

Guardian Media Group response to CMA interim report on the UK digital advertising market

About Guardian Media Group

Guardian Media Group (GMG) is one of the UK's leading commercial media organisations and a British-owned, independent, news media business. GMG owns Guardian News & Media, the publisher of theguardian.com and the Guardian and Observer newspapers, and its globally acclaimed investigations, including investigating the Paradise Papers and Panama Papers, and Cambridge Analytica. As well as being the UK's largest quality news brand, the Guardian and Observer have pioneered a highly distinctive, open approach to publishing on the web and have achieved significant global audience growth over the past 20 years. Our endowment fund and portfolio of other holdings exist to support the Guardian's journalism by providing financial returns.

Introduction

GMG welcomes the opportunity to comment on the CMA's interim report on the digital advertising market. In the six months since the CMA commenced the market study process, the study team has developed a thorough understanding of how the market functions, and the tensions and conflicts that exist at its heart. As a result of the CMA's continuing work, there are now a suite of recommendations that, if implemented by Ministers, could deliver a once in a generation opportunity to enable greater competition, innovation and growth in the digital economy, to the benefit of advertisers, publishers, citizens and the wider economy.

In addition to the work required to complete this market study, GMG believes that the CMA now has the knowledge and expertise to take forward market investigations in each of the markets where it has identified competition issues. Through the second phase of this market study, the CMA should leave open the possibility of moving to a market investigation phase in order to implement targeted interventions that could stimulate a pro-competitive environment in which transparent, accountable, innovative products and services emerge, to the benefit of UK consumers and the wider UK economy.

CMA consultation questions

1) Do you agree with our descriptions of general search services and social media service, as set out in Chapters 2 and 3?

Yes

2) Do you agree with our explanation of the different forms of digital advertising, as set out in Chapter 5?

Yes

3) Do you agree with our explanation of how the intermediated open display market operates, as set out in appendix H?

Yes.

The CMA notes (para 134 bullet 1) that identity will become a key battleground in the ability to serve digital advertising in the future. The market is changing rapidly with Apple, Mozilla and now Google making moves to ban third party cookies and web wide tracking within browser environments. We agree that these changes will largely not “affect Google or other companies, such as Facebook or Amazon, which can rely on users’ log-ins”.

The fact that the market is evolving should not, however, be seen as a reason for the CMA not to implement remedies in the open display advertising market. Even as the technologies that underpin the market evolve, the clear conflicts of interest that the CMA has identified at its heart will remain, persist and likely deepen. The resolution of those conflicts should remain the central focus of the CMA’s approach to remedies during its next phase of work.

4) Do you agree with our understanding of the role of data, as set out in Appendix E?

Yes.

We agree that, in a market in which digital advertising transactions are largely executed using third party cookies, websites that are unable to use third party cookies may receive either lower CPMs or no bids from advertisers for their digital display inventory. The CMA is sceptical of the suggestion that “UK publishers earned [50%-65%] less revenue when advertisers could not target their advertising”. Fundamentally, as the CMA rightly notes, if third party cookies were unavailable to all publishers and platforms - i.e. a level playing field - “advertisers may well redistribute their spending from personalised ads (ie targeted personal advertising) to non-personalised advertising.”

What the Google study does usefully highlight, is the practical commercial impact that the differential enforcement of regulation on market participants can have on expected advertising yields and advertiser demand. [CONFIDENTIAL]

We hope that, over time, the relevant data protection authorities with jurisdiction over dominant platforms highlighted in this study, will take enforcement action to level the playing field on this issue.

5) Do you agree with our analysis and findings in relation to competition in search and social media, as set out in Chapter 3?

We agree with the CMA’s findings in relation to competition in search and social media advertising markets. GMG welcomes the CMA’s focus on the importance of single sign-in tools, that give search and social platforms power and an extensive view of activity on their own platforms and across the wider web.

6) *Do you agree with our analysis and findings in relation to consumer control over data, as set out in Chapter 4?*

We agree with the CMA's analysis set out in chapter 4, particularly regarding consumers' lack of choice as to how their personal data is used, as "*social media platforms such as Facebook do not allow consumers to turn off personalised advertising.*" This is a poor outcome for citizens in the UK and across the EU, whose access to Facebook - and a range of other social media services - is governed by the Irish Data Protection Commissioner.

The CMA is right to stress that effective "*regulation that puts consumers in control of their own data is essential in the modern digital economy.*" We welcome the dialogue that the CMA has had with the ICO about how "*aspects of data protection regulation risk creating competition concerns by unduly favouring the business model of large, vertically-integrated platforms over smaller, non-vertically-integrated publishers.*"

We note the CMA finding that the further processing of "*personal data for ancillary purposes, such as personalised advertising based on the consumer's observed preferences, is not necessary to provide the core contracted service, and so contract is not an appropriate legal basis for that additional processing.*" GMG also notes the CMA's negative perception of click-wrap agreements noted between paras 4.133 to 4.135 of the report. The CMA should outline in its final report, how it - or another relevant UK regulator - can enforce UK citizens' rights against Facebook for its ongoing breach of the Data Protection Act 2018.

7) *Do you agree with our analysis and findings in relation to competition in digital advertising, as set out in Chapter 5?*

[CONFIDENTIAL] We strongly agree that the digital advertising market is complex and opaque, and that this creates the opportunity for dominant players to exploit conflicts of interest.

We agree that 'advertisers and publishers' face a lack of transparency over key aspects of market functioning'. As the CMA notes, this lack of transparency means that normal market signals - such as the reputation of market participants or a data driven assessment of company performance - are largely absent from the digital advertising market. This misalignment of market incentives has led to growing market dysfunction, which should not be surprising, because it is a market in which intermediaries do not speak a common language, and do not have an obligation to provide standardised data to their customers.

[CONFIDENTIAL]

We agree with the CMA's comments (para 5.123) about the lack of consistent metrics used by dominant platforms, on the basis that this is not only a bad outcome for advertisers in terms of knowing how effective their spend has been, but also sets potentially false expectations about the level of effectiveness that other media channels are required to meet in order to trade with advertisers.

The CMA notes the growth of concerns about brand safety (para 5.126 and 5.127), viewability and ad fraud in the absence of external measurement. The CMA potentially

underestimates the scale of ad fraud (para 5.128), which one analyst, Juniper, estimated grew to \$42 billion in 2019¹. While a number of industry initiatives have been launched to combat ad fraud (para 5.128), these initiatives are sticking plasters for the fact that there is no common language or protocol that is used across the industry, from dominant tech providers to small and nascent vendors. In the absence of a mandatory common protocol to underpin digital advertising transactions, misreporting of metrics and ad fraud is likely to remain rife.

The CMA notes (para 5.140) that *“Facebook’s current costs may partly reflect investments it is currently making to further enhance the consumer experience and enter new markets in the future.”* While Facebook is investing more in areas such as moderation and security, this is primarily due to external pressure from governments² and regulators who are seeking to hold Facebook to account for the negative externalities that it facilitates. In tandem with governmental efforts to hold Facebook to account through new legal frameworks, it is vital that the CMA addresses its commercial power and limits *“its ability to exploit consumers through excessive extraction of data.”*

GMG notes the CMA’s reference to Google’s position at the heart of the open display advertising market as having *“similar characteristics to financial markets... and that there is a case for considering general rules on all market participants to mitigate potential conflicts of interest, similar to those that exist in financial markets.”* GMG notes that the MiFID II regulation of financial markets includes useful principles such as investor protection, conduct of business and organisational requirements that could provide a potential blueprint for regulation of the programmatic advertising market.

GMG agrees with the CMA’s analysis on issues relating to vertical integration, conflicts of interest and leveraging and agrees that *“vertical integration can ... give rise to conflicts of interest and allow companies with market power at one stage of the value chain to leverage it in other parts of the industry, potentially foreclosing competing providers.”*

[CONFIDENTIAL]

8) *Do you agree with our assessment of the merits of a code of conduct for large online platforms funded by digital advertising?*

Yes - but it is absolutely vital that this code of conduct is enforceable by a legally empowered independent regulator. We agree that the existence of a code of conduct should not preclude concurrent enforcement action against companies that are subject to the code.

9) *Do you agree with the range of possible practices we have identified that could be considered under such a code of conduct?*

Yes.

¹ <https://www.juniperresearch.com/press/press-releases/advertising-fraud-losses-to-reach-42-bn-2019>

² <https://www.gov.uk/government/consultations/online-harms-white-paper/public-feedback/online-harms-white-paper-initial-consultation-response>

10) Have we identified the appropriate range of potential interventions to address the sources of market power for Google and Facebook?

We agree that the code of practice could help to address the sources of market power for dominant platforms with strategic market status (SMS) on the basis that the regulator's decisions are legally enforceable, and that the related remedies for enforcement are sufficient to force companies with SMS status to desist or change their practices.

11) Have we identified the appropriate range of remedies to improve consumers' control over their data?

GMG agrees with the CMA (para 6.101) that the proper enforcement of GDPR in relation to the platform policies of Facebook, would enable users to opt-in (para 6.105) to personalised advertising on its platform. This option should be provided to users on sign-up for the service, or at the next appropriate point at which the service is launched in browser or app. The idea of enshrining this principle in UK law (para 6.103) is welcome, if this begins to level the playing field between platforms and publishers in relation to gaining consent for personalised advertising.

It is important that the remedy proposed (para 6.96) does not prevent the creators of services offering consumers paid-for versions of services which might offer consumers additional features and functionality or a completely ad free experience (i.e. no contextual advertising either). We agree with para 6.97 on this point.

We agree that the 'fairness by design' duty (6.114) on platforms with SMS would be a positive intervention to the benefit of UK consumers. It would help consumers to understand how their data is being used within walled garden environments, and to control the use of that data according to their personal preferences. The news media and wider publishing industries will offer this level of granular consent through the development of the industry's IAB TCF framework, and therefore should not be subject to the same duty.

We support the CMA's recommendation (para 6.122) that "*competition and data protection authorities [...] consider jointly the interface between consumer, competition and data protection law.*" The practical intersection of these areas will be fundamental to enabling competition and innovation in the digital economy in the years ahead.

Regarding the need to simplify and centralise consent (para 6.128), one of the main stumbling blocks to the adoption of the draft ePrivacy regulation was concern expressed by publishers about the power that the centralisation of these controls would provide to browser and ecosystem vendors.³ It is essential that the centralisation of consent mechanisms does not inadvertently exacerbate the existing power of dominant platforms and ecosystem gatekeepers.

Proposals regarding data mobility (para 6.132 onwards) aim to enable users to move media and playlists from one proprietary platform environment to another. While these proposals are welcome, they again assume that the user's identity should be

³ <https://digiday.com/media/eprivacy-looming-nightmare-publishers/>

owned by the platform and not the user. The CMA has the expertise and understanding to consider whether a neutral form of digital infrastructure could devolve ownership of digital identity back to the consumer. This identity could be used to put the consumer in control to determine which platforms, publishers, advertisers, retailers and public services can have access to their identity in a manner of their choosing.

12) Have we identified the appropriate range of remedies to address conflicts of interest and a lack of transparency in digital advertising markets?

Yes

13) We have set out a number of specific questions relating to the potential interventions, which are discussed in the following appendices:

I: Potential practices to be tackled through a code of conduct

I.1 Do you agree with the overall proposed approach of regulation in the sector through a code of conduct applying to SMS firms? What thresholds should be applied by the regulator in determining SMS and compliance with the code?

We agree with the CMA's proposed approach for a code of practice that is enforced by an external regulator.

The threshold test should be applied to businesses with strategic market status (SMS) in a particular market and should be flexible enough to adapt if and when other businesses evolve to have SMS in a given market.

I.2 What are your views on our initial thinking on the list of potential rules described in the left column of Table 1 below?

The initial list of rules outlined by the CMA is welcome but it is essential that the list of rules is dynamic, enabling adaptation as new forms of abuse are identified by the regulator.

I.3 What are your views on the proposed form of regulation: a set of principles-based rules, supported where appropriate by guidance?

An overarching and enforceable set of principles-based rules, enforced by an external regulator, will be a valuable addition to the suite of tools available to competition authorities to hold dominant platforms to account in a swift and timely manner.

I.4 What powers should the regulators have in making SMS companies change behaviour and under what conditions?

GMG welcomes the regulatory powers set out at paras 17 and 18. The power to act as a dispute resolution body (para 19) is also a welcome addition.

I.5 What sanctions should apply where a SMS platform does not comply with or breaches orders under the code of conduct, and, what impact that might have on the speed and effectiveness of the regime, including any appeal process?

The code regulator should be able to impose significant financial sanctions on SMS platforms that do not comply with breaches orders under the code. Other sanctions may include exclusion of SMS platforms - and associated enterprises - from trading with the UK government, for example exclusion from the cabinet office advertising framework, or from working with NHS patient data. Failure to comply with orders may also be taken into account when the CMA considers future mergers or takeovers by SMS companies.

I.7 Should the regulator be able to direct SMS firms to implement, or unwind, measures for the purpose of fulfilling the objectives of the code?

Yes

I.8 What forms of reporting by SMS firms should be within the scope of the code?

Reporting obligations should be in line with the level of information deemed necessary by the regulator to monitor compliance and enforcement of SMS platforms' substantive obligations under the code.

J: Potential interventions to address market power in general search

J.1 Should there be some form of restriction on the ability of Google to buy default positions and / or the ability of browsers or device manufacturers to place defaults on their own properties? What benefits could this intervention deliver and what adverse effects could the prohibition of such practices have on competition?

Yes. [CONFIDENTIAL]

K: Potential interventions to address market power in social media

M: Potential interventions in digital advertising markets

78. We have discussed the following specific potential interventions:

- separation of Google's publisher ad server (or Google's publisher ad server together with its SSP (AdX)) from other of its intermediary operations;*
- separation by all intermediaries active in the open display market which operate both on the buy-side and sell-side to separate their operations between buy-side and sell-side;*
- access by independent DSPs to Google's YouTube advertising inventory;*
- access by independent intermediaries to Google's Analytics service; and*
- access by independent intermediaries to Google's data from its user-facing markets.*

79. Where these interventions apply to data and digital advertising held within the 'walled gardens', and if the interventions were to be effective, we are seeking views on whether the interventions should be applied to Facebook, because of its strong position in display advertising.

M.1 Would the intervention be effective in addressing the concerns identified in Chapter 5?

The CMA has discovered fundamental conflicts of interest at the heart of the digital advertising ecosystem, the effects of which are likely to be prolonged into the future.
[CONFIDENTIAL]

M.2 Would an intervention focused on the purchase/sale of digital advertising inventory aimed at UK users be effective?

Yes. The UK has one of the world's largest advertising economies, with digital advertising accounting for over half of all spend, with that percentage likely to increase in the coming years. The CMA has identified clear conflicts of interest at the heart of the open display advertising market and in the supply of intermediary advertising technology, and is therefore right to consider targeted intervention.

M.3 Should the intervention be considered further as a priority either by the CMA or by a regulatory body in the future?

Yes. The CMA has discovered fundamental conflicts of interest at the heart of the digital advertising ecosystem, which will likely persist for the foreseeable future, regardless of changes to the vehicles used to carry the identity of web users (i.e. cookies) or changes to browser policies. Given the conflicts identified, as it moves into the second phase of this market study, the CMA should not rule out the possibility of launching a market investigation at this stage.

M.4 How could the intervention be designed to minimise costs and maximise benefits?

[CONFIDENTIAL]

M.5 Would the benefits of such an intervention be likely to outweigh the costs?

Regulatory intervention in the market is essential to curtail the ongoing consolidation of the digital advertising market to just one or two dominant players. The cost of not intervening may be an even greater reliance on dominant companies, who the CMA have identified exploit their market power to the detriment of advertisers, publishers, consumers and competition in the wider online ecosystem.

81. In respect of mandating separation of Google's publisher ad server (or Google's publisher ad server together with its SSP (Adx)) from other of its intermediary operations we also invite stakeholders to specifically consider:

M.6 Would separation in an appropriate form be effective in addressing the concerns above, and if so whether this would require ownership separation, or would operational separation be sufficient?

[CONFIDENTIAL]

M.7 If separation of the publisher ad server were to be an effective intervention, would it be more effective to require Google to separate out solely its publisher ad server operations or its now fully integrated publisher ad server/SSP operations?

[CONFIDENTIAL]

82. In respect of mandating access by independent DSPs to Google's YouTube advertising inventory we also invite stakeholders to specifically consider:

M.8 Could any concerns about the sharing of personal information needed in order for Google to be able to sell YouTube advertising on a programmatic basis via all qualified DSPs be overcome?

Yes - we understand that Google is on a path to overcoming privacy concerns in relation to selling publisher display inventory through GAM. YouTube is ultimately a publisher, and there are ways that YouTube can ask users for consent to send data to third parties in order to enable the sale of YouTube inventory through other DSPs.

M.9 If it were too difficult for TrueView inventory to be offered to third-party DSPs, could access to only non-TrueView inventory still be effective?

Yes, access to non-TrueView inventory could help increase monetisation -
[CONFIDENTIAL]

M.10 Would there need to be a mechanism to help ensure that Google would treat Google and non-Google demand on the same basis?

Yes - a central objective of the final CMA report should be on the market-wide adoption of a reformed common standardised RTB protocol (openRTB) to underpin all open display advertising transactions. Auction data generated based on this standardised protocol should be made available to publisher and advertiser clients for the purpose of audit, analysis and performance management.

Deployed in the context of the UK digital advertising market, that data could also provide HM Treasury and its agencies with the data required to make a more accurate assessment of the tax liability of SMS platforms and digital intermediaries involved in the process of buying and selling digital advertising in the UK.

83. In respect of mandating access by independent intermediaries to Google's Analytics service we also invite stakeholders to specifically consider:

M.11 Would mandating access to Google's attribution service rather than underlying data address privacy concerns?

M.12 Would mandating access to Google's attribution service, rather than the underlying data, allow rivals to offer an equivalent service to Google?

Access to the underlying data is preferable to access to an interpretation of that data. Access to the raw data enables the use of our own internal data models to generate analysis.

84. In respect of mandating access by independent intermediaries to Google's and / or Facebook's data from its user-facing markets we also invite stakeholders to specifically consider:

M.13. Could a comparable intervention to that which we have indicated could be applied to attribution data also be developed to open up access to data collected by Google and/or Facebook for targeting purposes?

The development of innovative products and services relies on GMG being able to access data points that provide an understanding of its audience. Access to a range of data held by online platforms could enable innovative new business models to emerge:

[CONFIDENTIAL]

Transparency interventions

85. We have considered the following potential interventions:

- *reporting of fees by Google and Facebook or reporting of fees by all ad tech providers;*
- *requirement to comply with a common transaction ID;*
- *a requirement on Google and Facebook to comply with industry standards on ad verification and measurement;*
- *a requirement on Google and Facebook to allow third-party verification of their own advertising inventory;*
- *a requirement on Google and Facebook to provide certain data, including bidding data, to publishers; and*
- *a requirement on Google and Facebook to provide transparency about the working of auctions to a regulatory body or approved independent auditor.*

86. In respect of each of these specific transparency interventions we invite stakeholders to consider:

M.14 Would the intervention, either individually or in combination, be effective in addressing the concerns identified in Chapter 5?

Yes, transparency interventions are crucial to driving market reform and aligning the incentives of market actors. In respect of the CMA's idea of creating a common transaction ID, this could be achieved by mandating the use of a common standardised RTB protocol - based on openRTB - to underpin auctions in the programmatic marketplace. The openRTB protocol, owned by the IAB tech lab - an associated group of the Internet Advertising Bureau (IAB) - requires reform to ensure that vendors complete mandatory data fields with common values in order to ensure that data passed between intermediaries in the market is uniform in nature. The use of common market data would enable publishers, advertisers and regulators to use that data for the purpose of audit, analysis and vendor performance management.

Ensuring that such data is made available to advertisers and publishers by all parties in the value chain - whether dominant or nascent - would align the incentives of market actors, creating competition, accountability and innovation, creating a healthier more diverse digital economy to the ultimate benefit of UK consumers. This intervention could negate the need for a separate intervention to force Google and Facebook to set out the fees they take, as those fee levels would become self-evident through analysis of standardised auction data.

Similarly, with mandated access to consistent auction data in a standardised form made available by Google and Facebook, the need for those two parties to provide insight into how auction mechanisms work could become redundant. The nature of the auction mechanisms could become self-evident through analysis of the data, and could be used by individual publishers, and the new regulator, to act.

[CONFIDENTIAL]

M.15 Should the intervention should be considered further as a priority either by the CMA or by a regulatory body in the future?

Yes, transparency interventions are crucial to correcting wider market dysfunction as well as to the task of holding dominant platforms to account. Creating a common transaction ID, through mandation of the use of a common standardised RTB protocol would have multiple positive externalities for multiple parties. It should be a top priority.

M.16 How could the intervention be designed to minimise costs and maximise benefits?

Ideally the standardisation would be achieved on a global basis to maximise benefits, but beginning with the UK market would be a positive first step.

M.17 Would the benefits of the intervention be likely to outweigh the costs?

There will be costs in ad tech companies adapting their systems to run auctions to produce data in a common standardised form, but this should be rewarded by the upside of being able to demonstrate their probity in executing transactions. In the long term, the requirement to produce auction data in a common standardised format should enable market participants to begin to compete on an equal footing.

87. In respect of those interventions that would just apply to Google and Facebook we invite stakeholders to consider:

M.18 Would transparency interventions be better addressed by a code of conduct as proposed in Chapter 6, for example by requiring Google and Facebook to comply with existing or future industry standards, or by a regulatory body given specific powers to address the lack of transparency?

In terms of the requirement for Google and Facebook to comply with existing industry standards, this would be a positive step. However, the industry standards themselves are in need of tightening and improvement. Therefore bringing Google and Facebook

up to that level would not completely solve the challenges of verification identified by the CMA.

[CONFIDENTIAL]

M.19 If there were to be a regulatory body with powers to be able to put obligations on Google and Facebook in respect of the information that should be provided, what information should be provided?

Advertisers and agencies are best placed to advise on the underlying raw data required to independently verify impressions served on dominant platforms.

Again, verification services suffer from the lack of standardised auction data, that would otherwise enable a more granular insight into how and where advertisers and agencies have spent their money.

88. In respect of a requirement to comply with a common transaction ID we also invite stakeholders to specifically consider:

M.20 Would any of the standard formats which currently exist, were they be adhered to either through industry agreement or a requirement by a future regulatory body, be effective in enabling the reporting of the ad tech tax?

GMG strongly believes that the concept of a common transaction ID can be achieved through mandation of the use of a common standardised RTB protocol. The current OpenRTB protocol could form the basis of such a common transaction ID, though Facebook and Google should be required by the new regulator to adopt this new standard.

M.21 Would it be sufficient for the intervention to apply just to Google and Facebook or would the requirement also need to apply to all ad tech providers for it to work effectively?

A common standardised RTB protocol should govern the whole market, enabling advertisers and publishers to have certainty and trust in trading whoever their partner in the market might be. It is essential that, just as in the financial services sector, a common language is used to underpin all market transactions. That commonality of data, and an obligation to make that data available to advertiser and publisher clients, should enable the emergence of a new suite of tools to enable audit, analysis and performance management.

89. In respect of a requirement on Google and Facebook to provide certain data, including bidding data, to publishers we also invite stakeholders to specifically consider:

M.22 What information should be provided?

[CONFIDENTIAL]

M.23 Should this information be provided to publishers to analyse or, alternatively, provided to a regulatory body for audit or review against stated auction rules?

Auction data should be provided to publishers and advertiser partners with whom they work. Auction data is not just vital for the purpose of audit, but also to analyse and manage the performance of vendors acting on behalf of advertisers and publishers.

As rules around the use of personal data tighten, it is also essential that advertisers and publishers are able to see how vendor partners are using data gathered on their sites, and where that data transits within the advertising ecosystem.

Other possible interventions

90. The above separation and transparency interventions represent a selection of possible interventions in the digital advertising market. They do not necessarily represent an exhaustive list of interventions that might be able to be made to work effectively in this area. We would therefore invite other suggestions intended to address the competition issues we have identified in Chapter 5 that stakeholders consider to be worthy of further consideration by us in the second phase of this market study.

Do you have any views on the more specific questions in these documents?

14) Do you have any views about the appropriate sequencing of the remedies we have identified?

The focus on implementation of transparency interventions should be immediate. Consistent market data will be absolutely vital to the work of the new regulator of the code of conduct.

As noted in response to question 11, enforcement of GDPR in the UK - through the Data Protection Act 2018 - in relation to SMS platforms is vital to the objective of securing the data protection rights of UK citizens, whilst also achieving the competition objective of ensuring a level playing field between SMS platforms and the rest of the digital advertising ecosystem.

[CONFIDENTIAL]

Market investigation

15) Do you agree with our assessment of the potential candidates for a market investigation, and what are your views on the merits of each?

[CONFIDENTIAL]

We don't agree that increased operability is an adequate remedy to curb Facebook's market power. As we note elsewhere in this response, there is a strong public policy imperative for the CMA and policymakers to consider how users can be empowered with a permanent form of digital identity that they control.

The CMA briefly mentions calls for "Facebook and Instagram (and possibly also WhatsApp) to be structurally separated" at para 6.77, before effectively discounting these calls by suggesting that "a forced separation would also have significant costs and complexity, and it could lead to a loss in efficiencies for users." Were Instagram

a separate company today, it would likely have faced aggressive competition from Facebook, including the likely wholesale replication of many of its core features⁴. But under independent leadership, Instagram may have pursued an alternate business strategy, for example by enabling users to have greater control of their personal data, by investing more resources in content moderation and the prevention of harmful content, or by offering users alternate ways of paying for services other than the exchange of personal data⁵. A plurality of ownership of tech companies is, ultimately, preferable in order to ensure that one person's business philosophy⁶ is not allowed to dominate the apps that occupy the attention of consumers. The need for plurality of ownership is especially important in a sector in which the corporate governance of leading SMS companies is weak⁷.

We recognise that the forced separation of Facebook's acquisitions may require action by international competition regulators. GMG is aware of ongoing work⁸ in the US to re-examine whether these transactions should have been allowed, or should be unwound. The CMA should use the findings and expertise it has developed through the first phase of this market study to contribute that international work where possible. In the short term, the CMA should work with international competition authorities to properly assess whether the mooted integration of Facebook's family of acquired apps⁹ is in the public interest, or whether it will act to stymie a potential ruling for Facebook to divest one or more of its acquisitions.

16) Do you agree with our proposal not to make a market investigation reference at this stage?

[CONFIDENTIAL] Through the second phase of this market study, the CMA should leave open the possibility of moving to a market investigation phase, in order to implement targeted interventions that could stimulate a pro-competitive environment in which transparent, accountable, innovative products and services emerge, to the benefit of UK consumers and the wider UK economy.

17) Do you support recommendations to the government as an effective route to implementing interventions in these areas?

The recommendations made by the CMA in the interim report could, taken together, have a positive long term impact on competition in the digital economy. However, where the CMA has identified conflicts of interest at the heart of the open display advertising market, the CMA should leave open the possibility of moving to a market investigation phase, with a view to implementing targeted interventions that address those concerns.

Further work we propose to do over the second half of the study

⁴ <https://www.businessinsider.com/all-the-times-facebook-copied-snapchat-2017-5>

⁵ <https://www.wired.com/story/facebook-mark-zuckerberg-15-months-of-fresh-hell/>

⁶ <https://www.theatlantic.com/technology/archive/2010/09/the-life-and-philosophy-of-mark-zuckerberg/344208/>

⁷ <https://www.ft.com/content/b9ef082e-052b-11e9-9d01-cd4d49afb3e3>

⁸ <https://techcrunch.com/2020/02/11/ftc-to-examine-every-acquisition-by-alphabet-amazon-apple-facebook-and-microsoft-in-2010-2019-over-antitrust-issues/>

⁹ <https://www.nytimes.com/2019/01/25/technology/facebook-instagram-whatsapp-messenger.html>

18) Do you agree we have identified the right areas for further work in the second half of the study (set out below), and are there any significant gaps?

Analysis of auction algorithms

At 5.290, the CMA focuses on developing “more detailed analysis of money flows within the ad tech stack; and further analysis of advertising outcomes and the potential effects of market power.” A full analysis of spending flows across all intermediaries in the digital advertising ecosystem may not be necessary at this phase in the report process. The CMA could instead focus on commissioning research which articulates how conflicts of interest that the CMA has identified at the heart of the market, influence the dynamics of auction outcomes.

[CONFIDENTIAL]

Empowering consumers through development of a neutral digital identity

A key theme running through the CMA’s excellent report is the ownership and exploitation of user identity for the purpose of digital advertising. GMG notes that, whether in relation to the use of third party data to power personalised advertising, or the use of single-sign in tools, digital identity is the currency at the heart of the current phase of the online economy. Yet digital identity, or identities, are in fact not owned by the citizen, they are owned by dominant platforms such as Google and Facebook, or in the case of third party cookies, estimated as a result of data generated online such as browsing habits or device identity, over which the citizen has limited control.

The focus on centralised technical settings distracts from the underlying and fundamental problem that citizens do not currently have an online identity which they own and control as they use digital products and services across the web. The CMA report, the ongoing implementation of GDPR, the creation of the ICO’s age appropriate design code, are all policies that are being implemented in the absence of key bits of infrastructure that should be in place in order to enable the citizen to make decisions about how their identity is published, monetised and processed in a digital environment. The CMA and wider government should lead a debate about whether a form of digital identity that is independent from dominant platforms and government would enable innovation in new areas such as AI, and enable citizens to transact with public and commercial services in a manner of their choosing.

Guardian Media Group

February 2020