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**Twitter International
Company**
One Cumberland Place
Fenian Street
D02 F663 Dublin
Ireland

Marie-Madeleine Husunu
Competition and Markets Authority
Victoria House Southampton Row
London WC1B 4AD

By email: Marie-Madeleine.Husunu@cma.gov.uk

RE: Twitter's response to CMA's interim report on online platforms and digital advertising market study

Ms. Husunu,

Please find enclosed Twitter's response to the CMA's interim report on online platforms and digital marketing market study. Please let us know if you have any questions, or if you would like to discuss these responses further.

Sincerely,

Philip Merrills-Dearn
Associate General Counsel, EMEA Head of Legal

Michele Lee
Associate General Counsel, Global Litigation, Regulatory, and Competition

Micah Rubbo
Senior Counsel, Litigation, Regulatory, and Competition

Steven Baer
Counsel, EMEA



Twitter's response to CMA's interim report on online platforms and digital advertising market study

1. Summary

- 1.1. Twitter welcomes the opportunity to comment on the CMA's interim report ("Report") relating to its market study into online platforms and digital advertising.
- 1.2. The Report raises a number of important issues and a careful consideration of these issues, and proposed interventions, is required.
- 1.3. This response ("Response") does not address all points raised in the Report, or comment on all questions identified for consultation pending the CMA's final report. We have limited our comments to those areas where we consider we are able to contribute to the market study. This means, for example, that we do not comment on matters that relate solely (or primarily) to "general search" as opposed to "social media." However, the fact that we do not specifically comment on certain provisional findings in the Report (whether related to general search or social media) does not mean that we necessarily agree with, or endorse, those comments. Our focus in our Response is on those areas that we consider to be most relevant in connection with the potential interventions that have been identified.
- 1.4. We set forth below specific comments on various issues. However, before doing so, we consider there are some high-level points that are relevant to any assessment which should be taken into account when concluding on the potential interventions and reflected in the final report, as follows:
- 1.5. As the Report itself recognises, legislative interventions run the risk of unintended consequences. These are particularly acute in fast-moving markets, like online markets, and "over-intervention" raises the serious risk of stifling change and innovation. This runs counter to the issues that the CMA

identifies that need to be addressed to improve outcomes for competition and consumers.

- 1.6. In particular, it is very important to ensure that interventions do not inhibit new entrants and smaller market participants to devise and promote new business models. As such, any of the proposed interventions should apply to firms who have achieved Strategic Market Status (SMS) (whether or not they have used their dominance to engage in anticompetitive conduct). Even then, it is important to not adopt rules that deter entry by a firm that happens to have achieved SMS in concentrated markets elsewhere, or vice-versa. They certainly should not apply to all market participants (which discourages innovation and investment and adds an unnecessary administrative and cost burden on smaller market participants).
- 1.7. Whilst rules that are too prescriptive are likely to be difficult to draft and may miss certain behaviours as markets develop, general principles should not be too wide to catch all types of behaviour. Rather, any general principles proposed should be aimed at dealing with specific issues identified by the CMA, and flexible enough to allow for amendment or development as the relevant markets evolve and mature.
- 1.8. As noted in the Report, to the extent interventions are pursued, they only make sense in a global setting given the nature of the markets concerned. Unilateral action by the CMA risks creating additional hurdles for smaller competitors or potential new market entrants and therefore adversely affecting consumers in the UK. We therefore favour a coordinated approach, which can incorporate the detailed work undertaken by the CMA, and also note recent reports that the European Commission is soon due to present some proposals as part of its “European Strategy for Data.” Even following Brexit we believe, and understand, that the CMA will want to coordinate on matters such as this that are trans-national, and we fully support that position.
- 1.9. We elaborate on these issues below, in the context of certain interventions that have been identified in the Report.

2. The scope of proposed interventions

- 2.1. We note that the Report itself recognises that interventions run the risk of unintended consequences. This risk cannot be overstated. If the proposed interventions were to come into effect we consider it is very important that it does not apply to all market participants. Doing so risks adding to the costs of – and therefore deterring – new entry, as well as innovation.
- 2.2. Whilst we support transparency and aim to ensure transparency, adding another layer of regulation (over and above existing consumer protection and competition legislation which already applies) would only increase costs for



new entrants and challengers to established market operators (so of much may be dominant companies benefitting from scale and incumbency advantages). This would lead to entrenching the incumbents' market position and result in less consumer choice if all market participants were required to abide by a code of conduct. Twitter is already engaging with UK government entities on a number of existing regulatory proposals, such as the Online Harms regulatory proposals, among others, and would urge the CMA to ensure its own proposals are coordinated with these initiatives.

- 2.3. Smaller social media platforms are constantly innovating to improve their offerings and compete more effectively against the market leader, Facebook, which the Report identified as accounting for c. 50% of the display advertising market (followed by YouTube with c. 10%). At Twitter, we are always seeking to improve our service and the strictures of these regulations applying to those without market power risks undermining those efforts.
- 2.4. The fact that the proposed interventions need not, and should not, apply to all market participants is highlighted by the remedy imposed following the groceries market investigation. In that case, the Groceries Supply Code of Practice, introduced following a detailed market investigation, only applies to some supermarkets. Given the highly competitive nature of that market it applies to a number of supermarkets, i.e. those with sales of over £1 billion. By contrast, in the social media market there is – as the CMA identifies – a clear market leader and so, should a code of conduct be mandated, it is appropriate that it only apply to those with market power. It would be unnecessary, disproportionate and – most importantly – counter-productive for such a code to apply to those described by the CMA as “small platforms” which the CMA identifies as including Twitter, Snap, TikTok and Pinterest.
- 2.5. We note that there are only 43 references to Twitter in the body of the Report, whose focus is clearly and understandably on Google and Facebook given their strong positions in their respective markets. Given the absence in the Report of any adverse effects on competition from the conduct of the “small platforms” there is no basis on which to impose a remedy on them.
- 2.6. The issues identified in the Report can be addressed by applying the proposed additional regulation to market participants with market power: Seeking to expand the remit of regulation beyond those with market power would be disproportionate and harm those firms' ability to compete against established (possibly dominant) firms. In this respect, whilst we recognise that “other platforms may be considered to have SMS when considering their role in other markets outside the scope of this study”¹ it would not be reasonable to seek to extend the scope of any proposed code to cover such markets which have not been subject to review as a part of the market study and Report. Regulation on separate public policy areas is already being

¹ See paras. 68 and 6.34 of the Report.



considered by government elsewhere, and should be out of scope of the CMA's Market Study

- 2.7. We note that the CMA very recently published a new report entitled “Regulation and Competition: A Review of the Evidence.”² That report is very pertinent, and supports the view that regulation can stifle innovation and so should not be excessive. In this respect we note, for example, comments such as “[m]uch of the harm to competition comes from regulation that creates or raises barriers to entry. By restricting innovation and market disruption, such **regulation can have significant negative effects**. A large number of studies have found that barriers to entry can come in a wide range of forms ... such as **excessive compliance or administrative costs**, which can have the **effect of making entry more difficult or less attractive** e.g. excessive compliance or administrative costs” (emphases added).³ We also note the comment that “in dynamic markets more flexible forms of regulation can reduce the risk of deterring innovation, and therefore harming competition.”⁴
- 2.8. The research and findings as set out in CMA111 serve as a timely reminder of the risks of over-intervention in dynamic markets. Social media and digital advertising are some of the most dynamic, fast-moving and innovative markets. It is extremely difficult for existing market participants – let alone regulators – to predict how markets will develop and how consumers will behave/react, or what future disruption will entail. It is therefore very important that any proposed interventions by the CMA (or proposals to Government) adequately recognise this. As such, intervention – i.e. regulation – must not be too inflexible or intrusive. A detailed impact assessment of proposed interventions would be necessary before any regulatory changes are made.
- 2.9. Against that background, we make some comments on specific issues or proposals identified in the Report.

3. Interoperability

- 3.1. Twitter is committed to open internet principles. In fact, we recently launched a new initiative called @bluesky (<https://twitter.com/bluesky?lang=en>) where we funded a small independent team of up to five open source architects, engineers, and designers to develop an open and decentralised standard for social media. Project @bluesky, which will operate independently of Twitter, is evidence of our deep commitment to a decentralised standard for social media.

² CMA111, January 2020.

³ See CMA111, para. 1.13.

⁴ See CMA111, para. 1.16.



- 3.2. We believe that industry-wide interoperability requirements for social media platforms, however, would harm competition by disincentivizing smaller competitors, new entrants, and innovation, so the likely impact of any such proposal must be considered very carefully.
- 3.3. The Report proposes the remedy of requiring Facebook to allow interoperability based on the provisional finding that Facebook’s market power “*derives in part from the strong network effects stemming from its large user base.*”⁵ Twitter believes that requiring SMS firms to offer interoperability features (e.g. cross-posting from other social media platforms and access to social graphs) could bring significant competitive benefits. Twitter also notes that cross-posting should occur without distortion or stripping of attribution of the original source and with fully rendered media. As the Report rightly notes, this remedy should be imposed as a remedy “to help overcome these network effects for new entrant and challenger social media platforms.”
- 3.4. The Report rightly recognises that access to APIs from SMS firms would help increase competition amongst social media platforms. It would mean that customers could spend time on other non-SMS firm platforms knowing that their content would reach a large audience, across different platforms. Therefore, if a smaller platform is more innovative and/or offers a better customer experience it would attract customers and increase competition, but will only be able to do so if the customer knows that it is not necessary to also use a SMS firm to reach a wide audience given its network effects and substantial reach and customer base. In other words, consumers will use an alternative platform if they find it easier/better to do so, knowing that their content will also be seen on an SMS platform; if posts on the alternative platform were not also viewable on an SMS platform (with its far greater reach) such consumers would have no choice but to use it instead of a platform they actually preferred. Therefore, cross-posting will actively encourage competition as smaller players will know that there are no network dis-benefits for customers using their service, in which they can invest and innovate.
- (a) Mutual interoperability requirements, on the other hand, risk harming competition by stifling innovation, making it more difficult to compete, and further concentrating power in the hands of SMS firms. If smaller firms are required to allow their customers to post and interact with content from SMS firms, those customers need never leave the dominant platform. Requiring nascent or smaller firms to offer interoperability forces those firms to, in effect, advertise for those SMS firms in the form of cross-posts that drive traffic back to SMS firms.

⁵See para. 82 of the Report.



- (b) Mutual interoperability requirements also risk putting more data, from smaller firms with unique customers, back in the hands of SMS firms.
- (c) With respect to which elements of functionality would be strong candidates for interoperability, Twitter believes that both accessing connections and cross-posting, when applied only to SMS firms, could significantly promote competition. Twitter believes the other proposals discussed in Appendix K, such as forced interoperability with respect to viewing and engaging with content or replicating social media platforms' core functionality, however, would have the opposite effect. These proposals would only discourage innovation and further concentrate the social media market into the hands of SMS players.

4. Personalised advertising

- 4.1. People's right to privacy and data protection is something Twitter has fought to protect since it was created in 2006. Behind the scenes, teams across the company are constantly working to protect customer privacy and data. Our motto is "Trust is earned, not given" and we are devoted to cultivating the best data privacy, security and management practices. While Twitter believes that customers should be given options regarding data collection, for the reasons discussed below, it should not be prevented from serving relevant advertisement based on **on-platform** content, particularly when that use is clearly disclosed in its Privacy Policy.
- 4.2. As the Interim Report notes, Twitter does use information it gathers from customers' activity *on the platform*, including "information from consumers' devices, the location where they signed up and their current location, to personalise the ads they see and their experience "on the platform" or put differently ads personalised using on-platform data.⁶ As we make clear in our settings and controls, when the personalised ads setting is enabled "Twitter may further personalize ads from Twitter advertisers, on and off Twitter, by combining your Twitter activity with other online activity and information from our partners" or ads personalised using on-platform data that is supplemented with **off-platform** data. For more information about the options Twitter provides with respect to personalized advertising can be found here:
<https://help.twitter.com/en/safety-and-security/privacy-controls-for-tailored-ads>
- 4.3. Twitter believes it is important to distinguish between these two types of advertising. Ads that are based upon a customer's activity on the platform, including, what a person Tweets or who the person follows, are not "contextual" advertising, as the Report defines it. This type of advertising, however, is inherently different from advertising that uses data from off-platform sources.
- 4.4. It would be a mistake to treat these practices in the same way and require all platforms to allow customers to opt out of advertising that is based upon a customer's activity on the platform. Such a remedy is disproportionate and has the

⁶ See para. 4.64



potential to make it more difficult for smaller firms to compete thereby further entrenching incumbents. In particular:

- (a) Such a radical intervention, which has the potential to undermine platforms' business models, should not apply to platforms without market power (although all platforms should make clear--as Twitter does--the different types of advertising provided using 'on or off platform data'). Removing one of the fundamental pillars of a smaller firm's business model, as well as their ability to enrich their customer's experience and control, risks further harming their ability to compete. If a platform without SMS uses 'off platform data' to personalise ads, it should only be obliged to clearly inform customers of these practices in its privacy policy. It is important to recognise that unless a firm has reached SMS status, the customer already has a choice: They can easily choose not to use that particular platform which, by definition, would not have sufficiently large network effects to "force" a customer to use that platform. It is only once a firm has obtained SMS, and in particular dominance, that the customer is deprived of a meaningful choice.
- (b) Such a requirement also has the potential to eliminate important forms of competition. As the Report notes, respondents identified Twitter as having a unique ability to compete with Google and Facebook, as it is able "to reach niche and highly relevant audiences through . . . a range of ad solutions that are different to others." Applying this requirement across platforms removes one important form of competition: The quality of ad placement and the ability to leverage the unique attributes of a particular platform to compete against firms with larger reach.
- (c) As generic advertising is less effective, smaller platforms will suffer faster and more catastrophically if their advertising revenues decline. This is an example of unintended consequences, because it would be very likely to reduce the ability of smaller platforms to compete with the market leaders - as income would fall and the smaller platforms would have less ability to invest in order to seek to compete more effectively with those with market power. Imposing a remedy on social media platforms without market power that removes a fundamental pillar of its business model, would reduce income and return on capital and make it much more difficult for them to compete with SMS firms. This could have far reaching adverse consequences on platform users' welfare.⁷

4.5. Many of the issues raised in the Report flow from the nature and the extent of data available to, and/or collected by, platforms. It is important to appreciate that the vast majority of platform customers are willing to provide their data in the knowledge that this enables a better customer experience (and Twitter fully supports efforts to ensure that this point is made clearly to consumers in terms and conditions and/or privacy policies – see further below). In this context, any interventions must be considered and proportionate so that they do not result in a lower quality of service to consumers.

⁷See para. 40 of the Report.



5. Role of data

- 5.1. Against that background, and as discussed above, Twitter recognises that customers should be able control access to their data. In fact, just this last December, Twitter launched the Twitter Privacy Center (<https://privacy.twitter.com/en>) to provide more clarity around what we are doing to protect the information people share with us. It is the central place that hosts everything that is part of our privacy and data protection work: Related initiatives, announcements, new privacy products, and communication about security incidents. It explains, in simple and clear language, what data Twitter collects, how we use it, and the controls the customers have regarding that data.
- 5.2. Appendix E notes that Twitter collects relatively less customer (or third party) data in comparison to other firms.⁸ Twitter feels strongly that it would be unfair, disproportionate, and counterproductive to impose data regulations that limit the ability of smaller firms, who lack SMS status and for whom there is no evidence of anticompetitive behavior, to compete. Regulatory requirements such as this are particularly inappropriate where controls are provided that enable consumers to choose how off-platform data can be used versus on-platform data.

6. Factual inaccuracies

- 6.1. Footnote 111 appears to be inaccurate. It refers to the Vine example whereas the text in the body of the Report comments on the character limit for tweets.

7. Conclusion

- 7.1. The Report raises a number of important issues. Our views can be summarised as follows:
- Interventions should carefully consider the risk of unintended consequences, especially to the extent proposals extend to all market participants.
 - Interventions should be coordinated at a pan-national level to have the greatest efficacy, and the CMA's proposed action should also be coordinated with any other action/proposals the UK government is considering.
 - Interoperability is important to promote competition, but mutual interoperability would be self-defeating and not achieve the CMA's stated objectives.
 - Personalised advertising has significant benefits for consumers. These need to be balanced against the right to privacy. Therefore, certain restrictions on

⁸ See Figure E.2, Appendix E of the Report.



the use of off-platform data may be reasonable and proportionate, but the use of on-platform data is necessary to achieve those benefits and compete against SMS firms. Personalisation based on on-platform data therefore should be allowed so long as the use of such data is clearly explained to consumers.

