



***Online platforms and digital advertising - CMA market study interim report***

***Comments from Verizon Media EMEA***

***February 2020***

**1. Introduction**

- 1.1. Verizon Media is pleased to provide these comments on the CMA's analysis and the proposed remedies set out in the interim report. The report is a valuable contribution to understanding the challenges and constraints facing competition in the digital advertising market.
- 1.2. We note that the CMA will continue its analysis during the second half of the study. We welcome the CMA's openness to feedback and to further evolving its thinking and remedies in the light of new evidence and comments from stakeholders.
- 1.3. The market study impacts our business at all levels. We provide here some high level comments, with some initial thoughts on potential remedies and areas where further work is needed. We expect to add to these comments during the second phase of the study.

**2. General comments**

- 2.1. We are supportive of competition authorities maintaining interest in the digital advertising market and, where appropriate, using their existing powers to promote competition and address distortions in the marketplace. The interim report sets out a thorough analysis of the structure and functioning of the market. Much of this reflects our lived experience of operating in the UK digital advertising market as a challenger to the market leaders.
- 2.2. We set out in the sections below areas that would benefit from more detailed analysis in the second half of the study and areas where our views diverge from the report's conclusions.
- 2.3. The interim report sets out a vast number of potential remedies and we note that some are included in response to concerns expressed in the first half of the study but that the detailed analysis of the need for such remedies and/or a competition impact assessment has yet to be done. This work should be prioritised during the second half of the study.

- 2.4. The report invites views on prioritisation and sequencing. Priority should be given to remedies that solve issues *at source*. A number of remedies seek to correct issues which result from the way the market functions today. Many of these issues could be resolved by a market that is competitive and functions effectively. Other remedies seek to regulate to deliver outcomes that could be achieved by advertisers and agencies within the ordinary course of commercial contracting to ensure accountability within the ecosystem.
- 2.5. Some of the same remedies are being proposed in other contexts, including government-initiated policy discussions around digital advertising regulation and targeting. The second half of the study should press advocates to set out the specific barriers their preferred remedies seek to remove and robustly test remedies via impact assessments. This would help hone in on remedies that would create the right incentives and behaviour in the market, and drive more effective competition. It would also strengthen the evidence base in key areas and inform prioritisation.
- 2.6. In examining the right prioritisation and sequencing of remedies, consideration must be given to the capacity of the market and digital supply chains to sustain additional regulatory and other interventions while it is adapting to significant external events including GDPR, migration to version 2.0 of the IAB's Transparency and Consent Framework ("TCF") and Google's plan to phase out third party cookies in Chrome within two years (which follows moves by Apple's Safari and Mozilla's Firefox to block third party cookies by default). This analysis should also consider the appropriateness of remedies which would shift liability between parties in the supply chain. This could introduce new barriers to competition and the underlying concerns could be more effectively addressed in other ways.
- 2.7. We are mindful that the evidence gathered in this study is intended to be used to inform the formulation of digital policies by government and other regulators. Given the significance of this for the market at large, sufficient time should be devoted to robustly testing the analysis in the second phase of the market study and ensuring any gaps are clearly identified.
- 2.8. We are also mindful that government is separately examining a range of digital policy issues. Government decisions on these related areas of policy have a bearing on how companies engage in the market study. It is challenging to comment on potential competition remedies while this wider government agenda remains unclear and comparable, detailed analysis has yet to be done. Understanding the detail of government's proposed regulation of digital markets is key to determining the balance between CMA action and government-led remedies. We have urged government to provide this detail as soon as possible. We comment on this at more length below.

### **3. Regulatory reform**

- 3.1. The report refers to the government's 'regulatory reform' agenda. We noted in our response to the Statement of Scope that the market study comes at a time when

UK digital policy is in some flux and a number of novel policy initiatives touching digital companies are simultaneously in flight. The speed and breadth of proposed interventions risks unintended collateral impacts, and this is compounded by overlapping policy emanating from different sources and limited cross-government coordination.

- 3.2. Not only are there multiple digital policy initiatives in play at the same time, but they have different (and sometimes competing) policy objectives. This body of government work does not, as a whole, have the promotion of competition in digital markets as a core (and common) goal and there are no published assessments of individual or cumulative impact. Concern about the practices and market position of the very largest players in the market is a key driver and informs the design and focus of these initiatives.
- 3.3. The target companies know they are the targets of such interventions. While they can shape new rules and adapt pre-emptively, there are myriad companies on the periphery who are either unjustifiably captured by regulation not directed at them and ill-suited to their business model and practices, or are burdened with prolonged periods of uncertainty as to whether or not they are in scope. Many of these peripheral companies have vastly more complex supply chains and believe they (and the ecosystems that sustain them) would bear a disproportionate share of the regulatory burden and cost of adapting to new rules. Such companies can also be forced to redesign business operations in response to the approach taken by those with strategic market status.
- 3.4. The CMA should therefore not consider the consequences of the design and implementation of GDPR to be a one-off. This phenomenon is quite deeply embedded in digital policy-making in the UK and elsewhere.
- 3.5. The proposed framework for online harms and a digital services tax are examples of this trend. The DCMS' review of digital advertising regulation and the Centre for Data Ethics and Innovation's review of targeting and personalisation share similar characteristics and are exploring or recommending broad market interventions. It is not yet clear what these interventions will be or how they could impact the competitive landscape.
- 3.6. Challenger firms share a concern that the current body of digital policy could potentially add to competitive pressures rather than serve as a programme of "regulatory reform" to enhance competition in digital markets. This trend in digital policy making is important context for the market study and government must be encouraged to clearly set out plans for pro-competitive reform, particularly if the CMA considers regulatory reform a substitute for a market investigation.
- 3.7. In addition, there is a need to review the full body of government's digital policy before it progresses further and to revisit how policy is developed and evidence gathered to support the case for intervention. Policy-making would benefit from greater transparency to external stakeholders, and more specific and proactive engagement with challenger firms in order to inform evidence-based policy-making

and appropriately target interventions. This would go some way to providing greater legal certainty for the full range of market participants and build understanding of the necessary conditions for complex digital supply chains to compete and thrive. Finally, all departments should be required to carry out economic and competition impact assessments of digital policy proposals.

#### **4. Data protection regulation**

- 4.1. We welcome the CMA's thoughtful analysis of the unintended effects of data protection law, which reflects our lived experience of GDPR over the last 2 years. While the precise contours of data protection law are still evolving, competing platforms and ad intermediaries are impacted differently from market leaders and have insufficient certainty to satisfactorily inform their forward business decisions and commercial partnerships. We agree with the conclusion that competition and data protection authorities should work together to address legitimate data protection concerns while preserving effective competition and sustaining competing ecosystems.
- 4.2. The report reaches a number of conclusions about how GDPR rules are operating in practice and identifies areas where they may be confusing for consumers. This analysis needs to be balanced with an understanding that GDPR imposes a vast number of binding requirements on businesses, including to provide notice and transparency about complex processing. The digital advertising sector is one of many facing the challenge of conveying technically complex information to consumers. For example, conveying information about how insurance premiums are calculated or data is shared between providers to prevent fraud is comparable in scale and complexity.
- 4.3. There are no lack of rules around how personal data should be processed and the requirement to provide consumers with transparency. But at the same time, there is a lack of clarity about what is and is not acceptable in practice, with EU regulators often taking differing approaches. New domestic legislation would add further confusion to an already complex legal and regulatory landscape. It would be particularly disruptive at this time when there is still so much uncertainty around the UK's exit from the EU. New legislative action outside the limits of GDPR may also affect both the UK's ability to secure adequacy for personal data transfers from the EU, and investment decisions by businesses (particularly overseas ones that have greater flexibility about where to invest).
- 4.4. The interim report specifically suggests users should be provided with more granular controls over the processing of personal data. Although we note that the CMA also believes that consumers will likely find it easier to consent once for an appropriate variety of linked data processing purposes, rather than multiple times. As the CMA correctly flags, this practice is potentially in tension with the GDPR principle that consent should be 'specific' (implying that multiple, more granular, consents should be sought), but the issue is worthy of further analysis and discussion with relevant data protection authorities. Consumers already bear a heavy burden as a result of GDPR. Adding to this burden when GDPR provides

other tools to hold companies accountable for how they process personal data seems counterproductive and unfair on consumers.

- 4.5. We believe that GDPR provides the rules necessary to achieve the outcomes set out in the interim report, including transparency, consent, choice, accountability, privacy by design and fair processing. But consistency of interpretation - and a common sense view of what is ultimately in consumers' interests - should be more actively promoted.
- 4.6. Next steps should prioritise clarifying the precise contours of GDPR. This would serve to support the sustainability of the competing ad intermediation ecosystem and provide complex supply chains with a clear path to compliance and better outcomes for individuals. This work is urgent, and crucial to the future stability of the open demand ecosystem. Clarity will afford responsible firms the opportunity to demonstrate that open demand can operate in compliance with GDPR and establish high privacy standards for consumers.
- 4.7. This effort should focus on:
  - 4.7.1. Clarifying legal bases for processing in different layers of the ad intermediation chain, in particular that consent is the most appropriate legal basis for ad personalisation. This is consistent with the CMA's conclusion that consumers should be able to withhold and withdraw consent to their data being used for personalised advertising;
  - 4.7.2. Additionally, clarifying there is a role for legitimate interests in programmatic advertising, for example when serving and measuring non-personalised ads, supported by a proper analysis and balancing test (i.e. a legitimate interests assessment);
  - 4.7.3. Acknowledging that nothing in GDPR prohibits companies offering *non-personalised* advertising (and processing the associated personal data) as a precondition of using a service. Consent is still freely given as there is no consumer detriment if a user declines consent (provided the services are not truly unique) as there is no absolute right for consumers to have access to commercially produced digital content. There is instead an upside for users as they gain access to services that are expensive to develop and maintain for no monetary consideration. This is analogous to consumers not being able to remove contextual advertising from commercial TV/radio/print media, nor being able to demand that paid-for streaming services should be made available for free;
  - 4.7.4. Prioritising timely DPA guidance and support *over* enforcement in areas where highly integrated ecosystems need to move swiftly and in concert towards a common model of compliance;
  - 4.7.5. Prioritising, in particular, guidance which seeks to achieve consistency between competing business models;

- 4.7.6. Reconsidering the rules with respect to the bundling of consent in ways that benefit consumers.
- 4.8. An approach that prioritises timely guidance over lengthy enforcement processes (which would produce guidance only at the very end, many years later) would address many of the issues at source. It would alleviate the need for more intrusive interventions including restricting legitimate business models by law, duplicating GDPR principles like privacy by design and imposing defaults on platforms and ad intermediaries which go far beyond what legislators intended with GDPR.
- 4.9. More effective and timely guidance and enforcement of existing data protection law should be complemented with other activities including active support for IAB Europe's TCF. TCF will build trust and confidence of users over time and participating companies have already committed engineering resources to implementing TCF v2.0 by the end of H1 2020. This involves collective effort across the ad ecosystem and re-consenting companies' entire EU user base. This is not a trivial undertaking.
- 4.10. This iteration of TCF will have a clearer interface and an expanded list of purposes for which data can be processed. Those purposes will be used consistently across digital news, magazine and other websites, which will foster understanding to consumers via their trusted online brands. It will also give users the right to object to an intermediary using their data on a legitimate interest basis (in addition to the right to withhold consent). It will give users more control over whether and how vendors can use certain features such as geo-location. The TCF will continue to evolve, and as it does consumers will become even more familiar with increasingly consistent consent flows and recognise those that adopt TCF as providing a common standard of transparency. Regulators should endorse the approach, the ecosystem should adopt it and consumers will be better served as a result.
- 4.11. We welcome recognition that the regulatory landscape is particularly challenging for investors in the UK digital advertising market who are established in the EU and are managing a complex transition as the UK leaves the EU. There is enormous instability in the regulation of personal data globally and many challenger firms face overlapping and conflicting rules to which platforms, publishers and ad intermediaries are having to collectively adapt in real time. This will require re-engineering of global platforms with associated costs and business disruption. The diversion of engineering resources from venture investment is a serious concern for challenger firms and has implications for competition in the market.
- 4.12. We therefore welcome the commitment to engage with other relevant national authorities whose decisions impact the regulation of, and competition within, the UK market. The market needs regulatory consensus across the EU *and* the UK and while the thoughtful process initiated by the ICO is welcome, a collective response by all European DPAs is required. We continue to believe that more can be achieved within existing rules without further regulation or legislation.

- 4.13. Finally, we note that para 6.127 suggests that data protection authorities and policy-makers should explore the extent to which browsers, operating systems and/or devices could enhance users' control over their data. The insertion of decision-making intermediaries in the relationship between providers of online services, their contracted service providers (such as ad intermediaries) and consumers is a complex issue. Regulatory intervention to bring about this situation raises additional issues, including favouring some business models over others with no guarantee of a net gain in privacy protection for users.
- 4.14. The second half of the study should explore this in detail, together with the assessment of changes to the treatment of third party cookies by browsers and the cost of mandated browser standards designed to favour business models such as Brave. This work should involve detailed consultation with practitioners in the field. All three issues are interrelated in terms of their impact on competition and choice in ad intermediation services, and are potentially in conflict as remedies.

## **5. Transparency**

- 5.1. We agree that transparency for ad buyers and publishers is an important feature of a well-functioning market. Usable information flowing through the advertising ecosystem can inform and drive buying decisions and efficiencies in the system, as well as promote competition for the provision of ad tech services which respond to advertisers' demands for a healthy and brand safe ecosystem.
- 5.2. We are disappointed to see the provision of ad tech services characterised as an "ad tech tax". These services are provided in response to advertiser demand and many ad intermediaries have invested in solutions ahead of the market. Verizon Media, for example, provides many such services free of charge to clients as a way to differentiate ourselves in the market. This is a significant investment on which we seek a return.
- 5.3. The analysis and conclusions in the interim report therefore feel too broad to form the basis of specific interventions. This has yielded a large number of potential remedies, some of which overlap and may create unintended incentives in the market. The second half of the study should more clearly identify issues that concern only players with strategic market status and those that concern the wider market. Where advocates of the many proposed remedies are unclear as to their specific competition concerns, the CMA should request this from them during the second half of the study. We can then be more specific in our feedback.
- 5.4. This analysis should also identify the different reasons behind calls for greater transparency and how they differ between publishers and advertisers, as well as where there are conflicting interests, for example as the result of advocacy by solution vendors.
- 5.5. Priority should be given to transparency between contracting parties and ensuring that this information is passed through the ecosystem to advertisers and publishers. Most ad intermediation providers contract with agencies and fee

disclosures would be best addressed within existing commercial arrangements. However, we would urge caution in focusing purely on fee transparency (to the exclusion of other elements of ad tech services provided) as this approach is likely to benefit players with significant market status by shifting the focus to specific percentages of underlying fees rather than on net revenue and overall benefit to publishers.

- 5.6. With respect to transaction ID, the second phase of the study should examine in more detail pilots of blockchain and other technologies which aim to provide equivalent outcomes. Verizon Media and others are beginning to test these technologies and will evaluate the results to identify the outcomes they deliver relative to the engineering costs involved. The market study should allow these market-led initiatives to complete their course before considering new and costly remedies. It is also important to note the many data protection issues that would arise from a requirement for very granular transparency, for example at the level of individual impressions. We continue to believe that priority should be given to transparency between contracting parties, as noted above.
- 5.7. We welcome acknowledgement in the interim report of how industry schemes - delivered via the IAB UK Gold Standard and TAG - have driven down ad fraud and addressed brand safety concerns. The second half of the study will examine the characteristics, objectives and behaviour of advertisers and this should explore the extent to which these standards are routinely requested in RFPs and widely adopted as a prerequisite for procurement. Such practice is the best way to promote competition in the ad tech market, encourage investment in innovative solutions and drive cost and other efficiencies within the ecosystem.

## **6. Separation of integrated platforms**

- 6.1. The interim report explores the separation of integrated platforms to address problems that arise from operating in multiple markets.
- 6.2. We note that the main focus is on the potential separation of Google's vertically integrated business but that the study gives consideration to whether separation might also be appropriate where other firms operate both demand-side and supply-side platforms in order to avoid a conflict of interest. In this regard, a separation remedy would be a punitive and draconian intervention and there is no justification in competition law nor sufficient evidence in the interim report to support forcing this on a non-dominant firm. In fact, it is likely to undermine competition by disadvantaging sub-scale competitors.
- 6.3. The number of competing firms which operate both demand-side and supply-side platforms is small and they are sub-scale globally. Competing firms are structured this way in order to compete effectively with market leaders. The efficiencies gained from vertical integration are what enables any competition in this market. The risk of enforced separation would remove these efficiencies and could result in market exit by making these firms even more sub-scale and unable to compete.



## **7. Data mobility**

- 7.1. We note that the interim report sets out data mobility as a potential remedy under 'options for the future', primarily in the context of promoting competition within social media but potentially more broadly.
- 7.2. The interim report concludes that existing initiatives like the Data Transfer Project (DTP) are unlikely - on their own - to be transformative at improving competition. Data mobility can be effective in specific situations and to address specific and well-understood competition outcomes - for example, to facilitate number portability in domestic telecoms services or switching tools for retail broadband or energy services. However, it is not clear what specific competition issues data mobility would address in the digital advertising space. Such initiatives tend to benefit established, large scale companies which can invest the necessary engineering resources to participate and exploit more data.
- 7.3. The interim report also notes the emergence nascent schemes such as Personal Information Management services (PIMs) and Personal Data Stores (PDS). These are nascent and none has yet reached commercial scale. Policy-makers should be cautious about regulatory intervention at this time to support such schemes.
- 7.4. The interim report hints that data mobility solutions could be deployed by intermediaries. A great deal more work would be needed to assess the specific competition barrier(s) that this would address and the extent to which this would materially improve the competitive landscape at this time. Consideration should also be given to the diversion of resources from venture investment by competing providers this would involve. It could take a long time for any benefits to be felt by consumers and others in the ecosystem.
- 7.5. We believe that the market study should set aside these potential remedies in the second half of the study and focus on other remedies which are likely to be more impactful.

## **8. Codes of practice**

- 8.1. We anticipate further in depth discussion of the proposed codes of practice during the second half of the market study. As noted above, the next phase should focus on incentives and likely behavioural changes that would address specific competition concerns identified by the review. While the CMA has indicated that codes will be limited to entities with incentives to restrict competition, i.e.: those with strategic market status, the context within which these codes operate and their effect on market dynamics, incentives of firms with strategic market status, and subscale players should all be carefully considered. There is a risk, for example, that codes incentivise firms with strategic market status to cascade burdens through the wider ecosystem. While the specific facts matter, the context matters at least as much if not more in these fast moving, complexly interconnected digital markets.

- 8.2. Codes could be a more proportionate and targeted alternative to broad market regulation where competitive concerns are unique to players with strategic market status (e.g.: to overcome preferential access to inventory through their DSP) and such regulation would disproportionately impact sub-scale competitors and the ecosystems that sustain them.
- 8.3. The next phase of the study should consider the process by which codes could be developed and designed. The process should be open and informed by close consultation with interested stakeholders as to content and target outcomes. The process must also avoid creating opportunities for subjects of a code to insert design features that could tip the balance in their favour, for example by creating new barriers via unfair contractual terms or controlling standards-setting processes.
- 8.4. The administration and enforcement of codes should be designed with the resources and capabilities of competing companies in mind. In particular, regulators would need to carefully balance the burden of information requests and consultations with the desired competition benefits.
- 8.5. As noted above, government departments are advancing related workstreams from the Furman Review including exploring codes of practice to address competition concerns in other digital markets and setting up the proposed Digital Markets Unit. It will be important that these workstreams are brought together in the next phase of the study so that stakeholders can assess proposals as a whole and consider their implications not only on one another, but on the operation of, and competition in, the market. It is important for challenger firms that, taken together, the market study and government's digital policy agenda make a coherent whole and that they drive towards clear and deliberate competition outcomes.
- 8.6. The interim report describes potential synergies between the code of practice and the code(s) recommended by the Cairncross Review on the sustainability of news. It is important that government first clarifies the scope of these codes, as it is not yet clear whether they would be limited to platforms with strategic market status or whether government would seek to apply them also to other distributors of online news content. The Cairncross Review was unclear on this point, as was government's recently published response.

## **9. Search**

- 9.1. The interim report offers thoughtful analysis of the search market and recognises that over-regulation has downsides for incentivising investment by incumbents and by competing players to increase competition and choice in the market. Over-regulation is not a net win for the market as a whole.
- 9.2. There should be an explicit recognition that search advertising data is useful to advertisers as a source of purchase intent, which makes it some of the most valuable data in the advertising market as a whole. While it is appropriate that search and digital advertising are treated separately in competition terms, the

interim report seems to overlook the mutually reinforcing nature of the connection between search advertising and other forms of digital advertising. The scale of such data available to the market leader is one of the biggest advantages the market leader has over all other players in the market.

- 9.3. The provision by those with strategic market status of access to search click and query data could be effective at improving competitors' services because greater data scale enables greater relevance which is a key aspect of quality for consumers. The benefits of shared data would need to justify the investment by competitors in innovation and analysis in order to understand and use it. Key challenges include how to provide access to data without impinging on user privacy or otherwise disadvantaging users. These challenges pose both a technical design question and a legal one. The purposes for which other providers could use shared data are also pertinent. These issues should be explored in the second half of the market study.
- 9.4. We note that the second part of the study will explore choice screens. The EU's decision to offer competing search providers access to Android users on an auction basis financially benefited the incumbent. Were this to be explored more broadly, consideration should be given to the ability of the incumbent to determine the design of the remedy and to insert contractual provisions and other terms which tip the balance in their favour. Consideration should also be given to the design limits of different devices and to the number of choices provided in order to ensure fairness to competitors and avoid arbitrary limits.
- 9.5. The interim report considers whether syndication agreements should be offered by certain providers, and should be subject to fair, reasonable and nondiscriminatory (FRAND) terms. There seems to be confusion as to the terms on which search syndication agreements are concluded. The terms most typically involve a revenue share based on search advertising, rather than fees paid to the search engine for access to search results. This will need clarification in the second half of the report. We do not at this stage see the benefits to competition of requiring search engines to offer FRAND terms to all market participants and this could constrain the freedom of competing search providers to conduct business or explore new business models.
- 9.6. The second half of the study should also consider the impact of a digital services tax on incumbent and competing search providers and the ecosystems they sustain. The UK government is expected to confirm in the next Budget the introduction of a 2% tax on gross search revenues derived from UK users. A digital services tax of 3% has already been levied in France and the second half of the market study should examine the impact on the French market to understand the likely impacts in the UK. Experience to date shows that publishers may bear an unexpected financial burden as the levy passes down through the syndication ecosystem. The calculations are complex and not entirely transparent to downstream firms, and this is causing contention in commercial arrangements which support the growth strategy of challenger search providers.