



CMA Market Study - online platforms and digital advertising

Vodafone response to interim report

Introduction

Vodafone welcomes the CMA's interim report and the opportunity to provide feedback on the proposals to address concerns in the important sector of digital advertising.

We have restricted our comments to some of the key themes in the report and would be happy to assist the CMA on its work in this area in the future.

Key points

- Competition law can be used to address issues in the digital advertising market if deployed flexibly and appropriately. However, we support the concept of proportionate and targeted ex-ante regulation being introduced in this sector. Such ex-ante regulation should be a complement to existing competition law rules and not a substitute for continued antitrust enforcement in digital markets.
- Vodafone has commissioned a study on designing an EU intervention standard for digital gatekeepers. We would be happy to share a copy of the study once it has been published. The findings of this research provide support for the views that:
 - Targeted ex ante intervention may be necessary to ensure a digital market remains contestable where a market has already "tipped". It might also be necessary where market failure means that existing antitrust tools are insufficient to address the underlying competition concerns. Appropriate remedies may include data-related or interoperability requirements.
 - *Ex-ante* regulation should be targeted at undertakings which enjoy significant market power.
 - Guaranteeing the autonomy of digital users is important to the proper functioning of the private market economy. This requires that consumers are well informed and able to make meaningful free choices about the use of their data.
- Vodafone agrees with the CMA's view that the *ex-ante* regulation should be directed at the small number of undertakings that are identified as likely to give rise to the most significant competition concerns in "*strategic gateway markets*". However, as previously submitted, it is our view that it would be appropriate to apply the pre-existing concept of "significant market power" (SMP) instead. This concept is already used in the telecoms markets to identify digital gatekeepers to whom ex ante regulation should be applied.
- In particular, prior to the assessment of whether one or more undertakings enjoy a dominant position, the three criteria test for whether a market is suitable for ex ante regulation should be applied:
 - high and non-transitory barriers to entry;
 - a market structure that does not tend towards effective competition; and



- where competition law alone is insufficient.
- Given the multi-sided nature of digital markets, any assessment should include connected markets, which form part of a value chain (e.g. operating systems and app stores). The concepts of SMP and dominance are well established and understood so could be readily applied to digital markets.
- If the CMA supports the untested concept of "strategic market status" (SMS) introduced by the Furman Review, it is essential that this concept is clearly defined, having regard to all digital markets to which the concept may be applied. Detailed guidance should be provided on the thresholds that will define SMS in digital markets.
- On the use of an enforceable pro-competitive code, Vodafone agrees that the application of high-level principles will be important in retaining sufficient flexibility to ensure that the regulation is fit to apply to rapidly changing digital markets. However, in order to provide clarity and certainty for businesses on how the Code will be applied and interpreted, such a principles-based regulation must be accompanied by additional detailed guidance from the outset. This Code would also need to be updated as its application evolves in response to changes in digital markets.
- We welcome the CMA's recognition of the conflicts of interest that may arise due to vertical integration in the digital advertising market and its proposals to address barriers to entry and unfair discrimination by platforms towards their own vertical products and services.
- As previously stated, whilst we support the need for regulatory oversight of digital markets, in our view *ex-ante* regulation should be overseen by an existing regulator i.e. Ofcom or the CMA. To the extent that a new Digital Markets Unit is to be established, this should be formed within an existing regulator that holds the relevant and necessary expertise to provide an effective oversight and enforcement function.
- There are already a number of different regulators acting in the digital space, which has led to confusion and potential duplication. It is important that businesses have clarity of direction and certainty of outcome and adding another regulator would risk creating further complexity.
- Vodafone understands that the intent of the interventions being considered by the CMA on data usage, specifically in Chapter 6 under the heading 'Potential interventions to give consumers greater control over their data', are to target the behaviours of online platforms. However, there are no clear assurances that online platforms, using their market power, will not pass on the cost of implementing these interventions to businesses that advertise using these platforms. The CMA needs to consider how these interventions may indirectly increase the cost of doing business and cost to consumers and how online platforms can be held accountable.
- Vodafone also notes that the 'Options for the future: data mobility and privacy-enhancing technologies' outlined in Chapter 6 and Appendix L may extend beyond online platforms. At this stage, Vodafone has not seen any evidence that these remedies and technologies will significantly benefit consumers of telecommunications services. Vodafone believes that



consumers of telecommunications services are already provided with an appropriate level of access and control over their data. Vodafone considers that any proposals to implement these remedies and technologies in the telecommunications sector should involve targeted industry consultation.

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