

February 10, 2020

Competition and Markets Authority

To Whom it May Concern:

Response to the CMA's 'Online platforms and digital advertising' market study Interim Report

This submission provides [*a digital advertising service provider's*] comments on the CMA's Interim Report for its 'Online platforms and digital advertising' market study. We have reviewed the Interim Report with interest and respond below to certain points that are salient to our business. Generally, our observations focus upon the CMA's potential interventions in digital advertising, as outlined at Appendix M to the Interim Report. Our observations are not tied directly to individual questions in the CMA's Appendices, but give our views on the CMA's core remedy proposals, taken in the context of the findings outlined in Chapter 5 of the Interim Report. [...]

Having reviewed the Interim Report, however, we would like to reiterate our strong view that any remedies to be implemented by the CMA should be limited to the likely 'Strategic Market Status' ("SMS") companies that are the focus of the Interim Report. And it should be clear who those players are, so that smaller businesses are in no doubt as to the rules / regulations applicable to them. Our main concern is that remedies designed to moderate the behavior of the largest market players might have a damaging impact upon the competition that currently exists [*from other market players*]. Viewed in this light, we think particular caution is needed in relation to any new requirement regarding transparency and restrictions on companies' efforts to extract usable data from large data sets – this is where our comments are focused.

Our reasons for confining any remedy to the SMS companies are several. First, we note that concerns about industry practices are really about the SMS companies. The Interim Report describes various market issues that are closely linked to the activities of SMS companies. To enforce remedies against an industry to resolve a concern created by SMS companies runs the risk of unintended consequences and a restriction on non-SMS companies' ability to compete (thereby perversely enhancing a SMS company's position in the market).

One need look no further than previous industry-wide regulations enforced that only served to benefit the SMS companies. As you note many times in the study, GDPR had the unintended effect of benefitting the walled-gardens. It is with valid concern and trepidation that we worry that any industry-wide remedy will only serve to recreate the wheel and leave the same powers in place once the decks are shuffled (but with reinforced market positions).

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Another reason to limit any remedies to the SMS companies is that industry-wide remedies will only move the playing field to another set of criteria. It will not reset any rules or create any protections for smaller companies. For example, if a remedy under consideration – that privacy preferences are established in the browser at the device level – is implemented, all that will do is place power and control in the browser and device companies. [...] Shifting power from one company to another (or in some instances from one division within a company to another) does not solve the problem. [...]

It is also worth noting that smaller companies will bear a disproportionate burden to any industry-wide remedy. To illustrate this point, look at the recent advent of the California Consumer Privacy Act, which became law on January 1, 2020.

Our experience is therefore that regulation has a “chilling effect” on the market and in particular on smaller players. [...]

To summarize, we encourage the CMA to be mindful of the following risks to any industry-wide remedy it considers. Any remedy cannot:

1. Create a new advantage for SMS or other similarly situated companies.
2. Cause an industry depression of prices as only the SMS or similarly situated companies can survive a severe loss of revenue.
3. Bear a disproportionate cost on smaller companies who will find it impossible to compete.

[...]