

# Appendix B: summary of responses to our interim report consultation

## Introduction

1. On 18 December 2019, we published our interim report into online platforms and digital advertising. It set out our initial findings across each of the three themes within our scope and highlighted a range of potential interventions to address the issues we identified.
2. We invited comments and views from stakeholders on the following areas:
  - our understanding of the markets within our scope;
  - our initial findings and concerns under each theme;
  - the merits and challenges of the potential interventions identified;
  - the case a market investigation; and
  - the further work we propose to do over the second half of the study.
3. We received 77 responses from a variety of stakeholders, including online platforms, publishers, advertisers, ad tech intermediaries, consumer groups, think tanks, and academics. We have published 76 of these responses on our website.<sup>1</sup>
4. This document summarises the key messages and common themes emerging under each of the five areas above. We have provided a short response to the key points at the end of each section.

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<sup>1</sup> [Online platforms and digital advertising market study case page](#). We have taken the decision to anonymise some of these responses, while one has not been published at all. These decisions were made in line with our obligations as set out in Part 9 of the Enterprise Act 2002. The requests to anonymise or not to publish were considered and decided in line with the guidance set out in *CMA6: Transparency and disclosure: the CMA's policy and approach*. This summary reflects the main points made across all responses received.

## **Our understanding of the markets within our scope**

5. Most respondents were in broad agreement with our understanding and explanation of the markets within the scope of our study, with a minority identifying areas that deserve increased attention or emphasis within our report.
6. Many stakeholders commented positively on the quality of the report, the progress that has been made by the market study in the time available, and the extent to which we have taken forward the public debate. We are greatly encouraged by this feedback.

## ***Our descriptions of general search and social media service***

7. Several respondents were in broad agreement with our description of general search services and social media services. For example, Microsoft stated that ‘the Interim Report provides a thorough explanation and analysis of digital advertising and related search and social networking markets’ and News UK stated that it ‘generally agrees with the CMA’s descriptions of general search services and social media services.’ Similarly, John Lewis Partnership said that ‘...the CMA’s descriptions of general search and social media services are generally accurate.’
8. Rather than directly challenging our understanding of search and social media markets, a few responses highlighted areas of the online ecosystem for greater emphasis. For example: the Developers Alliance asked us to ‘consider the perspective of app developers’ in our assessment of the market; 51Degrees commented on ‘...how control over the web browser can be used to skew the results of these services’; and DMG Media said that ‘the increasing popularity of voice assistants will exponentially increase platforms’ ability to pick winners and losers in search.’

## ***Our explanation of the different forms of digital advertising***

9. Multiple stakeholders expressed agreement with of our explanation of the different forms of digital advertising and our segmentation of them:
  - IAB UK said that the ‘interim report sets out the different forms of digital advertising effectively, and demonstrates a sound understanding of how they operate.’
  - News UK agreed ‘that search, display and classified advertising serve different purposes and are materially differentiated’.

- Verizon Media said ‘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.’
10. Two platforms challenged the way we segmented digital advertising markets. Facebook said that any proposed segmentations between search and display, video and non-video advertising and open and owned/operated display advertising are ‘artificial and not reflective of market reality’. Similarly, Snap Inc. said that ‘the digital advertising market should be considered holistically, not as a series of sub-markets’.

### ***Our explanation of how the intermediated open display market operates***

11. The minority of respondents that commented directly on this topic (eg the Guardian Media Group, News UK, DMG Media, Prof. Geradin and Katsifis) broadly agreed with our explanation of how the intermediated open display market operates. DMG Media observed that Google’s decision to phase out third-party cookies in Chrome will have a massive impact on the ad tech ecosystem, since the third-party cookie is the backbone of advertising on websites.
12. Some respondents made observations about specific aspects of our analysis, or pointed out some possible limitations:
  - News UK argued that the alleged efficiencies of vertical integration in ad tech should not be taken by the CMA at face value, as much of the movement towards vertical integration by third-party ad tech providers has been a competitive response to Google’s conduct, and it is not clear that any benefits of vertical integration would be passed onto consumers, advertisers or publishers.
  - The Developers Alliance submitted that ignoring developers’ reliance on digital advertising to support low-cost and free consumer services is a flawed approach.

### ***Our understanding of the role of data***

13. Stakeholders that commented specifically on this topic were broadly supportive of our description of data and its role in the provision of user-facing services and digital advertising. For example, Horizon Digital Economy Research Institute said it agrees ‘with the factual description of how data is generated and consumed in the online advertising ecosystem’ and Radiocentre commented that ‘unequal access to data means that platforms

enjoy significant competitive advantages in both targeting and measuring effectiveness’.

14. Some respondents made observations about the distinctions between different types of data. For example:
  - DuckDuckGo disagreed with our statement that the line between contextual and personalised advertising is blurred. It said that its business model relies on contextual advertising (ie ads triggered by search key words), in contrast to Google’s model of personalised/targeted ads built on data collected on individuals, including search history.
  - The Computer and Communications Industry Association argued that our interim report does not distinguish between pre-existing data and data generated through the use of the platform. Similarly, Twitter said that ‘ads that are based upon customer’s activity on the platform, including what a person tweets of who the person follows, are not contextual advertising. This type of advertising, however, is inherently different from advertising that uses data from off-platform sources’.
15. Most responses agreed with our assessment that Google and Facebook have exclusive access to large amounts of data which gives them a significant competitive advantage over other market participants. For example, Lloyds Banking Group said that ‘exclusive access to extensive sets of data creates a substantial competitive advantage for Google and Facebook. This unequal access to data represents an important source of market power for these platforms as it allows for highly-targeted advertising, creating a significant barrier to entry for smaller firms.’
16. Several stakeholders commented on the importance and value of data in digital advertising. This point was made by two groups of parties with different perspectives:
  - Several parties highlighted the importance of user data to effectively target ads to users and support publisher’s business models. For example, IAB UK noted that advertising inventory that has been effectively targeted using user data is viewed by advertisers as significantly more valuable. This was supported by DMG Media which said that, after the removal of third-party cookies by Firefox and Safari, it saw a significant drop in CPM for inventory placed on these browsers.
  - Some others made the point that the value of data in digital advertising is somewhat overestimated. For example, the Computer and Communications Industry Association said that ‘valueless data generally

outweighs the data that is actually useful for improving the advertising products'. Which?, the Guardian Media Group, and others expressed caution in the interpretation of studies that show that the removal of third-party cookies have a significant negative impact on publishers' revenue. For example, Which? said 'as it becomes more common for platforms to be unable to serve personalised advertising, then both the ratio of spending across personalised and contextual advertising and the relative price of these should change, so that the negative impact of being unable to sell personalised advertising would be expected to fall'.

17. In relation to the question on whether data is a barrier to entry and expansion, Facebook's take on the evidence was that platforms do not require access to large volumes of data to enter and expand, with any data needed being easily obtainable from consumers themselves (when they choose to engage with an online platform) or from a host of other third-party data aggregation providers. Other stakeholders however were of the opposite view. For example, Horizon Digital Economy Research Institute said that we have significantly understated how the unique role of data is in this sector and how this challenges the conventional ways to assess competition and market power. This is because 'new entrants to the market, while technically competing with the dominant players, will have to somehow connect to the complex advertising data networks (directly or indirectly), which will eventually further empower those who control the operation of the networks.'
18. We received few comments on the specific role of data in search advertising. The main point raised was that search advertising data is the most valuable data in advertising as a whole because it is a source of purchase intent. Verizon Media said that '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'.
19. Several stakeholders raised concerns about Google's recent announcement of its plan to block the placement of third-party cookies on Chrome. Oracle said that in this case 'while Google's ad tech competitors would face even greater difficulties in providing behavioural targeting because of their decreased ability to collect data, Google itself would remain virtually untouched by these changes as it has sufficient workarounds to continue collecting data at a large scale'. Some publishers, including DMG Media, indicated that they expect this would have a significant negative effect on their revenue, as the previous removal of third-party cookies from other browsers have shown.

**CMA Response:**

- Responses highlighted a few areas that we should place more emphasis on in the second half of our study, including the importance of app developers, web browsers, and voice assistants. We agreed with this feedback, and have increased our focus on these important parts of the digital ecosystem, as well as emphasising the importance of ecosystems to platforms more broadly.
- We received some challenge from two platforms on the way that we segmented the digital advertising market. However, all other evidence we have seen and feedback we have received on this issue has been supportive. We have retained the same segmentation within our analysis in our final report.
- We received a relatively small number of comments on our interpretation of the role of data and on the functioning of digital advertising intermediation. Though this may have partly been down to the technical nature of the issues, we are also able to take some encouragement from this, as we specifically requested feedback on any areas that we had misunderstood.

## Our initial findings and concerns under each theme

### *Theme 1: competition in consumer services*

#### *Search*

20. Search engines including Microsoft, DuckDuckGo and Ecosia supported our overall analysis of competition in the general search sector. For example, Ecosia said that our analysis was ‘very thorough’ and ‘comprehensive’.
21. Google said that its ‘success is not a result of our benefitting from barriers to entry or exclusionary practices’. Google said it was driven by competition ‘from specialised search providers among others’ and encouraged us to do more to understand ‘the extent to which [Google’s] success in search is caused by investments in new and innovative search engine features that users value’.
22. Most stakeholders that commented on general search suggested that defaults act as a significant barrier to competition. For example, the Competition Law Forum said that ‘the evidence shows that, at least in the mobile industry, Google has been engaged in questionable practices to consolidate its position. This consists of making payments to phone manufacturers so they will pre-install Google as their default search engine’. Cliqz said ‘the primary cause for Google’s dominance is the fact that Google forecloses access to distribution for competitors...Google has raised the cost of distribution deals to the point that no new entrant can match their price’.
23. Several search engines agreed with our assessment of the role of economies of scale in web-indexing and click-and-query data. For example, Microsoft said ‘search is a scale business; more users lead to improved relevance’, while Verizon Media said that ‘greater [click-and-query] data scale enables greater relevance which is a key aspect of quality for consumers’.
24. Some respondents expressed a different view on the importance of click-and-query data. Horizon Digital Economy Research Institute suggested that Google’s ‘dominance’ of general search ‘is not necessarily an indication of its overall better performance’ and that ‘The claim that click-and-query data plays an important role in the improvement of search quality lacks independent, verifiable empirical support’. Google questioned the importance of click-and-query data scale; it said that scale cannot help it answer unique queries and that a 2011 alliance between Yahoo! and Microsoft illustrates that ‘click and query data goes stale and suffers diminishing marginal returns’.

25. Some stakeholders highlighted interactions between Google's position in general search and its position in related markets such as browsers and/or operating systems and highlighted additional concerns in those markets. For example, 51Degrees said that 'Chromium is a significant and unique source of market power for Google. Chromium's absence in the interim report must be addressed during the second stage'.

### *Social media*

26. We received a relatively small number of responses to our analysis of the consumer-side of the social media sector.
27. Microsoft said that the CMA has produced a thorough explanation and analysis of social networking. In relation to Facebook's position in the market, Snap Inc. agreed that 'Facebook 'appears subject to limited direct competition' while Twitter suggested that Facebook 'is the clear market leader'.
28. Facebook questioned much of our analysis; it said the interim report 'lacks any evidence that Facebook has "market power" and/or that such "market power" is causing any detriment to consumers'. Facebook suggested that our market assessment overly relied on functional characteristics and said that YouTube competes with Facebook. It said that the evidence shows that 'barriers to entry and expansion are low in light of the extensive multi-homing by consumers', 'network effects tend to be localised', and 'platforms do not require access to large volumes of data to enter and expand' and cited the entry and growth of Snapchat and TikTok.
29. Snap Inc. suggested that we should take more account of the differentiated nature of social media platforms and encouraged us to adopt a similar approach to the German Bundeskartellamt in its investigation into Facebook; it said that 'while the BKartA identified the relevant markets quite narrowly, it acknowledged that those markets overlap materially, have significant impact on one another, and all compete for the same advertising spend'. Snap Inc. also said 'there are no material barriers to multi-homing'.
30. Several stakeholders that commented on social media focused their responses on other themes or on remedies. We discuss these responses later in this appendix.



**CMA Response:**

- The responses we received from Google's and Facebook's rivals were generally very supportive of our characterisation of the barriers they face. They had some differing views on the relative importance of each barrier, largely dependent on the way their business model is structured. We have reflected on this detailed feedback in determining our proposals for the interventions that should be taken forward by the DMU, and in which order.
- In response to challenge from Google, we have conducted extensive further analysis of the constraints or otherwise imposed by specialised search providers.
- Despite Facebook's questioning of our initial conclusions regarding the strength of its position, our further analysis has strengthened our finding that Facebook has market power in social media.

## ***Theme 2: consumer control over data***

31. We received submissions, from a range of stakeholders, which commented on our findings on consumer control over data and our proposed interventions in this area. The majority of respondents agreed with our views and we received some helpful observations on our approach to remedies, which we have considered in the course of developing our final recommendations. We summarise below the key messages which emerge from the responses.

### *Supportive views on our initial findings*

32. Many stakeholders agreed with our findings that consumers should have control over their data but that, currently, such control is often inadequate. For example, Doteveryone welcomed the report's 'analysis and findings in relation to the challenges consumers face to manage their data, and the need to reduce the friction platforms impose on users to do so', and the Guardian Media Group agreed with our analysis regarding consumers' lack of choice as to how their personal data is used, describing it as 'a poor outcome for citizens in the UK'. Which? welcomed our research on the extent to which consumers engage with the current controls available to consumers on platforms. Others (including an online travel comparison service, agreed with our findings around the extensive collection of data by the platforms.
33. Some respondents also commented on our findings regarding transparency, such as the use of 'dark patterns' in choice architecture. Privacy International said that our initial findings 'underline several ways in which platforms may undermine consumers' choices or even deprive them of effective control over their personal data', while News UK agreed that 'major platforms should not be able to extract excessive data either by exploiting the essentiality of their services, the power of default bias or by using complex and opaque terms and conditions.' Facebook said that it supported our efforts to improve transparency and control (although considered that it already achieved this). Several respondents also commented on the need for transparency of privacy policies. For example, Snap Inc. agreed that 'services' terms and conditions and privacy policies should be intelligible and as brief as reasonably (legally) possible' and Barclays said that 'on privacy policies, we can see the need for clarity as to how consumer data in general should be used going forward'.
34. We did not receive any challenges to our analysis of controls or choice architecture.
35. A small number of stakeholders responded to our findings from consumer surveys and academic research. Stakeholders agreed with our findings, such as Doteveryone which noted that its 'research validates many of the report's

findings in relation to public digital understanding, and also points to deeper behavioural and motivational barriers people face to control their data.’  
DuckDuckGo also said it is ‘grateful that the CMA recognizes the importance of the shadow surveillance, and how fundamentally naïve consumers are about it.’

36. One stakeholder, Horizon Digital Economy Research Institute, noted that ‘existing studies tend to be subject to criticisms in terms of methodological rigour and policymaking’ and ‘empirical studies on user attitudes to online advertising are known to have produced starkly contradictory results due to the different research set-up and question framing.’

### *Competition and privacy interplay*

37. A number of respondents referred in their submissions to the fundamental tension between data protection and competition law. For example, Barclays acknowledged the need ‘to consider the conflicts between competition law (and related remedies to open up data) and data protection’, while the News Media Association welcomed our acknowledgement that ‘measures aimed at enhancing user privacy may be used by platforms to further entrench their position. Ensuring a workable balance between privacy and competition should be at the centre of the CMA’s work in this area.’ Lloyds Banking Group ‘strongly agree with the importance and requirement of competition and data protection authorities to jointly consider the interface between consumer, competition and data protection law’.
38. Others took a more partisan approach to the issue. DMG Media flagged that sharing data benefits consumers ‘in the form of lower prices, and easier and quicker access to a far wider range of goods, services, and knowledge’, and that ‘the risks involved in sharing data, at least in digital advertising, are difficult to quantify’, going on to warn that focusing on data privacy to the exclusion of other things is likely to result in consumers losing out on those benefits. In contrast, Privacy International stressed the importance of privacy and data protection as fundamental rights, stating that it is ‘essential that personal data is not regarded/framed as a mere economic asset’.
39. Telefonica UK, however, noted that privacy, and the control over data collection afforded to consumers by platforms’ terms of service, have the potential to constitute ‘an important parameter of competition’ against a backdrop of excessive data collection and a lack of genuine choice as to whether to accept fair treatment by the platform.

## *Interplay with GDPR*

40. Many respondents mentioned the role of GDPR in relation to this theme and, in particular, to the potential interventions set out in the interim report. IAB UK and Facebook challenged our views on consent under GDPR as set out in the interim report, asserting that taking a view on these issues are outside the CMA's remit, while Brave suggested, in reference to enforcing the correct categorisation of data as special category data, that 'the CMA should investigate whether it can enforce in these areas itself', and suggested we follow the example of the Bundeskartellamt.
41. Barclays said that GDPR represented a 'step change' in data protection, and several respondents (IAB UK, Snap Inc., Verizon Media, Developers' Alliance) warned that, with the GDPR is still in its infancy, it would be premature for the CMA to introduce interventions to give consumers greater control over their data, particularly as these are likely to be similar to existing GDPR requirements, and would create greater uncertainty and complexity for the industry. Verizon Media called instead for guidance, which 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.' Twitter cautioned against introducing further data protection regulation over and above the existing legislation, due to the likely increase in costs to businesses.

## *OS and browser-level settings*

42. A few stakeholders commented on the proposal in the interim report to look more closely at the interaction between privacy settings at OS, browser and platform level. DuckDuckGo 'emphatically' supported further work in this area and suggested related areas for the CMA to consider.<sup>2</sup> However, several respondents (The Telegraph Media Group, the Advertising Association, IAB UK) had concerns in relation to the possibility of moving the privacy controls to the browser or device level stating that this would simply shift the power to manufacturers and browser operators. Business Information Risk Management Consulting stated that it considers 'that reliance on browser settings as a primary or main privacy control is entirely the wrong emphasis, as it forces the individual web user into a permanent defensive posture... In any case, regardless of assertions to the contrary by platform owners, assiduous efforts are continuously under way to circumvent browser-based

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<sup>2</sup> i.e. whether browser settings impact search engine defaults, especially once the EU Android search preference menu is introduced, and whether Android's Manifest version prevents or hinders privacy functionalities from properly working.

privacy controls. They therefore provide no permanent assurance of efficacy, and their current state of effectiveness is generally an unknown to the user.'

### *Benefits and harms of personalised advertising*

43. Several responses called for us to further develop our thinking on the benefits and harms of personalised advertising. The Computer and Communications Industry Association submitted that '...the use of data for personalised advertising increases the quality of advertising for consumers and there is surprisingly no serious discussion, analysis or attempt to quantify this increase in consumer welfare'. Facebook stated that 'there is a public interest in the CMA grounding any policy proposals for change on robust evidence of actual harm; and weighing any such harm against the substantial pro-consumer and business benefits that exist today', going on to assert that the interim report 'has not evidenced any actual harm from personalised advertising or that consumers would be better off if Facebook's ability to provide personalised advertising was limited'. The UCL Institute for Innovation and Public Purpose also observed that 'there needs to be a more public and concerted effort to establish the real value of targeted advertising, so as to better differentiate claims regarding scope of data collection and processing...'.
44. A few stakeholders made observations, in the course of their responses, on the benefits or harms of personalised advertising; for example, an advertiser submitted that 'if the right balance is not struck [between ensuring consumers have adequate control over their personal data and ensuring that they continue to receive relevant advertising personalised to their specific interests], then consumers risk being bombarded with generic / irrelevant advertising, which could lead to frustration and ad fatigue'.

### *Third party data*

45. Which? stated that we should consider the use of first- and third-party data in the context of consent processes, arguing that it 'seems likely that consumers may feel differently about the use of first- and third-party data' and suggesting that 'consent ought to be given explicitly for third-party data to be used, so that a single consent cannot cover all personalised advertising'. It called for further review of the platforms' data collection from third parties, whether directly or by third parties sharing it, and the extent to which the privacy policies of third parties make it clear that this sharing occurs. It also urged us to look at the sharing of data between platforms owned by the same company and, in particular, at the extent to which 'access to a service requires the consumer to

allow data to be shared between sister platforms' and 'whether consumers can always access settings to control their data within the relevant platform'.

46. Twitter called for further consideration of the distinction between 'on-platform content' and 'off-platform data' used for personalised advertising.

**CMA Response:**

- We were encouraged by the supportive feedback received regarding our assessment of controls and choice architecture. We have sought to refine and update this analysis where appropriate. This has firmed up our conclusions on the barriers to effective consumer engagement with privacy controls.
- The mixed responses we received on the relationship between competition, privacy and data protection illustrated to us the complexity of these considerations and the range of potential perspectives. We have continued to engage proactively with the ICO on these issues and are committed to doing so on an ongoing basis now that this market study has concluded.
- Facebook challenged that we had not provided sufficient evidence in our interim report that consumers may benefit from Facebook's ability to show personalised advertising being limited. The critical part of our assessment regarding these issues, and the interventions we are proposing, is that we consider there to be benefits to consumers from having greater choice and control. This is discussed further in Chapter 8.

### ***Theme 3: competition in digital advertising***

#### *Overview*

47. Most respondents to our interim report consultation indicated support for our analysis and conclusions, though only a small number provided extensive or detailed feedback.
48. Several supported the finding that unequal access to data was an important source of market power for Google and Facebook as it allowed for highly-targeted advertising and the ability to track users and demonstrate the effectiveness of their advertising than their rivals. However, Google and Facebook both responded that they face competition from various sources, including traditional advertising and specialised search providers in particular.
49. Most respondents generally agreed with our analysis on advertising intermediation, with the notable exception of Google. There was a greater variety of views in relation to the competitive impacts of data protection legislation.

#### *Search advertising*

50. Microsoft was supportive of our analysis and findings around Google's market power and behaviour in search. Advertisers also supported these findings, with some suggesting that they did not go far enough. For example, an online travel comparison service submitted that it and indeed 'most businesses who appear on Google, have experienced harmful impacts caused by Google's algorithms which have reduced visibility in organic general search listings, and as a direct result have forced us to significantly increase our spend on paid Google listings to compensate for those losses. Eventually, maintaining our position in the market against in this context may prove unsustainable.' 'Google's dominance has even more exaggerated effects in general search on mobile devices. This is due to the fact that smaller screen sizes mean a greater proportion of the top of the listings, or "first scrolls", are given over to paid results, while it may take users far longer on mobile devices to reach organic results, which, due to deprecation of SEO listings, are already appearing further down the SERP, if indeed they scroll as far as organic results at all.'
51. Several other advertisers emphasised their reliance on Google as an unavoidable trading partner. They submitted that Google applies its policies in an inconsistent and arbitrary way, often suspending ads and accounts without proper explanation with severe implications for their business. For example, one small advertiser submitted that 'as a small business, we have faced

repeated breaches, disruption and abuse by Google resulting significant disruption and losses that are difficult to recover via legal means given the aggressive nature of Google's lawyers, terms and conditions and absence of alternative dispute mechanisms.'

52. Google submitted that the interim report underestimated the extent of competition on general search from specialised search and that specialised search players are becoming more successful in generating their own traffic over time.
53. An online travel comparison service, on the other hand, agreed with our assessment that paid listings in its own specialised travel search service do not provide equivalence or competitive constraint to Google's own general search listings. An online travel comparison service also agreed with the finding that Google performs a gate-keeper role, in that it is able to divert large proportions of traffic away from freely-listed specialised search services, in favour of paid placements in its general search platform. However, it emphasised that this could not be considered in isolation from Google's role in self-preferencing its own specialised search services such as Google Flights and Google Hotels in general search results. An online travel comparison service further submitted that a new 'carousel box' introduced by Google, displaying the logos of competing specialised search providers, did little to address concerns about self-preferencing.
54. Google challenged the findings in our interim report that its profitability in search advertising is consistent with market power. It submitted that this was inconsistent with empirical evidence<sup>3</sup> suggesting that the price of digital advertising has fallen by more than 40% since 2010 and argued that profitability analysis would have to disentangle those revenues that arise from market power from those which arise from genuine value-adds and competition on the merits.
55. Google also challenged the finding that concentration in search advertising could lead to higher prices faced by users across the economy. It submitted that the interim report did not sufficiently explain the transmission mechanism between alleged concentration in search and the prices of final products. It argued that using the various 'levers' set out by the CMA to increase the revenues from its advertising auctions, thereby increasing costs to advertisers, would not be in its long-term interest. This is because they would 'degrade the quality of Google's search service, harm user experience and trust, and damage the ad ecosystem as a whole.'

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<sup>3</sup> Progressive Policy Institute, [The Declining Price of Advertising: Policy Implications](#).



## *Display advertising*

56. While a few respondents supported the finding that Facebook had market power in display advertising through its greater access to data, no detailed views were expressed on this point. Facebook challenged our segmentation of the display advertising market, submitting that display competes with other types of advertising, as indicated by advertisers often shifting allocations between different types of advertising over time. The Computer and Communications Industry Association also suggested that we should look more closely at competition between digital advertising and traditional advertising media and that there was likely to be supply side substitutability within display advertising between video and non-video.
57. Lloyds Banking Group submitted that a 'lack of transparency in the way these platforms work have led to several concerns in the industry, particularly with regards to the display advertising market, where advertisers and publishers participate in a black box process of real-time bidding but have limited ability to verify the effectiveness of their advertising.'

## *Intermediation*

### *Competition in digital advertising intermediation*

58. Respondents generally agreed with our characterisation of competition in open display. Google, however, submitted that the interim report overstates levels of concentration in open display. Google submitted it faces strong competition from vertically integrated ad tech providers and independent operators at each level of the intermediation chain.
59. On a more specific point, Google submitted that the interim report 'did not recognise the growing convergence between ad serving and SSPs. Almost all the main ad serving tools now incorporate – at least to some extent – SSP-type functionality (and vice versa); there is no longer a true market for standalone ad serving, which is an entirely commoditised service.'

### *Lack of transparency in the intermediation chain*

60. Some respondents expressed agreement with the considerations made in the interim report about the lack of transparency in the intermediation chain and the implications this can have on the functioning of the market.
  - The Incorporated Society of British Advertisers ('ISBA') observed that the lack of transparency 'is a key issue for ISBA's members, and one which manifests itself in multiple ways. Algorithms are indeed opaque, and the

problem is particularly acute in the programmatic open display market, where the potential for market distortion is substantial given the opacity and anonymity of parties in the supply chain.’

- The Guardian Media Group and News UK submitted that 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.

61. Google recognised that there is an ongoing challenge to reassure stakeholders about transparency in this complex ecosystem, noting that levels of transparency have to be balanced against considerations such as user privacy and preventing ‘gaming’ of the auction rules. It noted that there is a tension between the need for increased transparency to publishers and advertisers on the one hand, and the legal requirement to protect the privacy of user data on the other.
62. Verizon Media, on the other hand, pointed out that our analysis should 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.

#### *Vertical integration, conflicts of interest and leveraging*

63. Several respondents (including DMG Media, the Guardian Media Group, News Media Association, ISBA and Arete Research) expressed agreement with our analysis of conflicts of interests and leveraging in open display. News UK emphasised some specific issues that could be more explicitly covered in the analysis. It submitted that:
  - In relation to data advantages of vertically integrated providers, ‘the question is not so much whether data barriers are *“insurmountable”*, but rather whether unjustified data restrictions, such as limiting ID access in 2018, untying bid data transfer files in 2019, announcing the removal of third-party cookies in Chrome in 2020, and further scrambling key values in publishers’ files in 2020, exist and reduce competition. [...] even though data is accessible by rivals to some extent, market outcomes could be significantly improved in a more competitive environment where rivals could collect and use data on a level-playing field and where Google’s conduct is effectively tackled.’

- Single-homing behaviour by advertisers (and particularly smaller advertisers who are a key part of Google's customer base) is likely to facilitate foreclosing effects.
- The technical risks publishers face in switching ad server are 'overshadowed by the commercial risk that moving to an alternative publisher ad server would jeopardise access to advertiser demand using Google's intermediation services. News UK adds that this risk is even more prevailing due to future uncertainty: risks does not only exist today (due to *existing* links between different elements of Google's ad tech stack that reduce interoperability) but also in the future considering how Google can and does *change its behaviour* unilaterally with limited warning and in a non-negotiable way. Therefore, even if a non-Google ad server could be identified today as being a potential viable solution, the risk of future lack of interoperability would likely make the switch unprofitable in expectation.'

64. Google, on the other hand, submitted that we are right to look into this issue given that many important players in this space are vertically integrated, but the risk of actual conflicts of interest should not be overstated. Google's view is that many of the specific concerns in the Interim Report are unsubstantiated, whilst others appear to rest on misunderstandings.

- In relation to the worry that making YouTube inventory accessible only through DV360 and Google Ads harms rival DSPs, Google submitted that (i) restricting third-party access to YouTube inventory is the best way to maintain the privacy of user information and prevent it from being leaked to potentially malicious actors; (ii) third-party DSPs only ever accounted for only a small percentage of YouTube spend, while significant technical resources were required to support that channel; and (iii) there is lively competition between different DSPs and ad networks.
- It is wrong to say that Google links Google Ads demand to AdX and AdX to Google's publisher ad server, as Google Ads demand is available both through third-party channels and Google channels other than AdX, while publishers can request ads from AdX using a third-party ad server.
- Google does not give AdX an informational advantage; its policy is to encourage fair competition by improving transparency in the industry.
- DV360 targets the inventory that is best suited to meet the advertiser's criteria in each individual auction. If Google did preference AdX at the expense of an advertiser's return on investment, the entire value proposition of DV360 as a DSP would be undermined.

### *Potential impacts of privacy concerns and data protection legislation*

65. In the interim report, we concluded that ‘privacy concerns and the application of GDPR are likely to have a significant impact on the market, reinforcing the trend towards vertical integration and potentially increasing the data advantage of the large platforms that have their own sources of first-party user data, making it harder for third parties to compete. These trends could exacerbate the existing competition concerns’.
66. Respondents expressed different views on this point.
- ISBA submitted that ‘the unintended impact of GDPR has been further to insulate ‘walled gardens’ from competition, through their understandable responses.’
  - News UK agreed with the concerns but noted that ‘many of the data advantages benefiting large platforms from the application of GDPR may not exist *per se*, but rather result from these same platforms’ liberal interpretation of what GDPR should mean. News UK would urge the CMA to explore whether platforms’ privacy claims are justified or if they are using GDPR as a smokescreen to restrict inter-operability and competition.’
  - Horizon Digital Economy Research Institute disagreed with our argument and submitted that ‘vertical or horizontal integration does not necessarily lead to better compliance with data protection law, and there are certainly alternative mechanisms to ensure a high level of data protection while maintaining a desirable level of competition.’ Similarly, Brave submitted that ‘data protection law is inimical to internal data free-for-all in vertically integrated platforms. The bundling of consent in the manner described by the CMA infringes some or all of the GDPR requirements of transparency, fairness, accountability, and purpose limitation in data protection law.’ Horizon also noted that under the GDPR, data subjects have the right of access and the right to data portability, which may potentially promote competition in consumer services and digital advertising.

**CMA Response:**

- Both Google and Facebook challenged our findings by stating that they face competition across a broader range of advertising services than we had recognised in our interim report. Following further consideration of the significance of specialised search providers and of traditional forms of advertising, we have firmed up our conclusion that Google and Facebook have market power in search and display advertising respectively.
- Google challenged our initial finding that its high profitability was indicative of market power, arguing instead that advertising prices have been falling over the last decade. We consider the evidence on this in Chapter 5. Importantly, our assessment of market power and potential detriment is not based on whether outcomes for consumers are better now than they were in previous years – instead, we have considered whether outcomes for consumers could have been even better if the market had been more competitive.
- We received strong support from multiple parties on the importance of increasing transparency and trust in digital advertising markets. We have factored this feedback into our assessment of which potential interventions in these markets should be prioritised.

## The merits and challenges of potential interventions identified

### *A code of conduct*

68. In our interim report, we set out our support for a code of conduct for large platforms with Strategic Market Status (SMS), as proposed by the Furman Review, as an effective complement to competition law. We agreed with the proposal for the code to take the form of high-level principles, and set out three key principles that could underpin it: fair trading; open choices; and trust and transparency.
69. In our consultation, we welcomed views from stakeholders on the scope and applicability of the code and the enforcement of the code, including details on the powers of the regulator, the investigatory process and appeal rights of those that fall within the scope of the code. This section summarises the responses we received on these points.

### *Merits of a code of conduct*

70. Overall, the vast majority of stakeholders were keen to see the development of a code and agreed that there is a very strong case for its establishment.<sup>4</sup> Of the 77 responses we received, 47 referred directly to the case for a code of conduct, and of those 42 indicated some degree of support for the proposal.
71. All of the publishers who responded to our consultation supported the introduction of a principles-based code of conduct as a means of limiting platforms' ability to exploit their market power.<sup>5</sup> It was generally believed that our interim report struck the appropriate balance in the scope, structure and enforcement of the proposed code.
72. Many advertisers were broadly in agreement over the introduction of the code. A broadcaster, BT, British Brands Group and Vodafone highlighted that it was vital for any interventions in this sector to be flexible and able to adapt to a fast-moving market. A broadcaster believed that a code would deliver against these aims. British Brands Group highlighted numerous models where harms like to those identified in digital markets have been addressed proportionately by behavioural remedies similar to the code. It drew attention to examples such as the Groceries Supply Code of Conduct and the Pubs code that govern and address unfair trading practices.

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<sup>4</sup> DMG Media

<sup>5</sup> Baylis Media, News Media Association, Horizon, Midlands News Association, Telegraph Media Group, Independent News and Media, DMG Media, Professional Publishers Association and the Guardian Media Group.

73. Social media platforms Twitter and Snapchat held differing views. Snap Inc. supported the code and thought the 'ex ante nature of the code would ensure the most egregious behaviours of a company with SMS would be identified and remedied quickly, without the need for lengthy investigations'. Twitter, however, feared that if all market participants were required to abide by a code of conduct, this would 'increase costs for new entrants and challengers to established market operators' which could lead to less consumer choice.
74. Google was, in general, not opposed to a code and stated that the principles underpinning the code would be essential to a healthy digital economy. However, as discussed below, Google thought it should apply to all digital platforms. Similarly, Facebook although supportive of our proposals to deliver increased choice and transparency, thought the proposed approach would result in regulation that is 'ineffective and not fit-for-purpose'.
75. A small number of respondents were concerned that the code would not address the competition concerns in full. For example, News UK submitted that while proposals for regulatory reform would go some way to addressing the concerns that have been identified in the interim report, it noted one of the potential limitations of the code, as acknowledged by the CMA, is that it may not restrict all of Google and Facebook's incentives to exploit the market position that they have built up to their own advantage while Competition Law Forum argued that the code seems to be a 'half-baked approach between the current situation and a fully-fledged regulatory regime'. However, the premise of the criticism appeared to be based on a misunderstanding of our proposal, believing that the code would be in some way voluntary.

### *Principles-based*

76. Overall there was support from multiple respondents on a principle-based approach with guidance. Several stakeholders highlighted that the approach to use principles-based code is not dissimilar to the regulation of utilities such as telecoms and regulation of the financial services.
77. All the publishers who responded supported our proposal for a statutory code, embedding the principles of fair trading, open choice and transparency in the relationship between SMS firms and their business users. News Media Association commented that 'any code of conduct should be principles-based and capable of governing market players' future conduct, as well as resolving specific issues that have already arisen'.
78. Horizon Digital Economy Research Institute submitted that the code required more than a principles-based approach. While it was important for the code to set out the high-level principles, it said it was equally important for the code to

include certain, commonly accepted mandatory technical or design requirements. In their view, these specific requirements would effectively address existing issues and would not prevent the generic principles from governing future practices as technologies evolve.

79. Similarly, advertisers considered that the three overarching principles to be broad enough to cover all potential areas of concerns (an advertiser and John Lewis Partnership). Vodaphone and an advertiser in particular agreed on the importance of retaining sufficient flexibility to ensure that the regulation is fit to apply to rapidly changing digital markets.
80. Google stated that it would be appropriate for the code to have broad principles rather than detailed rules, to minimise the risk of it becoming obsolete quickly. However, it also highlighted the risk that broad principles may allow for wide-ranging and unpredictable interventions.
81. Facebook described the principles outlined in the report as ambiguous and stated that a 'combination of high-level principles enforced by a powerful regulator could lead to legal uncertainty for businesses'.

#### *Application of the code to SMS firms*

82. Several respondents agreed that the code should be applied to SMS firms, based on a broad set of criteria as a starting point.<sup>6</sup> Below we highlight some of the key supportive views:
  - Both the Professional Publishers Association and News Media Association supported our conclusions that the code should apply to SMS platforms, which would cover Google and Facebook. They commented that the definition of SMS should be future proofed to capture these platforms.
  - Microsoft and BT were supportive of a cumulative three stage test as an appropriate starting point.
  - Snap Inc. stated that the criteria for SMS inclusion we proposed appeared to be reasonable and measurable. It agreed SMS should be applied to the corporate group as a whole.

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<sup>6</sup> The criteria for SMS firm is as follows: (a) platform has enduring market power over a relevant market; (b) platform acts as an important gateway for businesses to access a significant portion of consumers; and (c) businesses depend on the platform to access users on the "other" side of the market



- Similarly, BT stated that the broad principles should be capable of application to all of the firms' activities in relevant and adjacent markets including their relations with consumers, competitors and partners.

83. Some respondents disagreed with some elements of our proposals:

- Vodafone was of the view that it would be appropriate to apply the pre-existing concept of 'significant market power' (SMP) instead of SMS;
- Facebook called for an industry-wide application of the code;
- an advertiser suggested such a code should apply to all platforms, not just SMS platforms; and
- Radiocentre urged us to extend the scope to ensure advertising in radio and audio is covered by the code which would include smart speakers or similar internet-connected devices.

### *Enforcement Powers*

84. Most stakeholders agreed there should be a dedicated regulatory body to enforce the specific ex ante regulation, code and other remedies, with extensive information-gathering tools.

85. Some respondents made some important points related to the enforcement powers of the prospective digital regulator. These include:

- Threshold for determining compliance with the code:
  - DMG Media and News UK held that the applicable evidentiary threshold should normally be that of the 'balance of probabilities'. However, in DMG Media's view, a lower threshold would 'seem more appropriate' when determining whether interim measures should be granted. In that case, the threshold could be that of a 'prima-facie' case of non-compliance.
- Efficacy of enforcement for platforms based outside of UK's jurisdiction:
  - The Telegraph Media Group and Arete Research each raised concerns about a 'UK-only based code of conduct'. Even if the code were backed by robust enforcement measures, it may not be adequate in itself to provide an effective remedy.
  - Arete Research stated it 'would like to see the CMA pull together an international "congress" of regulators to agree global standards involving the US, EU and key Asian countries'.

- Reporting obligations:
  - Overall, the majority of stakeholders agreed that 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.
- Sanctions:
  - Several stakeholders argued that the prospect of substantial financial penalties was important. News UK submitted that SMS firms would have a strong incentive to engage in practices that contravene the code and have no countervailing costs for doing so. News Media Association and the Guardian Media Group echoed these views.
  - Although, Competition Law Forum highlighted that financial penalties do not seem to deter anticompetitive behaviour in the digital sector, it stated that financial penalties 'are a positive response to the problems detected in the market' but require complementary measures, such as a prohibition on the combination of data obtained from third parties' sources.

### ***Remedies to address Google's market power in search***

86. The interim report set out several potential interventions that could address the concerns we identified in the general search market. These interventions were categorised into demand-side and supply-side remedies and we have set out a summary of stakeholder responses on the proposals below.

#### *Demand-side remedies*

87. Many respondents to our interim report called for a restriction on Google's ability to enter into arrangements to be the default search engine on devices and web browsers and a lot of support was expressed for consumers to be given greater choice regarding their default search engine.
88. These calls for intervention were not limited to search engines that compete with Google and included a range of publishers, such as the DMG Media and News UK, as well as an advertiser.
89. However, market participants called for more intrusive prohibitions, with Microsoft and Ecosia calling for other search engines to be able to bid for the default position and where Google 'wins' this position, it should be compelled to provide a choice screen. Other stakeholders, including the Competition Law

Forum, generally agreed that choice and competition would be improved through greater roll out of choice screens.

90. Google contested the likely effectiveness of more intrusive interventions and noted that preventing Google from being the default alone would not address users' inertia and could reduce consumer welfare if users ended up with a less useful or attractive search engine as their default. With regards to the implementation of choice screens, Google submitted that any intervention should be applied to similarly situated platforms, such as Apple's iOS platform and Microsoft's desktop PCs, and should be applied irrespective of which service is set as the default.
91. Other market participants agreed that the scope of this intervention should be widened to capture other operating systems and web browsers. Ecosia expressed the view that applying choice screens on Android and iOS devices would address concerns on mobile devices and that this intervention should also be extended to Google Chrome on desktops. DuckDuckGo submitted that Google should be forced to relinquish its default position on mobile and tablet operating systems, laptops and most browsers, including Chrome, but recommended excluding smaller browsers, such as Firefox and Opera, from a ban to support a diverse browser market.
92. However, the support for choice screens was not universal. Cliqz and Microsoft expressed doubts regarding the likely effectiveness of choice screens due to Google's brand recognition which, was described by Microsoft as having 'become a colloquialism synonymous with internet search'.
93. DuckDuckGo also recognised this concern but submitted that this would still be preferable to the status quo and that this intervention has the potential to become more impactful over time because non-Google search engines would be able to incrementally gain access to more search queries and clicks which would permit them to improve search result relevance and increase the likelihood of investments in other search improvements.

#### *Choice screen on Android devices*

94. We also received a number of complaints regarding the design of the choice screen implemented by Google on Android devices from 1 March 2020. Every search engine that competes with Google and responded to our interim report (Microsoft, Verizon Media, DuckDuckGo, Ecosia, Mojeek, Cliqz and Lilo) criticised the design of the choice screen, with most concerned about the auction mechanism that Google used to select the search engines that would be made available alongside Google. Ecosia noted that the current choice screen on Android devices 'is not a choice screen, but an auction screen'.

95. Concerns were also raised regarding the number of slots made available on the choice screen and DuckDuckGo submitted that by restricting these numbers, Google had created a 'false scarcity to raise auction prices in the Android preference menu.'
96. Verizon Media, Ecosia, Cliqz and Mojeek also expressed the view that the design and mechanics of the choice screen should be controlled by a regulator and not left for Google to design and implement. DuckDuckGo submitted that the CMA could create guidelines to minimise the risk that Google nudges users towards its own search engine.

#### *Adverse effects of demand-side remedies*

97. The interim report expressed the concern that an intervention that affected Google's ability to acquire default positions could have an adverse effect on the business models of web browsers and potentially push up the price of devices to users.
98. We did not receive any responses from device manufacturers on this point, although this risk was recognised by two search engines in their responses. However, Cliqz submitted that this would simply expose the true costs that users are currently indirectly paying through the advertising system whilst another search engine submitted that the margins made by device manufacturers are so large that any reduced cost recovery would be unlikely to materially affect device prices.

#### *Supply-side remedies*

99. In our interim report, we identified two potential supply-side interventions that may improve competitive outcomes: the provision of access to search query and click data and whether the largest search engines should be subject to an obligation to supply search results and adverts on FRAND terms.

#### *Provision of access to search query and click data*

100. In our consultation questions, we asked whether the provision of access to search query and click data would be an effective and proportionate remedy. We received a wide mix of views to these consultation questions, with responses focused on whether this remedy should be applicable to the data obtained by Google through its search engine.

- *Calls for intervention*

101. Several competitors of Google, such as Ecosia, DuckDuckGo, Cliqz and Lilo, expressed strong support for this form of intervention, as did the Competition Law Forum which submitted that without this form of intervention, Google's position in the market would become further entrenched. Verizon Media also submitted that the provision of this data could be effective at improving competitors' services and could incentivise investment by competitors in innovation and analysis.
102. This intervention was described as low cost by Cliqz. However, an advertiser expressed the view that query data would need to be paid for as we had identified substantial costs associated with maintaining the necessary infrastructure.

- *Adverse effects*

103. Two main concerns were raised with regards to this intervention: privacy and incentives to innovate. Privacy International expressed 'deep concerns' about the provision of open access to this data and noted that there was a 'fine line between pseudo-anonymised data and anonymised data'. Google echoed these privacy concerns, highlighting that many search queries contain personal data, and that identifying and anonymising this information in large-scale datasets would be a major challenge with no guarantee of success. Furthermore, Google submitted that it invests heavily in security, auditing and protection capabilities to ensure that data are held safely but that third parties may not do the same.
104. Several search engines, such as Verizon Media and Cliqz, recognised these privacy concerns and advised that any implementation of this remedy would require great care. Ecosia submitted that privacy concerns could be mitigated if data was limited to query, URL click and click back data and that location data could be provided on a rough basis, such as part of a post code. DuckDuckGo also submitted that to be effective as a remedy, the relevant data need not and should not have consumers' personal information and any identifiable data, such as home addresses or telephone numbers, could be filtered out.
105. Google also expressed concerns that such an intervention could reveal its algorithm which would harm the incentive to invest for both Google and its rivals. Mojeek echoed the concern that such an intervention would dampen the incentive for other search engines to invest in their own indices and algorithms and also expressed a concern that such an intervention 'will actually just result in multiple search engines all offering the same service but

under different banners'. The Developers' Alliance also expressed concerns that such an intervention would compromise data-driven innovation.

106. DuckDuckGo did not agree that the provision of click and query data would reduce Google's incentive to innovate and improve its algorithm and that Google could terminate access rights to any firms that tried to replicate Google's ranking results. Both DuckDuckGo and the Competition Law Forum submitted that this intervention would heighten, rather than dampen, incentives to innovate as it would improve the competitive landscape.
107. Google also provided two further reasons to challenge the effectiveness of this intervention, submitting that there are diminishing returns to data and that since 15% of daily traffic is new to Google, it is in a similar situation as its rivals.

### *Syndication agreements*

108. In our consultation questions, we asked whether the largest search engines should be subject to an obligation to supply search results and adverts on FRAND terms.

- *Calls for intervention*

109. Firms that are reliant on these results, such as Ecosia, DuckDuckGo and Lilo, expressed strong support for this intervention. In their view, this would support the development of search engines that offer compelling alternatives to the largest two suppliers (Google and Microsoft) which would improve outcomes for consumers, although they recognised a need to monitor the competitive dynamics between Google and Microsoft. Arete Research also expressed support for this initiative.

- *Adverse effects*

110. A number of objections were also raised with regards to the implementation of this remedy. The Competition Law Forum expressed concerns regarding the feasibility of this remedy and whether the FRAND terms could realistically be developed, agreed and monitored. Verizon Media also expressed concerns that such an intervention would constrain the ability or willingness of competing search providers to explore new business models.
111. Mojeek expressed similar concerns to its views on the click and query data remedy, that it would dampen incentives for search engines to develop their own indices and algorithms and provide genuine alternatives to Google and Bing.

112. Finally, Google characterised this intervention as an extreme form of regulatory intervention which effectively amounts to a requirement to license their intellectual property rights or proprietary technology on FRAND terms which only arises in 'exceptional circumstances' such as standard setting. Google submitted that these are not exceptional circumstances and that search services and ads are not standardised and the underlying intellectual property is not essential.

### ***Remedies to address Facebook's market power in social media***

113. The interim report sought views regarding whether or how API access on social media platforms should be altered or enhanced, and whether mandating interoperability requirements on a single social media platform, or subset of them, would increase competition in these markets

### ***Content interoperability***

114. There was a lack of support expressed for content interoperability within the responses to the interim report. Market participants, such as Twitter, expressed concern that such an intervention would dampen incentives to invest and innovate and create a technological and administrative burden that would further concentrate social media markets. Snap Inc. submitted that such an mandating interoperability across the industry would be an 'own goal of huge proportions for the CMA' and 'the end effect would be to ossify the market, foreclosing it to innovative newcomers.'
115. Microsoft agreed, particularly to the extent that such an intervention would mandate standardisation across platforms. Microsoft also raised privacy concerns about individuals' content being viewable across platforms without their consent. Microsoft described the task of building an interoperability framework as complex if it were to achieve the objectives of maintaining standardised users' controls and privacy expectations, maintaining each platform's unique interface, whilst accommodating differing approaches to monetisation and being readily transparent and navigable for users.
116. Facebook also expressed concerns regarding the content interoperability proposal which it submitted risks a 'homogenisation of user-facing services for which there is no evidence of consumer demand'. Facebook also submitted that this would undermine the current high levels of competition and innovation and would limit the ability of platforms to provide a differentiated and innovative service to consumers and raise barriers to entry.

### *Increasing interoperability over specific functions*

117. There were greater calls to make specific functionalities interoperable with the Facebook platform. The Competition Law Forum submitted that basic user information and their network, ie contacts, should be interoperable and interventions should facilitate the mobility of this data.
118. Twitter submitted that accessing connections could significantly promote competition, if applied only to firms with SMS, as would enabling cross-posting functionalities, that 'should occur without distortion or stripping of attribution of the original source and with fully rendered media.' Snap Inc. submitted that there 'could be merit in mandating limited and targeted competitor access' on entities with SMS, where abuse of that status or evidence of market failure have occurred.
119. However, Facebook was opposed to the imposition of interoperability, including to restore past API access. Facebook submitted that this would risk 'stifling innovation and deteriorating Facebook's (and others') incentives to compete'. In their response, Facebook's submitted that its 'decision to deprecate certain APIs has been driven, in large part, by complex data privacy and security considerations and at the behest of regulators and stakeholders'. Consequently, interventions by regulators to restore past API access could undermine efforts to provide users with greater control over their data.
120. The Developers' Alliance expressed similar views to Facebook and submitted that the developer community 'agrees with the general observation that API access should be voluntary and subject to compliance with overriding personal privacy objectives'.

### ***Remedies to improve consumers' control over data***

121. In the interim report, we considered several potential interventions intended to increase and improve consumers' control over their data, including:
  - whether a principles-based duty should be introduced which would require platforms to have a positive duty to be fair in the design of their platforms (and whether such a duty should include additional requirements for SMS platforms) ('Fairness by Design duty'); and
  - whether platforms should be required to give consumers an option to use their services without requiring in return the use of their data for personalised advertising.



### *Supportive views*

122. We received a number of general comments in support of the potential interventions outlined in our interim report. For example, the ICO said that the interventions would ‘complement the data protection principles and individual rights under GDPR’. Lloyds Banking Group supported our efforts to ‘explore the extent to which mechanisms could be introduced to provide consumers with more control by balancing the need for granular consent against the risk of consent fatigue.’ Which? commented that the range of potential interventions were ‘complementary since they will provide varying levels of control and protection, and this is necessary since consumers vary in their preferences, level of engagement and ability to exercise control’.
123. On the question of whether the potential remedies should be imposed only on platforms with SMS, several respondents (BT, a digital advertising service provider, Twitter, Which?, and an advertiser) agreed that this should be the case, as any restriction on non-SMS companies’ ability to compete has the potential to benefit SMS platforms’ positions. BT submitted that ‘all remedies under discussion should only be imposed on digital platforms with SMS, as the ex-ante regime should only apply to those firms holding SMS.’ However, the Computer and Communications Industry Association argued that ‘making large companies less efficient and increasing their costs would have a larger impact on consumers overall’. Facebook advocated for ‘industry-wide’ policy recommendations, rather than targeting remedies on SMS platforms.
124. We also received many responses which focused on the specific proposed remedies for this theme.

### *Fairness by Design duty*

125. In relation to our proposal to require platforms to comply with a ‘fairness by design’ duty, the Data and Marketing Association called the proposal to mandate fairness by design ‘a bold and encouraging step to further accountability... In the same way that the “privacy by design” component of GDPR has helped businesses to incorporate accountability and transparency, “fairness by design” should also help further these aims as well as give greater control to consumers.’ The CDEI also supported the introduction of a fairness by design duty for online platforms.
126. The Guardian Media Group supported the introduction of a fairness by design duty but argued that it should apply only to platforms with SMS: ‘We agree that the “fairness by design” duty on platforms with SMS would be a positive intervention to the benefit of UK consumers... 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.' Competition Law Forum argued for trialling and testing requirements in relation to the duty to be restricted to platforms with SMS: 'running the trial and test could amount to an undue financial burden for small companies... Smaller competitors could be exempted of this obligation in the short term...'

127. However, Arete Research thought that the duty would be ineffective, as it feared that 'whatever the range of remedies to improve consumers' control over their data, getting consumers to activate (and understand) their rights will be difficult and efforts to include "privacy by design" have been subverted regularly by woefully inadequate application and subsequent enforcement of GDPR requirements.'
128. A number of respondents referenced the GDPR in their submissions on the proposed duty. Facebook argued that the CMA should be cautious about imposing a different balance on GDPR or going beyond it by introducing additional requirements and described the duty as 'unnecessary and disproportionate'. The Advertising Association observed that the new duty risked duplicating existing data protection legislation, and Snap Inc. was opposed to the introduction of the duty for all platforms: 'Industry already has privacy-by-design, age-appropriate-design and safety-by-design requirements to interpret and implement...Our recommendation for fairness by design would be to either drop it entirely from the CMA's recommendations, or to apply it in a narrow and highly targeted way to companies with SMS'.
129. There was also criticism from Snap Inc. of our consideration of remedies relating to choice architecture: '...it feels overly prescriptive of the CMA to be getting involved in decisions concerning new choice architecture'. DuckDuckGo, on the other hand, 'support the concept that platforms should be required to trial and test the choice architecture they adopt. It's our understanding that that large platforms do in fact test this, through third party consultants, and actually implement the opposite, i.e., design their "choices" in a manner that dissuades consumers from selecting the option that protects their privacy.'

#### *Control remedy*

130. Which?, Competition Law Forum and Oracle, amongst others, supported our proposal that consumers be given the option to use services without agreeing to the use of their data for personalised advertising. Competition Law Forum argued that 'Facebook's view [that personalised advertisement leads to better consumer experience] is based on the premise that consumers are willing to give up their data to benefit from targeted advertising. The CMA should reject

this premise... In the absence of evidence, Facebook should not decide what experience is the best for consumers. Instead, consumers should be empowered to decide that for themselves.’ Which? supported the proposal but questioned why the ‘opt-out’ by default should only apply to SMS firms. DuckDuckGo was also supportive but flagged the need for clarity, pointing out that ‘opting out of seeing personalized advertising does not mean that Google has stopped profiling consumers, collecting massive amounts of personal data for use in other ways, such as creating look-alike audiences or filter bubbles.’ DuckDuckGo also pointed out that ‘consumers’ ability to delete their search history is often moot, because the value that Google obtains from that search history is quickly achieved, and the deletion occurs only after Google has sucked all relevant data points from it, including its diffuse incorporation into user profiling.’

131. Some respondents (eg News UK) warned of the potential impact of this intervention on the economic value of advertising, particularly for smaller companies and publishers. News Media Association said that it was ‘concerned about its intention to consider obligating publishers to offer consumers the option to decline personalised advertising.... Such an obligation would disproportionately harm ad-funded news publishers by truncating returns on their advertising inventory’, which might impact on consumer welfare due to news publishers’ reliance on advertising revenue to fund their services. It argued that intervention in relation to publishers was unnecessary due to the choice available to consumers and the resulting competition between titles, which acted as ‘effective safeguards against the risk of publishers’ abusing user data’.
132. Others flagged the potential risks arising from this intervention, highlighting the use made by platforms of personal data ‘for a variety of purposes beyond monetisation when it comes to advertising and serving content to consumers, particularly when it comes to user safety and security’, such as ensuring only age-appropriate advertising. Facebook provided the strongest response on this remedy, however. It considered that the proposed intervention presented a fundamental challenge to multi-sided business models, arguing that personalised advertising was inherent to their service and that a service without personalised advertising was not sustainable, and urging us to reconsider this remedy.

#### *Data portability and privacy-enhancing technologies*

133. On personal information management services (PIMs), the responses were mostly sceptical and we received comments that almost completely echoed some of the potential limitations already highlighted in our interim report.

Several respondents (the Advertising Association, Verizon Media) expressed concern about interventions which support relatively new technologies and instead urged us to focus on other potential remedies rather than focusing on 'granular and prescriptive technology-based remedies... The risk is that, rather than solving problems, the imposition of certain standardised technologies creates stagnation in the market.' Various parties have suggested that a regulatory framework will be necessary to achieve adoption of these remedies at scale; Ctrl-Shift stated that PIMs 'have not thrived as yet is because of the need for standards and governance to make the market safe and easy and so it has been difficult to raise funds in the market. With a clear and published intention by Government to support the development of the market, this is likely to stimulate investment to help develop the market.'

134. DMG Media observed that no successful business model for these solutions has arisen yet. Ctrl-Shift commented that common standards and APIs would also be needed as part of regulatory measures. There were diverging views about whether data mobility remedies should mandate access inferred data. Some parties insisted that they should not, others (an advertiser, The Telegraph Media Group) claimed that they should, while the Competition Law Forum stressed the importance of any decision to be agreed with the ICO.
135. DMG Media also flagged that the adoption of PIM-like solutions would require additional effort by consumers, who might not be interested in changing their ways of consuming content, while an advertiser pointed out that the solutions would need to be easy to use to maximise adoption. Some stakeholders (Facebook, CDEI, Privacy International) commented that technical aspects connected to security and integrity of data still had to be fully ironed out.

#### *Other comments on interventions*

##### *Media literacy*

136. Several respondents, including Snap Inc. and the Advertising Association, suggested that improving media literacy would be a better intervention to give consumers control over their data. Telefonica UK said that 'remedies focused on the demand side (such as obligations to educate consumers on privacy or technology related matters) should also be considered, beyond the usual supply-side oriented remedies (transparency, etc.).'
137. However, others saw improving consumer understanding as the responsibility of platforms. An advertiser said in its response: 'We agree with the conclusion that consumers need to be more aware that they are participating in a value exchange – their data for useful, free services – and that platforms can do more to raise this awareness.' DuckDuckGo stated 'that, while additional

consumer education is helpful, it is more important to actually help consumers by changing platform practices, which are intentionally designed to ensure consumers do not have their own, and the collective public's, privacy as a top-of-mind concern, especially given the inherent cognitive limitations and consumers' behavioural biases.'

#### *The use of incentives*

138. Of those stakeholders who commented on the possibility of platforms incentivising consumers to give up their data for personalised advertising, the majority of the respondents expressed concerns about this. Which? observed that 'using offers, reward schemes or payments may have the potential to make the decision to give up privacy more complicated'. Others voiced more practical concerns: DMG Media noted that 'some of the proposals being put forward, such as [...] payments by platforms for consumer data, are untested and would rely on technology which does not yet exist', while an advertiser observed that 'offering consumers incentives to use their data would be popular with consumers, but runs the risk of pushing up advertising prices, as platforms would likely want to recoup any investments made in this regard.'
139. We also received some interesting comments regarding the desirability of a monetisation component to PIMs (and PETs) on the user side. The Advertising Association observed that monetisation might entail contrasts with privacy as a human right. Privacy International said that it could infringe upon individuals' informational self-determination, as well as reinforcing the advantage of large providers, as they would be able to offer the highest rewards. An advertiser noted that monetisation could also be counterproductive for widespread adoption if consumers considered it as another intrusion into their privacy.

#### ***Remedies to address concerns about the operation of digital advertising markets***

140. There were a large volume of very detailed and specific comments in relation to the large number of potential options we set out in the interim report. We have drawn out a selection of those views in this summary to show the diversity and range of feedback received.

#### *Overarching comments on options to separate out Google's businesses*

141. We received some mixed views on potential separation options regarding Google's businesses. A number of respondents offered support for this type of potential remedy. For example, DMG Media told us that a bundle of remedies aimed at curtailing Google's market power should be adopted, including

removing all exclusivities between Google's ad tech products and/or Google's products and inventory.

142. Other stakeholders pushed back:
- Google submitted that if any of our concerns remained after further investigation they could be addressed through less intrusive means, such as initiatives to improve transparency and/or a principle within a Code of Conduct that it should not 'unduly discriminate between its other businesses and third parties'.
  - Reach plc told us that on balance it was not in favour of attempting any separation interventions. We had raised some difficulties with identifying and implementing the correct intervention and Reach plc believed that as a result there was a high likelihood that such an intervention, whether begun by government or some other party would not ultimately be implemented effectively.
143. Arete Research submitted that we should explore the promising comparisons to the regulatory regime for financial markets', which was both well-established and well-understood, when considering structural separation. Material conflicts of interest were inherent, Arete Research explained, in the bundled ad tech "stacks" of leading platforms, doubting whether Google could fairly represent publishers as an SSP when it was also one of the largest publishers in the market, as well as the leading conduit of ad spend towards third-party publishers.
144. The Competition Law forum told us, echoing our view that remedies should be applied and tailored by considering the behaviour and circumstances of each individual market, that we would be mistaken to apply an escalation approach to firms that were ill-intentioned (ie likely to reap benefits from loopholes in the law) or well-informed (ie using their knowledge and highly skilled advisors). It would not be necessary to begin with the least restrictive remedy option. More intrusive measures should be considered and applied from the outset. It thought that the degree of regulation required would be more akin to that prevailing in telecoms rather than a code of conduct.
145. The Competition Law Forum also told us that it believed that the most intrusive measure (i.e. divestiture) would in principle deliver the most effective outcome. It concurred with our view that this measure would require coordination with other authorities. The Competition Law Forum encouraged us to engage with other antitrust enforcers (especially the FTC and the Commission) to decide on the best possible option for its implementation.

146. Privacy International told us that we should consider structural or behavioural regulatory interventions to limit anti-competitive behaviour of platforms with a dominant or 'strategic' position in the online market. Competition and data protection authorities should, it explained, consider jointly the interface between consumer, competition and data protection law. These were complimentary frameworks which needed to be used in tandem to address systemic problems with the current state of online advertising.

*Access by independent DSPs to Google's YouTube advertising inventory*

147. Several of the respondents who provided detailed comments supported this proposal. Google was the notable exception to this view.

148. Google told us that its current approach to bar all third-party access to YouTube was justified by privacy law, commercial necessity and reputational risk. Restricting access to both to its own targeting data and inventory (such as YouTube inventory) was the best way to:

- prevent user information from being leaked to potentially malicious actors: third-party DSPs with access to YouTube inventory could build profiles of users based on their viewing history, which would be a data protection risk.
- ensure that the ads appearing on its pages were of a consistently high quality, as widespread third-party ad serving on our properties could increase latency and make it harder for it to scan for 'bad' ads.

149. Google noted the lively competition between different DSPs and ad networks, noting that some of its rivals had important advantages over Google's DV360 in terms of their technology and service as well as access to inventory and data. Advertisers, it submitted, highly regarded the services of other large DSPs such as The Trade Desk, Xandr, Amazon and Criteo.

150. The Guardian Media Group told us that it believed that Google was on a path overcoming privacy concerns in relation to selling publisher display inventory through GAM. YouTube, it added, was ultimately a publisher, and could ask users for consent to send data to third parties in order to enable the sale of YouTube inventory through other DSPs.

151. Oracle told us that opening up YouTube inventory to independent DSPs would offer a straightforward solution to improve competition between DSPs and should not raise privacy concerns. It was important that we devised a mechanism to ensure that Google treated its and non-Google demand on the

same basis and that such mechanism should be subject to review by an independent third party.

152. Beeswax, a DSP, told us that this remedy was for it the most promising remedy proposal to level the playing field with Google. It was, however, important to mandate access via the standard open RTB interface used across the rest of the industry, rather than the proprietary interface used by DV360.

#### *Access by independent intermediaries to Google's Analytics service*

153. The Guardian Media Group told us that access to the underlying attribution data would be preferable to access to an interpretation of that data, enabling it to generate its own analysis based on the that data. Regarding user information the Guardian Media Group told us that it wanted access to data points that gave it an understanding of its audiences.
154. Oracle told us that any data interventions should cover all data collected through any of Google's tracking technologies – not just tags [deployed to support its analytics service]. Even in the most far-reaching scenario put forward by the CMA, ie, a scenario in which competitors can gain access to data collected by Google tags and to data used for targeting purposes, Oracle explained, Google's competitive advantage would continue to exist. Google would continue to have access to all data in its possession, [such as that from Android] whereas competitors only subsets of it. Advertisers would therefore continue to find it easier to turn to Google's one-stop-shop.
155. Oracle observed that we thought that such remedies would involve establishing a price for the access to the data that reflects the economic cost of the data to Google. That premise assumed, however, that the data belonged to Google whereas, in fact, it belonged to consumers. Google, Oracle explained, should not be compensated for data that was not its own to begin with.
156. DMG Media strongly supported mandating access to Google's attribution service, stating that with its user ID across Google products and sites Google was able to obtain a full picture of the user journey.
157. News UK told us that it had not understood what 'mandating access to Google's attribution service' was intended to entail. For it the priority was that any future cookie replacement should allow third-party technology to offer attribution technologies on a level playing-field with Google.
158. Verizon Media asked that we recognised the role for legitimate interests in programmatic advertising, for example when serving and measuring non-



personalised ads. Such a legitimate interests assessment would be supported by a proper analysis and balancing test. There was nothing in GDPR which prohibited firms offering non-personalised advertising and processing the associated personal data.

### *Remedies to address the lack of transparency in digital advertising markets*

159. Verizon Media told us that our analysis and conclusions were too broad to form the basis of specific interventions. For many options it was unclear to Verizon Media what the specific competition concerns were and who had expressed these concerns. We should, it explained, seek greater clarity in this regard so that it could be more specific in its feedback.
160. The News Media Association told us that transparency interventions were crucial to enabling competition and ensuring publishers and advertisers got a fair return for their inventory and ad spend. Transparency interventions, the News Media Association added, must cover current practices and be sufficiently flexible as to cover both current and future practices and be implemented in combination with principles of openness and fair dealing. Such transparency requirements including a full understanding of the dynamics of advertising auctions would ultimately benefit consumers who, it explained, would be best served by diverse range of well-funded, high-quality news titles covering every town and city across the UK.
161. The Guardian Media Group, DMG Media and Reach plc were all supportive of these initiatives. The Guardian Media Group told us that transparency interventions were crucial to correcting wider market dysfunction as well as to the task of holding dominant platforms to account. DMG Media told us increased transparency was important to making informed business decisions and avoiding unnecessary fees. Publishers would be able to determine which supply path had the lowest ad tech tax and choose their partners accordingly.
162. IAB UK were supportive of fee transparency but challenged the insinuation that adtech firms were taking a slice of the pie without adding any value. Some technologies, the IAB explained, were essential to buying programmatically and others were additional technologies that might be chosen in order to create additional value.
163. News UK told us no single transparency intervention would be effective in isolation. There would be benefits from extending certain requirements to apply to all major ad tech vendors, a number of which, News UK added, similarly operated as 'black boxes' in order to create a minimum reporting

*A requirement to comply with a common transaction ID applicable to all intermediaries*

164. Google told us that imposing consistent transaction IDs would raise potential privacy concerns by allowing advertisers to join Google's secure bid data with other information in a way that would allow individual users to be identified. It would also allow various market participants along the intermediation chain to 'pool' user data without user consent.
165. Arete Research told us there was a compelling case for transparent reporting of fees along the entire ad tech chain, with advertisers given a clear view of what they bought (inventory, audience), what they paid (which ad-tech partner received which fees) and what was received by publishers whose inventory was sold. It suggested that transaction IDs would be a good start: a common transaction ID applicable to all intermediaries should replace the existing multiple, non-comparable formats.
166. DMG Media supported such a measure. In the absence of a common transaction ID multiple fields needed to be used in conjunction to attempt to match up elements of individual transactions. This process, DMG Media explained, would be made much easier to understand whole transactions. For example, it was currently unable to ascertain its revenue share from Google's SSP, AdX, on a per impression basis. The lack of transparency was, however, an industry problem rather than just a Google and Facebook problem.
167. News UK told us applying this measure just to Google and Facebook would be an improvement on the status quo. It, however, considered, that the intervention should apply to all ad tech providers, otherwise there would be a risk of similar issues arising in the future.

*A requirement on Google & Facebook to allow third-party verification of their own advertising inventory*

168. Google told us that its approach to ad verification and attribution was driven by its obligations under the GDPR. Any initiative to improve the ability of third-parties to measure the performance of their ads should not, Google submitted, conflict with the requirements of data protection legislation.
169. Reach plc told us that it believed advertisers should be required to only source inventory compliant with the IAB Gold Standard. Both Google and Facebook, Reach plc added, were members of IAB UK.
170. Oracle, which owns verification firm Moat, told us that we should require Google to provide sufficient data to allow for effective ad verification and attribution analysis. Rather than aggregated data or insights, Google should,

Oracle explained, make raw data available to advertisers or publishers such that they can reach their own conclusions as to the effectiveness of their ad campaigns. In addition, third parties should be able to collect the relevant data from Google properties directly, rather than simply measuring Google's curated data.

*A requirement on Google & Facebook to provide certain data, including bidding data, to publishers*

171. Google told us some large advertisers were sensitive about the disclosure of their bidding activity behaviour in previous auctions and contractually restricted it from disclosing that data. Furthermore bid data could be joined to other information, eg through a transaction id, in a way that allowed individual users to be identified. Any attempt to 'improve' the quality of bid data which publishers received needed to therefore be balanced against the interests of these other stakeholders.
172. The News Media Association called for there to be a requirement for not just Google but all intermediaries to provide bidding data to publishers in order to foster trust within the market and enable it to understand whether it is getting value for money. Any difficulties surrounding the disclosure of sensitive information could be managed by aggregating and anonymising data. Were that to be the case, then more detailed data should still be supplied to the regulator to allow it to carry out its monitoring activities.
173. DMG Media told us this bidding information should in principal be supplied to publishers so that it can analyse it and make informed business decisions. It might also prove useful to a regulatory body in order eg to resolve disputes between the parties around the interpretation of the provided data or perform periodic audits.
174. Reach plc told us that Google and the other large exchanges/SSPs (such as Index and Appnexus) should also provide information on the auction process to publishers.

***Potential sequencing of remedies***

*Search*

175. Several search engines casted doubt regarding the level of substitutability of demand-side and supply-side remedies. They expressed concerns that, whilst these may become substitutable in the long term, demand-side remedies may never become effective unless search engines have access to the level of click and query data needed to improve their results.

176. DuckDuckGo suggested that a less satisfactory, though substantial improvement over the status quo, would be a staggered approach to introducing remedies in the following order: (1) choice screens, (2) default purchases, (3) access to click and query data, and finally (4) syndication agreements.
177. Lilo submitted that ‘should rather be considered as complementary’ and that supply-side remedies were required ‘within the shortest timeframe to ensure a high-quality search engine can be developed as alternative to Google.’

#### *Code of Conduct*

178. News UK believed that separation remedies should be further evaluated and, if appropriate, implemented through a market investigation running in parallel with the implementation of other remedies that require primary legislation, such as the code of conduct.
179. Professional Publishers Association told us the sequencing of remedies should prioritise those that will improve conditions for the UK publishing industry as the problems facing the magazine media industry are fundamentally related to revenue decline and not audience decline. A code of conduct should be implemented as soon as practical.
180. The News Media Association called for a statutory code of conduct, including the transparency requirements in relation to publishers’ sale of their digital advertising should be implemented as quickly as possible through primary legislation, to ease the strain imposed on publishers by Google and Facebook’s unilateral conduct.

#### **CMA Response:**

- We were struck by the overwhelmingly positive feedback received in support of a code of conduct for online platforms with a strategic market status. The further analysis we have conducted has reinforced our view that this will be an important vehicle for tackling a large number of different issues and concerns about the conduct of these platforms.
- The feedback received on a range of other proposals has supported our findings that the code of conduct would be complementary to a number of other pro-competitive interventions.
- We have factored in the wide range of views received when finalising our recommendations to government for the development of a pro-competition regulatory regime for online platforms.

## Views on a market investigation reference

181. In addition to our initial findings and potential interventions, we also consulted on our proposal not to make a market investigation reference at the conclusion of this study. Of the 77 responses to our consultation, 31 submissions referred directly to this proposal.<sup>7</sup> The views expressed, which came from a broad cross-section of stakeholders in the market, are summarised in Table 1.

**Table 1: Summary of views on our market investigation reference proposal**

<b>View</b>	<b>Number</b>
<b>Supported our proposal not to make a reference</b>	<b>8</b>
<b>Neutral</b>	<b>2</b>
<b>In favour of a reference</b>	<b>21</b>
Social media and display advertising	0
Search and search advertising	3
Open display advertising	11
Preferred scope not specified	7
<b>Total responses to our MIR proposal</b>	<b>31</b>

182. All but one of the 31 that responded on this topic indicated they were in favour of interventions in these markets more broadly, most notably the proposed code of conduct, and those in favour of a reference did not see a market investigation and broader regulatory reform as substitutes.

183. The following sections summarise the views we received in support of each option.

### ***Our proposal not to make a market investigation reference***

184. Eight responses to the consultation supported our proposal not to make a market investigation reference.<sup>8</sup> Of these, seven appeared to agree with our assessment that the test for a reference had been met. However, they also agreed with the reasoning we set out in our interim report that the likelihood of government intervention in the market, coupled with the global nature of the issues identified, meant that on balance we should not make a reference in any of the markets within our scope at this point.

185. Some respondents such as Which? and Reach plc also agreed explicitly with our position that this should be kept under review, depending on the pace and

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<sup>7</sup> 29 of the calls for a market investigation were published on our web page.

<sup>8</sup> BT; British Brands Group; Radiocentre; Barclays; Lloyds Banking Group; ISBA; the Developers Alliance; and Malouloua Ltd.

extent of government reform in the area. Which? in particular noted that if it was to ‘subsequently reach the conclusion that the current approach will not deliver the right outcomes for consumers, we will consider all the routes available to protect consumers including competition and consumer enforcement action.’

186. Just one response – from the Developers Alliance – explicitly rejected the conclusion that our findings could reasonably justify a reference, suggesting that ‘at present, it seems that there is not enough evidence of systemic problems that would support any of the broader regulatory measures proposed.’ We also note that the companies most likely to be under further scrutiny from any such investigation, in particular Google and Facebook, did not respond on this issue.
187. Responses in support of our proposal highlighted that there are sound reasons to be cautious about referring these markets for an investigation, in particular, that:
- A market investigation is a long process which does not easily align with the need for quick decisions in fast moving markets. Barclays made this point, noting particularly that ‘there are some parallels with – and learnings from – Open Banking and other CMA market investigation remedies...’
  - A market investigation could potentially cut across any broader regulatory reform. British Brands Group noted that it considers ‘that issues to be addressed by a code are broader in scope than digital advertising’... and ‘agree that it is more appropriate for there to be a recommendation to government to put in place a broader-based remedy than is possible by... the market study or... following a market investigation reference’.
  - Unilateral action by the UK could be challenging. Lloyds Banking Group said that ‘a market investigation may not be sufficient to address the uniqueness and complexity of this market and additional measures conducted on a global scale are likely to be required to effectively improve competition’.

### ***The potential candidates for a market investigation***

188. There were seven responses that, although not indicating support for a single specific candidate, they outlined reasons why a market investigation would be an appropriate course of action. These can broadly be set out into four themes:

- The issues identified in our interim report requires urgent redress. Digital Policy Alliance said that ‘The EU Commission’s detailed investigations and formal decisions do not need to be repeated. We see the case for swift action now in a Market Investigation that can resolve the unremedied position. We also see the issue as one where the CMA can now step up and deliver the remedies in the interests of UK consumers and businesses’.
- It could be run complementary to government reforms. The Professional Publishers Association said that a market investigation could ‘run concurrently and complementarily to this work and act to deliver urgent remedies to enhance competition and transparency in the digital advertising market’.
- It could further shine a light on the market and inform government decision making. Arete Research said that ‘there are substantial unanswered questions... behind the digital ads market that could be exposed in a more sustained investigation’ which ‘might help to inform ministers’ policy choices in a more unambiguous way’.
- The global nature of the issues identified in the interim report should not deter the CMA from taking action. The Competition Law Forum argued that ‘almost all possible interventions would require communication and coordination... including the enforceable code’ and that ‘following the same logic, very little progress would ever be achieved if any global issue required a sufficient level of understanding between competition enforcers globally’.

189. The Competition Law Forum also argued that our proposal not to make a market investigation reference is not consistent with the serious competition problems identified, and that the proposal appeared to champion maintaining the status quo. It encouraged us to set out all the considerations affecting our decision in our final report.

#### *A market investigation reference in general search*

190. There were three direct calls for a market investigation in general search and search advertising. The responses all emphasised the urgent need for action in the market, but from very different perspectives and with different concerns in mind. These range from the scale advantage Google has as a search engine, its ability to implement changes affecting downstream markets, and its ability to bundle its different services together.

191. DuckDuckGo, a rival search engine, argued that decisive action is needed to tackle Google's market power in general search, and that the CMA already has the powers to intervene. It questioned 'how many reports, how many commissions, how many blue-ribbon experts are necessary before anything actually changes?'. An online travel comparison website made the case that an investigation is needed to tackle the 'existential nature of the threat' that Google poses to the downstream travel market.

*A market investigation reference in social media*

192. We did not receive any calls for a market investigation focused solely on social media and display advertising. However, as part of its arguments in favour of a more broadly scoped investigation, Privacy International did refer specifically to social media being included. It argued a market investigation would give the CMA the opportunity to examine the appropriate range of remedies to address the issues identified. For example, it said that 'the CMA could use its order making powers to introduce increased interoperability in social media'.

*A market investigation reference in open display*

193. 11 responses called explicitly for a targeted market investigation in the open display market. Nine of these were from the national and regional news media, including News UK, DMG Media, the Guardian Media Group and News Media Association.
194. The arguments provided in favour of a market investigation in open display are summarised below under three high-level themes.

*A market investigation would complement the development of a new ex ante regulatory regime*

195. Several respondents argued that a market investigation in open display advertising would complement the development of a new ex ante regulatory regime, and that it should not be considered as a substitute. This was represented to us in two specific ways:
196. First, that the structural issues identified in the open display market may not be adequately dealt with by behavioural measures. Prof. Geradin and Katsifis for example noted that 'it is not clear how some of the issues... linked to vertical integration... could be addressed through a code of conduct'. That concern was also emphasised by almost all publishers in their response. The Guardian Media Group said, '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.’

197. Second, during a market investigation, the CMA could continue to gather evidence and inform any broader regulatory reform such as development of a code. The News Media Association said it ‘is convinced that, rather than ‘cutting across’ the government’s work in this area, a market investigation would complement it.’
198. In relation to the timeline of a market investigation compared to regulatory reform, News UK made a similar point. It suggested that ‘given such an investigation would last until at least early 2022... if the government moves forward promptly with implementation of an ex ante regime, there would be time for the CMA to factor in the initial effects of the regime into its final decision on any remedies. Conversely, if the government does not act promptly, this would reinforce the case for the CMA to take action itself, using powers available following a market investigation.’

*Interventions through a market investigation could take effect quicker than a code of conduct*

199. Several publishers indicated they consider their existence to be under threat, and as such argued in favour of a market investigation because it could take effect more quickly than a code of conduct. The point of urgency was expressed by several publishers, for example:
- DMG Media said it is ‘concerned that regulatory intervention may come too late to ensure the survival of the news industry. The collapse of advertising revenues, due in part to the behaviour of major online platforms, must be tackled urgently.’
  - News Media Association noted in relation to the potential code that there is ‘significant danger that the measures... may be significantly delayed. Given the dire financial situation in which many UK news publishers are in, such a delay may be lethal.’

*A market investigation is an opportunity for the UK to be a global leader*

200. While several parties recognised and agreed with our position as set out in the interim report that potential structural measures would be more efficiently implemented with international coordination, many outlined that they saw this as a justification in favour of a market investigation, rather than to the contrary. In particular, that coordination could be best achieved if the CMA led from the front.

201. Three stakeholders in particular saw a market investigation by the CMA as the best route for tackling the challenges identified:

- DMG Media emphasised the CMA's 'high standing in the community of antitrust authorities'.
- News UK highlighted that the CMA's powers in the area is a long-standing and well-recognised feature of the UK competition regime.
- News Media Association said that 'the range of resources and investigative powers it affords, its apolitical nature and its scope for international cooperation make[s] it the ideal vehicle to implement a targeted and effective separation'.

**CMA Response:**

- We have carefully considered all of the feedback received on this important issue, as well as factoring in other relevant developments since our consultation.
- We have decided not to make a market investigation reference at this stage – the full reasoning for this decision are explained in Chapter 9 of our final report.
- At this time, we see the establishment by government of a new pro-competition regulatory regime as the most appropriate next step to tackle the issues in question. Legislation will be the most effective mechanism for achieving this aim.

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

### *Areas we identified for further work*

202. The interim report set out a number of areas we identified for further and more detailed analysis during the second half of our study.

203. We received strong support from multiple parties for intention to carry out further work in the following areas during the second half of the study:

- Several responses, in particular those from publishers, welcomed our intention to carry out further work on fees and revenues in the open display advertising value chain. For example, DMG Media said ‘we welcome in particular the CMA’s intention to investigate further the fees and revenues in the open display advertising value chain.’ Similarly, News UK encouraged us ‘to conduct a more detailed analysis of revenue flows within the ad tech stack.’
- Several stakeholders responded positively to us engaging with the ICO and government and encouraged us to continue this in the second half of the study. For example, ISBA welcomed us ‘liaising closely with the ICO on questions of data’. Verizon Media said it ‘welcome[s] the commitment to engage with other relevant national authorities whose decisions impact the regulation of, and competition within, the UK market.’
- John Lewis Partnership was encouraged by our ‘plans to give further consideration in the second half of the study to developing a like-for-like cost-per-click search advertising comparison model’.

204. A few parties disagreed with particular areas we identified for further work and analysis during the remainder of the study:

- News Media Association disagreed with our intention to evaluate the controls over user data given to consumers by publishers, and expressed concerns about plans to consider obligating publishers to offer consumers the option to decline personalised advertising in the second half of the study, as ‘such an obligation would disproportionately harm ad-funded news publishers by truncating returns on their advertising inventory.’
- The Guardian Media Group were not in support of our intention to conduct a full analysis of spending flows across all intermediaries in the digital advertising ecosystem. It said ‘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.’

### ***Gaps in our evidence base***

205. The following issues were highlighted by parties as areas deserving of greater emphasis during the second half the study:

- Several small advertisers called for us to review and incorporate the recent findings of the French Competition Authority into our concerns. Respondents drew comparisons with the issues explored in our study and those examined by the French Competition Authority. Bradbury Harper said that we should also consider the findings of the Australian Competition Authority.
- DMG Media said that we ‘should investigate further Google’s decision to phase out third-party cookies on Chrome’ because ‘the move will have a massive impact on the ad tech ecosystem, since the third-party cookie is the backbone of advertising on websites’.<sup>9</sup> Google’s decision to inhibit the placement of third-party cookies was also highlighted by Arete Research, Oracle and DMG Media, as an area requiring examination.
- Some parties asked us to investigate further data sharing between services owned by the same platform. For example, Which? asked us to go further in our review of ‘the sharing of data between platforms owned by the same company’ (eg Facebook and Instagram); consumer attitudes towards this; and, what controls are available to consumers to manage this. Similarly, Arete Research asked us to ‘focus more on the power of defaults, and the sharing of data from distinct services within Big tech groupings’.
- 51Degrees asked us to further investigate the role of Chromium and stated that ‘Google’s role in the governance and control of Chromium alongside the impact this has on consumers and all competition needs to be explored in the second stage of the study.’
- Radiocentre encouraged us to consider the implications of the rise in use of smart speakers and to ensure that ‘this relatively new area is within the scope of any future regulation or code of conduct’.

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<sup>9</sup> After we published our interim report, Google announced on 14 January 2020 in a blog post titled ‘[Building a more private web: A path towards making third party cookies obsolete](#)’ its plans to phase out support for third-party cookies in Chrome within the next two years.

- Google stated that further time should be spent on understanding the extent to which '[its] success in search is caused by investments in new and innovative search engine features that users value'.

**CMA Response:**

- We have conducted extensive further work and analysis to refine our evidence base and our conclusions. This includes all of the issues highlighted above.