Anticipated acquisition by Taboola.com Ltd. of Outbrain Inc.

Decision on relevant merger situation and substantial lessening of competition

ME/6877-20

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 26 June 2020. Full text of the decision published on 21 July 2020.

Please note that [✂] indicates figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

SUMMARY

1. Taboola.com Ltd (**Taboola**) has agreed to acquire Outbrain Inc. (**Outbrain**) (the **Merger**). Taboola and Outbrain are together referred to as the **Parties**, and for statements referring to the future, as the **Merged Entity**.

2. In the UK, Taboola is active in the provision of digital advertising services, including content recommendation through a platform placed on publishers' webpages which displays ads for external content that users may be interested in reading under headings such as 'Content You May Like', 'Recommended for You' or 'Around the Web'. Outbrain is also active in digital advertising services in the UK, including content recommendation activities. The Parties' customers include advertisers (which include individual firms, media agencies and digital advertising service providers), publishers, digital media platforms and readers of publishers' websites.

3. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Taboola and Outbrain is an enterprise, and that arrangements are in progress or in contemplation which, if carried into effect, will lead to these enterprises ceasing to be distinct as a result of the Merger. The CMA believes that the share of supply test is or may be met on the basis of an overlap between the Parties in the supply of content recommendation

platform services to publishers in the UK and a combined share (by revenue) of [80-90]% with an increment of [30-40]%.

4.   The CMA considered the impact of the Merger against the prevailing conditions of competition.

Frame of reference

Product scope

5.   The Parties overlap in the supply in the UK of:

   (a) content recommendation platform services to advertisers and publishers;

   (b) outstream video advertising platform services to advertisers and publishers; and

   (c) other types of native advertising (eg 'in-feed' and 'in-content') platform services to advertisers and publishers.

6.   The Parties' overlapping services can be characterised as two-sided platforms, with the Parties competing to attract advertisers on one side and publishers on the other. The CMA therefore considered whether it would be appropriate to assess the impact of the Merger within a single or separate frame(s) of reference. The CMA found that the competitive dynamics on the advertising side are different from those on the publishing side, such that the Parties are subject to different competitive constraints when dealing with advertisers and publishers. For this reason, the CMA conducted a separate assessment of the impact of the Merger on each side (taking into account the two-sided nature of these platform services where relevant).

Content recommendation platform services for publishers

7.   **Content recommendation** is a type of advertising format which is displayed alongside editorial content on publishers' websites, and identifies other content that the website user may be interested in reading, often based on personalisation algorithms which use real-time data from users. When users click on these ads, they will be redirected to external webpages.

8.   The CMA found that the evidence supported a frame of reference for content recommendation platform services to publishers in the UK. This was on the basis of evidence from the Parties' internal documents, the Parties' use of exclusivity agreements with publishers covering content recommendation specifically, and the views of third parties, who explained that other forms of

digital advertising are not a substitute for content recommendation for most publishers. The CMA has therefore assessed the impact of the Merger on the supply of content recommendation platform services to publishers in the UK.

Outstream video advertising platform services for publishers

9. **Outstream video** is an independent video advertising unit that plays within an article page, feed, or any other location on the site, outside of any existing video player, as opposed to instream**.**

10. The CMA received mixed evidence from UK publishers on whether this product frame of reference should be widened. On a cautious basis, the CMA did not include other advertising formats and direct sales to advertisers as part of the product scope and considered the impact of the Merger on the supply of outstream video advertising platform services to publishers.

11. However, it was not necessary for the CMA to reach a conclusion on this product frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

Other native advertising platform services for publishers

12. **Native advertising** is advertising that follows the natural design, location and ad behaviour of the environment in which it is placed. It is designed to engage with consumers in more native, and, importantly, in most cases, non-promotional ways to be as relevant as possible and strengthen consumer ties to a brand. This is therefore a broad category, including advertising formats such as content recommendation, in-feed and in-content native advertising and native video advertising. The CMA uses the term '**other native advertising platform services**' to refer to the collection of native advertising formats other than content recommendation platform services and outstream video advertising platforms services. Other native advertising platform services provided by the Parties include 'in-feed' and 'in-content'.

13. The evidence indicated that most publishers would respond to a small worsening of terms in other native advertising platform services by switching to other types of advertising. The CMA therefore considered that it may be appropriate to widen the product scope to non-search display advertising, which includes advertising formats other than native advertising. However, the CMA did not need to conclude on this product frame of reference as no concerns arise on any plausible basis, including in the supply of other native advertising platform services to publishers in the UK.

Non-search display advertising services for advertisers

14. On the advertiser side, the evidence supported a product scope that is wider than the provision of content recommendation, outstream video advertising, or other native advertising as individual markets. This wider market includes each of the three types of advertising considered above, other advertising formats and advertising services offered by owned-and-operated platforms (ie platforms which own the advertising space and market that space themselves, such as Facebook). In particular, evidence from the Parties' advertiser customers strongly indicated that they would switch their advertising budget to other forms of non-search display advertising as a result of a worsening in the quality of each of the three types of advertising considered above. The CMA has therefore assessed the impact of the Merger on the supply of non-search display advertising services to advertisers in the UK.

Geographic scope

15. In relation to the geographic scope of the frame of reference, the CMA found that publishers with a UK readership find platforms with advertisers interested in advertising to UK customers more attractive. Similarly, advertisers wishing to target a UK audience prefer platforms partnering with publishers which have UK users. Evidence from the majority of competitors also indicated that their strength varies across different countries and that, for content recommendation, substantial barriers prevent entry and expansion in the UK market. The CMA therefore assessed the impact of the Merger on a UK-wide basis.

Theories of harm

16. The CMA has considered the following four theories of harm:

    (a) horizontal unilateral effects in the supply of outstream video advertising platform services to publishers in the UK;

    (b) horizontal unilateral effects in the supply of non-search display advertising platform services (including other native advertising platform services) to publishers in the UK;

    (c) horizontal unilateral effects in the supply of non-search display advertising services to advertisers in the UK; and

    (d) horizontal unilateral effects in the supply of content recommendation platform services to publishers in the UK;

Horizontal unilateral effects in the supply of (i) outstream video advertising platform services to publishers in the UK, (ii) non-search display advertising platform services (including other native advertising platform services) to publishers in the UK, and (iii) non-search display advertising services to advertisers in the UK

17. The evidence shows that there are strong alternative providers of outstream video advertising services and non-search display advertising platform services (including other native advertising platform services) to publishers in the UK. In particular, in relation to outstream video advertising, Teads has a strong market position and is much larger than the Parties combined. The CMA also considers that Outbrain has very limited presence in the supply of outstream video advertising and that other providers are likely to be a more significant constraint on Taboola than Outbrain. In relation to non-search display advertising services, and in particular the supply of other native advertising platform services (eg 'in-feed' and 'in-content' services) to publishers in the UK, where the Parties overlap, the evidence shows that the Parties do not compete closely and, in any event, the Parties face competition from stronger alternative suppliers.

18. In relation to horizontal unilateral effects in the supply of non-search display advertising services to advertisers in the UK, the CMA found that while half of the advertisers responding to the CMA's investigation considered the Parties to be close competitors, the majority did not express concerns about the Merger. The CMA also considered that the Parties' combined share in the supply of non-search display advertising services to advertisers in the UK is likely to be lower than [0-5]%, and that Facebook and Google are both active in this frame of reference and have shares of supply that are significantly larger than the Parties.

19. Therefore, the CMA believes that the Merger would not result in a realistic prospect of a substantial lessening of competition (**SLC**) in the markets for the supply of outstream video advertising, the supply of non-search display advertising platform services (including any potential segment for the supply of other native advertising platform services) to UK publishers, or the supply of non-search display advertising services to advertisers in the UK.

Horizontal unilateral effects in the supply of content recommendation platform services to publishers in the UK

20. In relation to the supply of content recommendation platform services to publishers in the UK, the CMA found that the Merger would combine the two largest players in the supply of content recommendation platform services in

the UK. As a result of the Merger, the Parties' combined share would be [80-90]%, with an increment of [30-40]%.

21.   The CMA also found that the Parties are each other's closest competitor in the supply of content recommendation platform services to UK publishers. In particular, the CMA has seen a large number of the Parties' internal documents which suggest that the Parties consider each other to be close, and often their closest, competitor. These documents also show that they monitor each other's activity and attempt to win each other's customers. Third party responses to the CMA's investigation also indicated that both publishers and competitors consider Taboola and Outbrain to be each other's closest competitor in the supply of content recommendation platform services to UK publishers.

22.   The CMA found that none of the alternative suppliers mentioned by the Parties or third parties, individually or in combination, would exercise a significant competitive constraint on the Merged Entity. In particular, the few suppliers that currently compete with the Parties in the supply of content recommendation platform services to UK publishers are weaker than the Parties and do not have comparable scale in the UK.

23.   The CMA also notes that the majority of publishers that responded to the CMA's investigation expressed concerns about the Merger.

24.   On the basis of this evidence, the CMA found that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to the supply of content recommendation platform services to publishers in the UK.

Countervailing factors

Entry and expansion

25.   The CMA believes that there are significant barriers that will generally prevent the timely, likely and sufficient entry or expansion of competitors to mitigate any SLC arising from the Merger in the supply of content recommendation platform services to publishers in the UK.

26.   In particular, the CMA considers that the Parties' exclusivity agreements may act as a barrier, as they prevent publishers from easily switching between platforms. The CMA also considers that this is a market characterised by strong network effects and innovation, suggesting that entry or expansion, particularly by smaller companies who would be competing with a very strong

incumbent, with considerable market power which it is able to leverage in the form of exclusivity agreements, is likely to be difficult.

27. Notwithstanding these general findings on barriers to entry and expansion, the CMA has seen evidence that Google is currently developing a 'Multiplex Ads' product that may compete more directly with the Parties' content recommendation services (in addition to its Matched Content product, which has been active in the UK for some years, but which has gained minimal share of supply to date). The CMA therefore considered whether such expansion would be timely, likely and sufficient to prevent a realistic prospect of an SLC occurring as a result of the Merger.

28. In light of the significant concerns arising from the Merger in the supply of content recommendation platform services to UK publishers – including the Parties' very high combined share of supply, the closeness of competition between the Parties and the limited constraint from other providers – the CMA would need strong evidence of sizeable and significant expansion in order to consider that such expansion would be sufficient to prevent a realistic prospect of an SLC occurring as a result of the Merger.

29. Although Google's Multiplex Ads product is currently only at alpha testing phase, the available evidence indicates that expansion by Google may be both timely and likely. However, the evidence gathered by the CMA, including using its formal information-gathering powers, indicates that this expansion would not be sufficient to prevent a realistic prospect of an SLC arising from the Merger. In particular:

    (a) Google has been active in the supply of content recommendation platform services to UK publishers for many years through its 'Matched Content' product. However, it has only achieved a minimal share of supply of [0-5]%.

    (b) It is unclear at this stage how closely 'Multiplex Ads' will compete with the Parties' content recommendation services. To the extent that 'Multiplex Ads' are differentiated, for example by being more native in style and less focused on editorial and advertorial content, they are less likely to pose a significant constraint on the Parties.

    (c) Evidence suggests that Google will face a number of challenges in growing its share of supply through its Multiplex Ads product, in particular the Parties' internal documents indicate that the Parties consider that they will be able to defend their position.

30. The CMA therefore believes, on the basis of the available evidence, that expansion by Google in the supply of content recommendation platform

services to publishers in the UK would **not be sufficient** to prevent a realistic prospect of an SLC as a result of the Merger.

Decision

31.   The CMA therefore believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of content recommendation platform services to publishers in the UK.

32.   The CMA considers that the Merger does not give rise to a realistic prospect of an SLC in relation to the supply of outstream video advertising platform services to publishers in the UK, the supply of non-search display advertising platform services (including other native advertising platform services) to publishers in the UK, or the supply of non-search display advertising services to advertisers in the UK.

33.   The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**) in relation to the supply of content recommendation platform services to publishers in the UK. The Parties have until 3 July 2020 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

ASSESSMENT

Parties

Taboola

34.   Taboola is a privately-held Israeli limited liability company.[1] In the UK, Taboola is mainly active in the provision of digital advertising services, including content recommendation through a platform placed on publishers' webpages under headings such as 'Content You May Like', 'Recommended for You' or 'Around the Web'. In 2019, Taboola had worldwide turnover of USD[✂], of which £[✂][2] was generated in the UK.[3]

35.   Taboola's customers are advertisers (which include individual firms, media agencies and digital advertising service providers), publishers, digital media

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[1] Final Merger Notice submitted to the CMA by the Parties on 28 April 2020 (**Final Merger Notice**), paragraph 10.
[2] Based on Bank of England average US$/GBP exchange rate of 1/0.78754 for the period of 1 January 2019 – 31 December 2019.
[3] Final Merger Notice, Section 2.6.1.

platforms and readers of publishers' websites. Taboola typically generates revenues from its advertiser customers on a cost-per-click basis (**CPC**) or, less frequently, on a cost-per-thousand impressions or cost-per-mille basis (**CPM**).[4]

Outbrain

36.   Outbrain is a privately-held Delaware corporation headquartered in New York, which operates from 18 offices worldwide, including in the UK. Outbrain provides digital advertising services, including content recommendation through a platform placed on publishers' webpages.[5] In 2019, Outbrain had worldwide turnover of USD[✂], of which £[✂][6] was generated in the UK.[7]

37.   Outbrain describes itself as an intermediary between publishers, digital media platforms and advertisers, seeking to buy and sell online digital advertising services. It connects advertisers, publishers, digital media platforms and readers through personal recommendations of articles, videos, slideshows and other ads that appear as recommended links on publishers' websites or mobile applications.[8]

Merger

38.   The Merger concerns the acquisition by Taboola of all of the equity securities of Outbrain on a fully diluted basis.[9]

39.   The Parties informed the CMA that the Merger is also the subject of review by competition authorities in Israel and the US. The Merger was cleared by the German competition authority on 11 November 2019.[10]

Rationale for the Merger

40.   The Parties submitted that the main strategic rationales for the Merger are:[11]

(a)   the Merger will allow the Parties to gain scale and generate synergies enabling the Merged Entity to compete more effectively with leading players, such as Google, Facebook, Amazon and Verizon;

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[4] Final Merger Notice, paragraph 13.
[5] Final Merger Notice, paragraphs 20-21.
[6] Based on Bank of England average US$/GBP exchange rate of 1/0.78754 for the period of 1 January 2019 – 31 December 2019.
[7] Final Merger Notice, Section 2.6.2.
[8] Final Merger Notice, paragraph 20.
[9] Final Merger Notice, paragraph 7.
[10] Final Merger Notice, paragraph 9.
[11] Final Merger Notice, paragraphs 24-26.

(b) the Merger will generate network economies by combining complementary customer relationships and aggregating data, leading to more relevant ads and more receptive end-users due to better targeting. This will generate higher returns for advertisers and publishers who will benefit from increased user engagement; and

(c) the combination of the Parties' technological and commercial assets and the elimination of duplicative costs of innovation and research and development will enable the accelerated development of more effective personalisation algorithms and user interfaces. The Parties submitted that this would also allow the Merged Entity to better compete with companies such as Google and Facebook.

41. The CMA notes that some of Taboola's internal documents indicate that the removal of the close competition with Outbrain may also be part of the rationale for the Merger (see paragraph 143 below).

Procedure

42. The CMA's mergers intelligence function identified this Merger as warranting an investigation.[12]

43. The Merger was considered at a Case Review Meeting.[13]

Jurisdiction

The legal test

44. An anticipated merger must meet the following two criteria to constitute a relevant merger situation (**RMS**) for the purposes of the Enterprise Act 2002 (the **Act**):[23]

(a) First, the arrangements in progress or in contemplation will, if carried into effect, lead to enterprises ceasing to be distinct.

(b) Second, either:

(i) The UK turnover associated with the enterprise which is being acquired exceeds £70 million (the **turnover test**), or

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[12] See *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60.
[13] See *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, from paragraph 7.34.

(ii) The enterprises which cease to be distinct supply or acquire goods or services of any description and, after the merger, together supply or acquire at least 25% of all those particular goods or services of that kind supplied in the UK or in a substantial part of it. The merger must also result in an increment to the share of supply or acquisition (the **share of supply test**).

Enterprises ceasing to be distinct

45.   Each of Taboola and Outbrain is an enterprise and, as a result of the Merger, these enterprises will cease to be distinct.

Turnover test

46.   As indicated above, Outbrain's UK turnover in 2019 was £[✄].[14] Therefore, the turnover test is not met.

Share of supply test

47.   The Parties submitted that the CMA does not have jurisdiction over the Merger as the share of supply test is not met. In particular, the Parties submitted that their combined shares of supply would be less than 25% in a range of segments and sub-segments, and that many of the narrow sub-segments for which the CMA requested share of supply data are not competitively meaningful.[15] However, the CMA considers that:

(a) the Parties overlap in the supply of content recommendation platform services to publishers in the UK; and

(b) the data available from the Parties and third parties indicates that the Parties' combined share of supply of content recommendation platform services to publishers in the UK exceeds 25% on the basis of revenue (see **Table 1** below), and there is an increment.[16]

48.   As a result, the CMA believes that the share of supply test in section 23 of the Act is met.

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[14] Final Merger Notice, Section 2.6.2.
[15] Final Merger Notice, paragraphs 30-32.
[16] The Parties submitted that their share of supply of content recommendation platform services to publishers in the UK was [10-20]% (Final Merger Notice, paragraph 181) but this was based on the Parties' inaccurate estimates of third parties' revenues in this activity: see paragraphs 131 onwards below.

49.   The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of an RMS.

50.   The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 29 April 2020 and the statutory 40 working day deadline for a decision is therefore 26 June 2020.

Counterfactual

51.   The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.[17]

52.   The Parties submitted that the Coronavirus (COVID-19) crisis has significantly impacted the digital advertising industry, slashing advertising budgets and lowering ad rates. The Parties also noted that small and medium-sized businesses, such as themselves, have been and will be disproportionately hurt. The Parties submitted that absent the Merger, they will have to implement cost-cutting measures to survive. However, the Parties have not submitted that the CMA should use any alternative counterfactual to the prevailing conditions of competition.[18]

53.   The CMA notes that the Coronavirus (COVID-19) outbreak may have had, at least in the short-term, an impact on the digital advertising industry. However, there remains considerable uncertainty about the duration and long-term effects of this impact. As set out in the CMA's recent guidance on merger assessments during the Coronavirus (COVID-19) outbreak, a merger control investigation typically looks beyond the short-term and considers what lasting structural impacts a merger might have on the markets at issue.[19] Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual in this case.

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[17] *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).
[18] Parties' Response to the CMA's Issues Letter, Section 6.
[19] *Merger assessments during the Coronavirus (COVID-19) pandemic* (CMA120), 22 April 2020, paragraph 22.

Background

54.   The Parties overlap in the supply of three types of display advertising:

      (a)   content recommendation platform services to advertisers and publishers;

      (b)   outstream video advertising[20] platform services to advertisers and publishers; and

      (c)   other types of native advertising (eg 'in-feed'[21] and 'in-content'[22]) platform services to advertisers and publishers.

Content recommendation and other display advertising formats

55.   **Native advertising** is advertising that follows the natural design, location and ad behaviour of the environment in which it is placed. It is designed to engage with consumers in more native, and, importantly, in most cases non-promotional ways to be as relevant as possible and strengthen consumer ties to a brand.[23] This is therefore a broad category, including advertising formats such as content recommendation, in-feed and in-content native advertising and native video advertising.[24]

56.   **Content recommendation** is a type of advertising format within native advertising which is displayed alongside editorial content. Content recommendation ads are typically found below or alongside publisher content (such as in article or in feed) and identify other content, including editorial and advertorial[25] content, that the user may be interested in reading, often based on personalisation algorithms which use real-time data from users. When users click on these ads, they will be redirected to external pages.

57.   Third parties told the CMA that content recommendation was an important way for publishers to monetise their webpages. Publishers also noted that they currently struggled to monetise their pages through advertising, and that it would be a challenge for them if they were to receive less revenue from content recommendation. Further detail on content recommendation and how

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[20] Outstream video advertising is an independent video unit that plays within an article page, feed, or any other location on the site, outside of any separate video player.
[21] In-Feed Native Ads are placed in article and content feeds and mimic the surrounding site design and aesthetics. As consumers scroll the listing of article summaries, editorial is mixed with native ad units providing an uninterrupted flow. See: IAB Native Advertising Playbook.
[22] In-Content Native Ads are ads placed primarily on article pages, in between paragraphs of content or below the article, and are designed in such a way that they mimic the design and aesthetics of the surrounding editorial content experience. See: IAB Native Advertising Playbook.
[23] See: IAB Native Advertising Playbook.
[24] Including some forms of outstream video advertising.
[25] An Advertorial is a newspaper or magazine advertisement giving information about a product in the style of an editorial or objective journalistic article.

the CMA considers it differs from other forms of display advertising is provided in the section on product scope below.

58.   As noted above, as well as content recommendation, the Parties also overlap in the supply of outstream video advertising platform services and other native advertising platform services (eg 'in-feed' and 'in-content' services). **Outstream video** is an independent video unit that plays within an article page, feed, or any other location on the site, outside of any separate video player. In this Decision, the CMA uses the term '**other native advertising platform services**' to refer to the collection of native advertising formats other than content recommendation platform services and outstream video advertising platforms services.

Distribution channels

59.   Display advertising services (including content recommendation) can be supplied through different channels. Publishers that own advertising space might decide to market their space through platforms (such as the Parties) or to sell directly to advertisers.[26] Similarly, advertisers might consider purchasing advertising space through platforms or by engaging directly with publishers.

60.   The publishers from whom advertisers purchase directly include owned-and-operated platforms. These types of platforms are primarily social media platforms which own the advertising space and market that space themselves,[27] acting as publishers (eg Facebook). Independent publishers cannot use owned-and-operated platforms to sell their advertising space.[28]

61.   Thus, the CMA in its decision will refer to 'platform services' when advertising services are provided by platforms that intermediate between third-party publishers and advertisers, such as the Parties, and to 'direct channels' when publishers negotiate directly with advertisers (and vice versa) without going through a platform owned by a third party. Negotiations between advertisers and owned-and-operated platforms fall within the direct channel.

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[26] Final Merger Notice, paragraphs 130 and 161.
[27] The CMA Online platforms and digital advertising market study, Interim report (**The CMA's Interim Report**).
[28] Some providers of owned-and-operated platforms may also offer a separate service that intermediates between third-party publishers and advertisers. These separate services would fall within the definition of 'platform services'.

Two-sided platforms, indirect network effects and exclusivity arrangements

62.   The Parties' overlapping services (including content recommendation) can be characterised as two-sided platforms, with the Parties competing to attract publishers on one side, and advertisers on the other.

63.   Publishers and advertisers use multiple different display advertising formats (eg banner ads, native ads, etc) at the same time. Within those formats, publishers and advertisers generally make use of more than one platform. However, publishers might have exclusivity arrangements in place for some formats (eg content recommendation or outstream video advertising),[29] which do not allow publishers to use multiple platforms at the same time for those formats.

Frame of reference

64.   Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.[30]

Product scope

65.   The CMA's approach to assessing the product frame of reference was to begin with the overlapping products of the merging parties in the narrowest plausible frame of reference and then to see if this should be widened on the basis of demand or supply-side considerations.[31]

66.   The Parties overlap in the supply of:

       (a) content recommendation platform services to advertisers and publishers;

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[29] The Parties have provided examples of such exclusivity clauses at Annex D of Taboola's response to RFI 3. Outbrain's terms are available on their website and contain the following language: '*During the Term, Outbrain shall be Partner's sole and exclusive provider of content recommendations, where "content recommendations" are one or more links comprised of a headline or phrase indicating that an End User will be driven to Content (regardless of whether the Destination Page displays content, advertorials or advertisements)*'.(https://www.outbrain.com/legal/#engage-terms-eu).
[30] *Merger Assessment Guidelines*, paragraph 5.2.2.
[31] *Merger Assessment Guidelines*, section 5.2.

(b) outstream video advertising platform services to advertisers and publishers; and

(c) other types of native advertising (eg 'in-feed'[32] and 'in-content'[33]) platform services to advertisers and publishers.

67. The Parties' overlapping services can be characterised as two-sided platforms, with the Parties competing to attract advertisers on one side and publishers on the other. The CMA therefore considered whether it would be appropriate to assess the impact of the Merger within a single or separate frame(s) of reference. The CMA found that the competitive dynamics on the advertising side are different from those on the publishing side, such that the Parties are subject to different competitive constraints when dealing with advertisers and publishers (as discussed below). For this reason, the CMA conducted a separate assessment of the impact of the Merger on each side (taking into account the two-sided nature of these platform services where relevant).

68. The CMA received no evidence of any further significant sub-segmentation.

The Parties' submissions

69. The Parties submitted that the relevant product market is all digital non-search advertising.[34]

70. With respect to publishers, the Parties submitted that all types of digital non-search advertising services compete for space on publishers' websites. They submitted that publishers work in parallel with many platforms offering different types of advertising and that publishers allocate their inventory based on expected yield.[35] Further, the Parties submitted that their platforms compete with the option for publishers to make direct sales to advertisers.[36]

71. With respect to advertisers, the Parties submitted that all types of online advertising compete for advertiser spend. Advertising firms typically have a defined advertising budget for use over the financial year and allocate their advertising spend across different types of digital ads based on their

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[32] In-Feed Native Ads are placed in article and content feeds and mimic the surrounding site design and aesthetics. As consumers scroll the listing of article summaries, editorial is mixed with native ad units providing an uninterrupted flow. See: IAB Native Advertising Playbook.
[33] In-Content Native Ads are ads placed primarily on article pages, in between paragraphs of content or below the article, and are designed in such a way that they mimic the design and aesthetics of the surrounding editorial content experience. See: IAB Native Advertising Playbook.
[34] Final Merger Notice, paragraph 128.
[35] Final Merger Notice, paragraph 3.
[36] Final Merger Notice, paragraph 130.

assessment of price and effectiveness or return on advertising spend ('**ROAS**').[37] However, the Parties noted that some advertisers prefer certain advertising formats and do not consider advertising platforms that do not provide them.[38] Further, the Parties argued that there was substitutability between the different channels (eg platform services and direct channels) advertisers use to place ads, as they achieve a similar return.[39]

The CMA's assessment of content recommendation platform services

72.   As noted above, the Parties overlap in the supply of content recommendation platform services to advertisers and publishers. The CMA has considered whether this is the appropriate product frame of reference on both the publisher and advertiser sides of the market.

Publishers

73.   The CMA considered the following evidence in its assessment of whether the supply of content recommendation platform services to publishers is an appropriate product frame of reference:

(a) the Parties' submissions on content recommendation platform services supplied to publishers;

(b) the Parties' use of exclusivity agreements with publishers;

(c) the Parties' internal documents; and

(d) third party views.

74.   The CMA considered whether to include types of advertising other than content recommendation, and whether to include direct sales to advertisers within the product frame of reference.

75.   As noted above, platform services intermediate between third-party publishers and advertisers. As publishers are unable to use owned-and-operated platforms, the CMA did not include them within the relevant frame of reference.[40]

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[37] Final Merger Notice, paragraph 141.
[38] Final Merger Notice, paragraph 79.
[39] Final Merger Notice, paragraph 129.
[40] Some providers of owned-and-operated platforms also offer a separate service that intermediates between third-party publishers and advertisers. These separate services have been taken into account within the relevant product frame of reference.

- *The Parties' submissions*

76. The Parties submitted that content recommendation is an artificially narrow segment and that the relevant product market is all digital non-search advertising supplied to publishers. Each of the Parties' arguments in this respect are considered by the CMA below.

77. The Parties submitted that the CMA Online platforms and digital advertising market study, Interim Report (the **CMA's Interim Report**) adopted a broader market definition than content recommendation platform services, and did not distinguish between advertising formats.[41] However, the CMA notes that the Interim Report did not discuss substitutability between different advertising formats from the perspective of publishers. Also, the CMA's Interim Report adopted a different starting point, looking at the advertising services on which Google and Facebook focus, and thus defining a wider market where these players have market power. Further, the CMA's Interim Report clearly distinguished content discovery platforms, such as Taboola and Outbrain, from other supply-side platforms, noting that content discovery platforms adopt a different business model from typical supply-side platforms.[42] Therefore, the CMA does not consider that there is any inconsistency between its assessment of this Merger and the CMA's Interim Report. The CMA also notes that the Parties have described the provision of alternative non-search display advertising formats by Google and others as 'indirect competition'.[43]

78. The Parties also claimed that the definition of 'content recommendation' has evolved over time and that today the term is used to refer to a much broader range of services and could easily be substituted with the term 'native'.[44] By way of example, the Parties submitted that Taboola has switched focus from the historic 'end of article widget' to a 'more sophisticated Feed format'.[45] However, the CMA considers that third parties responding to the CMA's investigation made a clear distinction between content recommendation and other forms of advertising (as set out in detail in the section on publishers' views of the Merger below). The CMA notes in particular that the large number of concerns relating to content recommendation specifically suggest that publishers consider it to be different to native advertising more broadly.

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[41] Parties' Response to the CMA's Issues Letter, CRA Report, 'Outbrain/Taboola An Economic Analysis of Competitive Effects', paragraph 81.
[42] CMA's Interim Report, Appendix H, paragraph 186.
[43] Minute of Discussion with Parties, 17 March 2020, paragraph 53.
[44] Parties' Response to the CMA's Issues Letter, paragraphs 2.1.
[45] Parties' Response to the CMA's Issues Letter, paragraphs 3.6.

79.   The Parties submitted that their strategic plans on product offerings, which they said focused on broadening their competitive position across the multiple dimensions of the digital space, confirm that the product market is wider than content recommendation.[46] In particular, the Parties submitted that by 2017 they had both decided to expand beyond content recommendation, as 'competition with one another was only one aspect of the competitive market they needed to consider'.[47] However, the CMA considers that the observation that firms are diversifying into new business lines does not necessarily mean that those other business lines are demand-side or supply-side substitutes.[48]

80.   Further, the Parties submitted that besides making direct sales to advertisers, publishers are able to self-supply content recommendation services,[49] and that they have increased their use of real-time bidding auctions,[50] all of which act as a constraint on the Parties. However, the CMA has not seen any evidence of the Parties facing constraints from publishers adopting real-time bidding auctions for their inventory. The CMA has considered the extent to which the Parties face constraints from publishers' direct sales and self-supply below.

81.   The Parties submitted an analysis showing differences in publishers' intensity of use of the Parties' services,[51] arguing that the observation that not all publishers used content recommendation to a significant extent was consistent with content recommendation being 'non-essential' and substitutable with other advertising formats.[52] However, the CMA notes that this analysis only indicated publishers' different advertising preferences on their webpages rather than substitution between advertising formats. In addition, evidence seen by the CMA showed that the majority of publishers currently using content recommendation services considered that other advertising formats would not be a substitute for content recommendation (see below).

82.   The Parties also submitted that around 40% of publishers' end of article ads also displayed organic recirculation[53] links. The Parties argued that this introduced an additional dimension of substitution, as publishers can choose

[46] White Paper of 14 April 2020 produced for the Department of Justice in the context of its review of the Merger, and provided to the CMA on 22 May 2020 (**White Paper of 14 April 2020**), page 12.
[47] White Paper of 14 April 2020, page 9.
[48] The CMA noted that the document submitted by the Parties including these plans did not specifically focus on the UK.
[49] White Paper of 14 April 2020, page 20.
[50] White Paper of 14 April 2020, page 25.
[51] Parties' Response to the CMA's Issues Letter, CRA Report, 'Outbrain/Taboola An Economic Analysis of Competitive Effects', paragraphs 97-103.
[52] Taboola-Outbrain Issues Meeting Presentation 4 June 2020, slides 48-49.
[53] Publishers use organic recirculation to recommend their own content on their webpages, in order to increase users' engagement with their property. Platforms offer organic recirculation as a non-monetisation add-on, in addition to advertising and monetisation services.

whether to focus on organic or paid content. Also, the Parties interpreted this as an indication that content recommendation was indirectly competing with other types of advertising. However, the CMA has not seen any evidence of organic recirculation being a strong constraint to the Parties' supply of content recommendation services. The CMA also notes that publishers said that they mainly use content recommendation for monetization purposes, while they use organic recirculation to increase users' engagement with their own content.

83.   The Parties argued that there is supply-side substitutability between advertising formats. The Parties submitted that this is evidenced by scaled businesses with access to data and relationships with publishers and advertisers, such as Google, leveraging their market power into content recommendation.[54] Further, the Parties submitted that Taboola shifting focus from content recommendation towards other types of advertising formats is also indicative of supply-side substitution.[55] However, the CMA did not consider that Taboola's expansion into other businesses demonstrates supply-side substitution from other advertising formats into content recommendation. The CMA also considers that Google has not generated significant revenue through its Matched Content product and this could be seen as evidence that it has not historically been able (or willing) to leverage its market power in digital advertising more generally into content recommendation platform services. Google's presence as a competitor in content recommendation, and its potential expansion, are considered separately below.

- *The Parties' use of exclusivity agreements with publishers*

84.   Most of the publishers that use Taboola or Outbrain for content recommendation services that responded to the CMA's investigation have exclusive agreements with the Parties.[56] The Parties' contracts contain exclusivity clauses that seek to ensure that publishers only use a single platform for the provision of content recommendation services.[57] The fact that

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[54] Parties' Response to the CMA's Issues Letter, CRA Report, 'Outbrain/Taboola An Economic Analysis of Competitive Effects', paragraphs 6 and 33.

[55] Parties' Response to the CMA's Issues Letter, CRA Report, 'Outbrain/Taboola An Economic Analysis of Competitive Effects', paragraphs 89-93.

[56] Parties' Response to the CMA's Issues Letter, CRA Report, 'Outbrain/Taboola An Economic Analysis of Competitive Effects', paragraphs 89-93.

[57] By way of example, see (i) Outbrain internal document [✂] in which the terms of the agreement forbid the publisher from displaying any content from [✂], which are described as 'Outbrain's direct competitors'; (ii) Outbrain standard legal terms, which state: 'During the Term, Outbrain shall be Partner's sole and exclusive provider of content recommendations, where "content recommendations" are one or more links comprised of a headline or phrase indicating that an End User will be driven to Content (regardless of whether the Destination Page displays content, advertorials or advertisements)'; and (iii) Taboola standard publisher terms: [✂].;

these exclusivity clauses specifically refer to content recommendation, rather than all non-search display advertising, suggests that the Parties and publishers recognise that content recommendation activities are distinguishable from other advertising services.[58] The presence of these clauses also indicates that the Parties consider that there is commercial value in preventing substitution to other content recommendation services, even in the absence of any contractual protection against the use of other advertising formats. This is further evidence that the Parties do not consider other advertising formats to be substitutable with content recommendation services.

85.   The Parties submitted that [✂] (the Parties do not comment on whether Outbrain has sought to enforce against [✂])[59]. However, the CMA notes that Taboola has sought to enforce exclusivity arrangements against [✂], including [✂] and [✂], where Taboola considered these to have been breached.[60] Other than these two examples, the CMA has not seen evidence of breaches by publishers or any other evidence to suggest that Taboola has a policy of non-enforcement. The CMA also considers that the continued inclusion of such exclusivity clauses in the Parties' contracts, which are negotiated with publishers and vary across contracts, suggests that the Parties consider the clauses to have commercial value, notwithstanding any risk of breach.

86.   The Parties also submitted that the exclusivity provisions go beyond just content recommendation, but that they have continued to use the 'Content Recommendation' language in their contracts over time, to ensure consistency and because this remains a collective term used to describe their services.[61] The Parties submitted that they are motivated to include as many competitors as they can within their exclusivity provisions and regularly seek to include Google and Facebook, [✂].[62,63] However, while these examples do show that certain of Google and Facebook's products are carved out of the exclusivity clauses, the CMA notes that the examples provided also often specifically distinguish between content recommendation and other types of native advertising (including referring to Google content recommendation services specifically, distinguished from wider Google advertising services),[64]

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[58] Parties' Response to the CMA's Issues Letter, Folder 2.29-30. For example, the Email between [✂] (Outbrain) and [✂] (13 October 2019) [✂], and the contract with [✂] (1 February 2016) [✂].
[59] Parties' Response to the CMA's Issues Letter, paragraph 2.21.
[60] Parties' Response to the CMA's Issues Letter, paragraph 4.12 and Table 4.
[61] Parties' Response to the CMA's Issues Letter, paragraphs 2.22-23, and 2.28.
[62] Parties' Response to the CMA's Issues Letter, paragraphs 2.33 and 2.34.
[63] Parties' Response to the CMA's Issues Letter, Folder 2.35.
[64] Contract between [✂] and Taboola (20 May 2016).

and stress the importance of Outbrain as a competitor by creating specific provisions referring to Outbrain in addition to the general exclusivity clause.[65]

87.   In conclusion, and in light of the other evidence as set out in this section on the product frame of reference, the CMA considers that the focus of the Parties' exclusivity clauses specifically on content recommendation supports a frame of reference of content recommendation platform services to publishers.

- *The Parties' internal documents*

88.   The CMA has seen evidence in the Parties' internal documents that supports a separate product frame of reference for the supply of content recommendation. In particular, the Parties discuss competitors and conditions of competition in content recommendation (sometimes referred to as the 'content discovery market', 'widgets' and/or 'bottom of article sponsored content') separately from other types of advertising. The CMA notes that while there are also a number of references in the Parties' internal documents to a broader 'native' advertising market,[66] the Parties are also active in other types of native advertising (eg 'in-feed' and 'in-content') platform services to advertisers and publishers, and this is therefore not inconsistent with separate frames of reference.

89.   In particular, Outbrain's internal documents supporting a product frame of reference for content recommendation include the following:

(a)   in the Outbrain document titled [✂] dated November 2019, only content recommendation competitors are mentioned within the competitor landscape for publishers, and the Parties are considered to be the largest players within content recommendation;

(b)   an Outbrain Request for Proposal from [✂] titled [✂] dated August 2018 notes that the [✂] are reviewing their 'Content Recommendation' service provision and invites proposals for delivery of said services;

(c)   in the Outbrain document with the title [✂] dated September 2019, Outbrain explains that there is a number of different types of 'native players', which can be differentiated by the format they use, for example:

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[65] Contract between [✂] and Taboola (20 May 2016); Contract between [✂] and [✂] and Taboola (3 April 2019); (c) Contract between [✂] and Outbrain (12 August 2019); Contract between [✂] and Taboola (20 January 2015).
[66] (a) Taboola document: [✂] (December 2019); (b) Taboola document: [✂] Jan 29, 2020; (c) Taboola document: [✂] July 2016; (d) Taboola document: [✂] from 2017; and (e) Outbrain document: [✂] dated August 2018.

[✂]. Outbrain also comments that content recommendation providers have recently started to enter outstream video; and

(d) an Outbrain document titled [✂] dated November 2018 introduces Outbrain as the [✂].

90. Taboola's internal documents supporting a product frame of reference for content recommendation include the following:

(a) a Taboola document with the title [✂] from July 2019 shows that in Q4 2018 Taboola and Outbrain had a combined market share in the UK of [✂]% and in April 2019, of [✂]%. The remaining share is made up primarily of 'greenfield' customers (which the CMA considers is likely to refer to new customers) ([✂]%), with the only competitors being allocated more than [✂]% share being [✂] ([✂]%) and [✂] ([✂]%). This document suggests that the focus of Taboola is on competition with Outbrain and other content recommendation providers, who it considers forms part of a distinct market;

(b) the Taboola document with the title [✂] from March 2019 includes a list of Taboola's potential targets for acquisition in 3 different categories of advertising - [✂]. The potential targets for acquisition in content recommendation are listed [✂];

(c) the Taboola document [✂], which formed part of a presentation to investors in May 2018, in which Taboola describes itself as [✂];

(d) a document with the title [✂] from February 2020 provides employees with an elevator pitch for potential clients, for example [✂];

(e) a document titled [✂] from May 2019 appears to be a presentation to publisher clients and indicates that Taboola's strategic objective is to provide publishers with [✂]; and

(f) a Taboola presentation titled [✂], from November 2019, states that [✂] and [✂]. Furthermore, it explains that [✂]. The presentation also compares recommendations to display advertising: [✂].

91. The Parties submitted that documents referring to content recommendation were 'historic' and did not reflect current competitive conditions.[67] However, the documents discussed above are recent (from 2018 onwards) and discuss

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[67] Parties' Response to the CMA's Issues Letter, paragraph 2.6.

competitors and conditions of competition in content recommendation separately from other types of advertising.

92.   The Parties also submitted that the Parties' offerings have evolved and while a content recommendation definition might have made sense in the past, it is not meaningful today.[68] However, the CMA also notes that the terms 'content recommendation' and 'content discovery' are still used by the Parties on their websites (as well as in their internal documents and exclusivity agreements, as discussed further above).[69]

93.   The CMA therefore considers that, overall, the evidence in the Parties' internal documents and contracts – including recent documents from the last couple of years – suggests that content recommendation is seen by the Parties as distinct advertising service from other forms of non-search display advertising and which analyse the Parties' competitive position within content recommendation.

- *The responses of third parties to the CMA's investigation*

94.   As part of its investigation, the CMA sought information from both publishers and competitors to inform the CMA's assessment of whether content recommendation platform services should be considered separately from other forms of non-search display advertising and sales through direct channels.

95.   The majority of publishers that responded to the CMA's investigation submitted that if all content recommendation platforms worsened the terms they offered to publishers, they would absorb the change of terms and continue to use content recommendation, rather than switching to another format or to direct sales. The reasons given by publishers included that:

(a) there was no comparable alternative type of advertising to content recommendation and it would not be possible to replace a portion of their traffic with alternative revenue sources;

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[68] Parties' Response to the CMA's Issues Letter, paragraph 3.4.
[69] For example, on the following pages: https://www.outbrain.com/about/company/; https://lp.outbrain.com/media-monetization-engagement/; https://www.outbrain.com/help/advertisers/utm-tracking/; https://www.outbrain.com/help/advertisers/what-are-platforms/; https://www.taboola.com/; https://www.taboola.com/our-story; and https://pubhelp.taboola.com/hc/en-us/articles/360003179813-How-Taboola-Works.

(b) the only option would be absorbing the worsening of terms, as the space at the bottom of the article is only sold to content recommendation providers;

(c) revenues from content recommendation are significant and switching to another type of advertising might not offset the reduction in content recommendation;

(d) it would be easier and quicker to find an alternative to address a revenue reduction in native or video advertising, while they would absorb a reduction in revenues for content recommendation.

96.   Only a minority of publishers that responded to the CMA's investigation submitted that they would switch to direct sales to advertisers.[70] None of the other publishers considered that direct sales would be an option. Two publishers explained that direct relationships with advertisers would not allow access to multiple buyers at the same time and that this would be a significant undertaking.[71]

97.   Of the publishers using either Taboola or Outbrain for content recommendation who submitted their revenues from selling advertising space in 2018, only one publisher made direct sales to advertisers. Further, only one publisher has engaged in self-supply, and this was only after using third-party content recommendation for a short period.

98.   The CMA notes that even among the minority of publishers that said that they would switch away from content recommendation in response to a small worsening of terms by all providers of content recommendation, the majority of those nonetheless expressed concerns about the Merger. These publishers were concerned that the Merger had the potential to reduce their revenues, quality of ads and innovation due to the lack of alternatives in content recommendation. The CMA will discuss publishers' views on the Merger in more detail at paragraphs 222 to 223 below.

99.   Almost all competitors[72] told the CMA that other forms of digital advertising are not a substitute for content recommendation for most publishers, as other forms of digital advertising were not a viable means of monetising the space below the article. Most[73] of these competitors were also of the view that direct

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[70] The CMA notes that publishers do not sell to owned-and-operated platforms.
[71] Calls with [✂] and [✂].
[72] [✂]. For the purposes of describing third party feedback, the CMA refers to those entities that are active in the supply of digital advertising as 'competitors' even though not all of these have been identified as exercising a competitive constraint in the supply of recommended content platform services in the UK.
[73] [✂].

sales to advertisers would not be an alternative; only one said it would be possible for some publishers.[74] Only one competitor submitted that content recommendation would be easily replaceable with any other type of advertising or by selling directly to advertisers.[75]

100. With respect to supply-side substitution, the CMA has not found evidence that platform operators can quickly and easily shift from providing one type of display advertising to start supplying content recommendation. Rather, evidence from third parties suggests that platform operators would need to make significant investments in order to enter and expand into content recommendation.[76] In this respect, the CMA notes that [✗].[77] In addition, the CMA has heard from third parties that the competitive strength of suppliers varies significantly across advertising formats. The CMA considers this evidence to be inconsistent with supply-side substitution and that content recommendation should not be aggregated with other types of display advertising. However, the CMA has assessed the scope for entry and expansion as a countervailing factor.

- *Conclusion on widening the product frame of reference for the supply of content recommendation platform services to publishers*

101. The CMA found that evidence on the Parties' exclusivity agreements covering content recommendation, third party views, and the Parties' internal documents were consistent with a frame of reference for content recommendation platform services supplied to publishers in the UK.

102. Further evidence set out in the competitive assessment also supports a frame of reference for content recommendation in which the Parties closely compete. In particular:[78]

(a) The CMA has seen a large number of the Parties' internal documents which suggest that the Parties consider each other to be a close, if not their closest, competitor. On the other hand, the Parties' internal documents consider competition from suppliers offering other types of advertising format relatively infrequently.

(b) The CMA has also seen internal documents of the Parties showing that each of the Parties monitors the other's activity and makes attempts to

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[74] [✗].
[75] Note of a call with [✗].
[76] See the section on barriers to entry and expansion at paragraph 312 onwards below.
[77] Taboola submitted that [✗]. Outbrain [✗]. Final Merger Notice, paragraphs 36 and 38.
[78] See the section on closeness of competition below for further detail and discussion of this evidence.

win the other Party's customers. In contrast, the CMA has seen far fewer internal documents monitoring competitors in other advertising formats.

(c) Publisher responses to the CMA's investigation indicate that third parties consider Taboola and Outbrain to be each other's closest competitor by a wide margin in the supply of content recommendation platform services to UK publishers.

(d) All of the competitors that responded to the CMA's investigation considered that Taboola and Outbrain compete closely in the supply of content recommendation platform services to UK publishers and other types of advertising formats were rarely mentioned.

103. Therefore, the CMA believes that the evidence supports a frame of reference for the supply of content recommendation platform services to publishers, which should not be widened to include other advertising formats or direct sales to advertisers. However, the CMA has considered the out-of-market constraints from other advertising formats and direct sales in its competitive assessment where relevant.

Advertisers

104. As noted above, the CMA considers that the competitive dynamics on the advertising side of the market are different from those on the publishing side. Evidence that the CMA received from UK advertisers supported the Parties' submission that the product frame of reference should be widened on the advertising side of the market to include other types of advertising:

(a) Only two advertisers said that they would continue using content recommendation following a small worsening of terms by all suppliers of content recommendation. One of those submitted that it is only making minor use of the service.

(b) Only two advertisers that responded to the CMA's investigation[79] indicated that they would absorb a worsening in the quality of content recommendation platform services. The majority of advertisers would switch their advertising budget to other types of advertising: either native or other non-search display advertising. In addition, some advertisers told the CMA that they would be willing to switch to purchasing from owned-

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[79] [✕] and [✕] would absorb the worsening in terms.

and-operated platforms,[80] though a majority indicated that they are otherwise not generally willing to deal directly with publishers.[81]

105. The CMA has also seen evidence in the Parties' internal documents to suggest that the appropriate frame of reference for advertisers is wider than content recommendation alone; in particular, that the Parties consider a wide range of alternative suppliers as competitors for advertiser customers. Further detail on such documents can be found in the competitive assessment below in relation to Theory of harm 4.

106. In light of the above, CMA considers that the evidence supports widening the product scope to other non-search display advertising formats excluding content recommendation and to purchases from owned-and-operated platforms for advertisers. The CMA has not included direct purchases of advertising space from publishers within the relevant frame of reference. However, the CMA did not need to conclude on the product frame of reference on the advertiser side because it identified no concerns on any plausible basis in relation to advertisers.

The CMA's assessment of outstream video advertising platform services

107. As noted above, the Parties overlap in the supply of outstream video advertising platform services to publishers and advertisers. The CMA has considered whether this is the appropriate product frame of reference on both the publisher and advertiser sides of the market.

Publishers

108. The CMA has received mixed evidence from UK publishers on whether this product frame of reference should be widened to include other types of advertising services. Half of the publishers responding to the CMA's investigation would absorb a small worsening of terms in outstream video advertising and half of them would switch to other types of advertising services. Only a few publishers submitted that they would start making direct sales to advertisers. None of the respondents expressed concerns about the Merger having an impact on outstream video advertising.

109. With respect to supply-side substitution, the CMA has not found evidence that platform operators can quickly and easily shift from providing one type of display advertising to start supplying outstream video advertising. In addition,

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[80] [✂].
[81] Only two advertisers responded that they would switch to direct purchases from publishers (one of them also responded that it would switch to other types of advertising) and other two said that they would 'do something else'.

the CMA has heard from third parties that the competitive strength of suppliers varies significantly across advertising formats. The CMA considers this evidence to be inconsistent with supply-side substitution.

110. The CMA has also seen evidence in the Parties' internal documents to suggest that the product scope is that of the supply of outstream video advertising platform services to UK publishers. In particular, these documents show that the Parties consider a number of strong alternative suppliers as competitors for outstream video. Further detail on these documents can be found in the competitive assessment below.

111. Based on this evidence, and on a cautious basis, the CMA did not include other advertising formats and direct sales to advertisers within the relevant product frame of reference and has considered the impact of the Merger on the supply of outstream video advertising platform services to publishers. However, the CMA did not need to conclude on this product frame of reference as it identified no concerns on any plausible basis in relation to outstream video advertising.

Advertisers

112. Views of UK advertisers that responded to the CMA's investigation supported the Parties' submission that the product frame of reference should be widened on the advertiser side to include other advertising formats and purchases from owned-and-operated platforms. None of the advertisers that responded said that they would absorb a small worsening of terms in outstream video advertising platform services. However, only a few advertisers would start using direct relationships with publishers as an alternative to using platforms to purchase advertising space for outstream video advertising.

113. In light of the above, the CMA included other non-search display advertising formats in addition to outstream video advertising and purchases from owned-and-operated platforms within the product frame of reference but excluded direct purchases of advertising space from publishers. However, the CMA did not need to conclude on this product frame of reference as it identified no concerns on any plausible basis in relation to outstream video advertising.

The CMA's assessment of other native advertising platform services[82]

114. As noted above, the Parties overlap in the supply of other types of native advertising platform services to advertisers and publishers, including 'in-feed' and 'in-content' services. The CMA has considered the appropriate product frame of reference on both the publisher and advertiser sides of the market.

Publishers

115. Evidence received from UK publishers that responded to the CMA's investigation suggests that most publishers would respond to a small worsening of terms in other native advertising platform services (eg 'in-feed' and 'in-content' services) by switching to other types of display advertising (including both native and other formats such as banner ads). However, only a few publishers submitted that they would start making direct sales to advertisers.

116. With respect to supply-side substitution, the CMA has not found evidence that platform operators can quickly and easily shift from providing one type of display advertising to start supplying other native advertising platform services. In addition, the CMA has heard from third parties that the competitive strength of suppliers varies significantly across advertising formats. The CMA considers this evidence to be inconsistent with supply-side substitution.

117. In light of this evidence, the CMA considers that the relevant product frame of reference may include other non-search display advertising formats but not direct sales to advertisers. The CMA therefore considered that it may be appropriate to widen the product scope to non-search display advertising, which includes advertising formats other than native advertising. However, the CMA did not need to conclude on this product frame of reference as no concerns arise on any plausible basis, including in the supply of other native advertising platform services to publishers in the UK.

Advertisers

118. For other native advertising platform services supplied to advertisers in the UK, evidence the CMA received on demand and supply-side substitution is

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[82] As noted above, the CMA uses the term '**other native advertising platform services**' to refer to the collection of native advertising formats other than content recommendation platform services and outstream video advertising platforms services.

set out above in relation to outstream video advertising platform services supplied to advertisers in the UK (see paragraph 112 above).

119. As set out above, the CMA has included other non-search display advertising formats and purchases from owned and operated platforms within the relevant product frame of reference but excluded direct purchases of the of advertising space from publishers. However, the CMA did not need to conclude on this product frame of reference as it identified no concerns on any plausible basis including in the supply of other native advertising platform services to publishers in the UK.

Conclusion on product scope

120. Based on the evidence set out above, and on a cautious basis, the CMA considers it appropriate to assess the competitive effects of the Merger on competition for publisher customers by reference to the following three product frames of reference:

    (a) the supply of content recommendation platform services to publishers;

    (b) the supply of outstream video advertising platform services to publishers; and

    (c) the supply of non-search display advertising platform services (including other native advertising platform services) to publishers.[83]

121. On the basis of the evidence set out above, the CMA considers that it is appropriate to assess the effects of the Merger on competition for advertiser customers by reference to the following product frame of reference: the supply of non-search display advertising services (including content recommendation, outstream video advertising, other native advertising, other types of display advertising and purchases from owned-and-operated platforms) to advertisers.

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[83] The CMA notes that, while, as explained above, it considers that it may be appropriate to widen the product scope for other native advertising (excluding content recommendation) to include other advertising formats, it has analysed the competitive effects of the Merger on the basis of a narrower frame of reference including only these other native advertising. Given that no concerns arise on any plausible basis within this segment, the CMA found that no plausible concerns arise in relation to any wider market.

Geographic scope

122. The Parties submitted that the relevant geographic scope of the frame of reference is global because they reach advertisers and publishers in many countries, regardless of their language or any cultural specificities. The Parties also submitted that their competitors operate on a similarly global basis.[84]

CMA's assessment

123. Evidence from the CMA's investigation indicated that publishers with a UK readership are likely to find platforms with advertisers interested in advertising to UK customers more attractive. Similarly, advertisers wishing to target a UK audience prefer platforms partnering with publishers having UK users. A number of advertisers and publishers told the CMA that targeting material for local readers was important, or that customers assessed potential suppliers based on their UK operation in particular.

124. The majority of competitors responding to the CMA's investigation indicated that their competitive strength varied by country. Some respondents indicated that competitors offered bespoke solutions in each market, or targeted specific types of customers in specific geographic markets. A number of competitors said that the competition they face varies by country. Some noted that their competitive conditions were very different in the UK from other markets where they were present. One competitor specified that its services had a stronger position in the US than in the UK. Another competitor submitted that it specifically targeted websites with a large US audience, which made it the third or fourth largest content recommendation platform in the US, although it had no presence in the UK.

125. Competitors also identified a number of barriers to entry or expansion in the UK market, including potential publisher customers being under exclusive contracts, the need to build reputation, the need for a strong local publisher network, regulatory and economic uncertainty in the UK surrounding Brexit, and the need to hire additional resources. This evidence is discussed further in the section on barriers to entry and expansion below.

126. Although many of the Parties' internal documents are produced at a global level, the CMA has seen evidence in the Parties' documents of differing

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[84] Final Merger Notice, paragraph 150.

competitive strengths of the Parties and their competitors in different countries. For example, the CMA has seen internal documents comparing the geographic focus of different competitors in different countries[85] and documents noting the differing strength of the Parties and differing strategies in different national markets.[86]

Conclusion on geographic scope

127.   For the reasons set out above, including differences between countries in terms of both demand and supply, the CMA considers that the relevant geographic frame of reference is the UK on both the publisher and advertiser sides of the market.

Conclusion on frame of reference

128.   For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:

   (a)   the supply of content recommendation platform services to publishers in the UK;

   (b)   the supply of outstream video advertising platform services to publishers in the UK;

   (c)   the supply of non-search display advertising platform services (including other native advertising platform services) to publishers in the UK; and

   (d)   the supply of non-search display advertising services (including content recommendation, outstream video advertising, other native advertising, other types of display advertising and purchases from owned-and-operated platforms) to advertisers in the UK.

Competitive assessment

Horizontal unilateral effects

129.   Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.[87] Horizontal unilateral effects are more likely when the merging parties are close competitors. The CMA

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[85] Taboola document: '[✂] July 2016'.
[86] Outbrain documents: [✂]; [✂] (May 2019); [✂] (February 2019); and Taboola document: [✂].
[87] *Merger Assessment Guidelines*, from paragraph 5.4.1.

assessed whether it is or may be the case that the Merger may be expected to result in an SLC by reference to the following four theories of harm:

(a) Theory of harm 1: horizontal unilateral effects in the supply of content recommendation platform services to publishers in the UK;

(b) Theory of harm 2: horizontal unilateral effects in the supply of outstream video advertising platform services to publishers in the UK;

(c) Theory of harm 3: horizontal unilateral effects in the supply of non-search display advertising platform services (including other native advertising platform services) to publishers in the UK; and

(d) Theory of harm 4: horizontal unilateral effects in the supply of non-search display advertising services to advertisers in the UK.

Theory of harm 1: horizontal unilateral effects in the supply of content recommendation platform services to publishers in the UK

130. In order to assess the likelihood of the Merger resulting in horizontal unilateral effects in the supply of content recommendation platform services to publishers in the UK, the CMA has considered:

(a) shares of supply;

(b) closeness of competition between the Parties;

(c) competitive constraints from alternative suppliers; and

(d) publishers' views about the Merger.

Shares of supply

131. The Parties generated estimates of shares of supply of content recommendation platform services in the UK by combining two industry datasets on prices and volumes. On the basis of the Parties' calculations, the Parties would have a combined share of supply of [10-20]%.[88] However, the CMA has identified significant flaws in the Parties' estimates:

(a) The price data that the Parties used related to display ads in general rather than to content recommendation ads; the price data were based on US prices rather than UK prices; and the estimates included an arbitrary

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[88] For price data, the Parties used data on ad placement from eMarketer's Digital Display Ad Pricing Statpack. For volume data, the Parties used data on page views from SimilarWeb.

adjustment that reduced competitors' prices by 40% because the source data included fees that Taboola does not charge.

(b) The volume data was based on clicks relating to native advertising, rather than content recommendation in particular.[89]

(c) The Parties' calculations included estimated revenues for providers which have no or minimal presence in the supply of content recommendation platform services in the UK. For example, [✂] was confirmed to be not active in the supply of content recommendation platform services in the UK. The CMA has also seen no evidence showing any material market presence of EngageYa, Streepto, Dianomi, Popin, Phoenix Widget, PostQuare, Propeller Ads and Strossle.

132.   Given these deficiencies in the Parties' estimates, the CMA has estimated shares of supply based on revenue data gathered directly from content recommendation platform providers in the UK. **Table 1** shows the revenues of the Parties and these third party providers, along with their estimated shares of supply.[90]

Table 1. Estimates of shares in the supply of content recommendation platform services in the UK

Market participants	Revenues (in million £)[91]	Estimated share of supply (%)
Taboola	[✂]	**[30-40]%**
Outbrain	[✂]	**[40-50]%**
Combined	[✂]	**[80-90]%**
Revcontent	[✂]	[10-20]%
MGID	[✂]	[5-10]%
Google	[✂]	[0-5]%
Plista	[✂]	[0-5]%
Zergnet	[✂]	[0-5]%

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[89] Annex 8.8 to the Final Merger Notice, 'Response to CMA Request for Information of 6 April 2020', page 7-8.
[90] The Parties' revenues in **Table 1** are based on location of user clicks, without splitting between advertisers and publishers. The CMA asked both the Parties and competitors to provide an estimate of their content recommendation revenues generated from advertisers and paid to publishers with a UK billing address. Thus, the CMA has adjusted competitors' revenues in **Table 1**, using the same relativity of competitors' revenues to the Parties' combined revenues under both revenue definitions:
- The CMA calculated the ratio of revenues paid to UK publishers submitted by each competitor on the revenues paid to UK publishers submitted by the Parties.
- To obtain competitors' revenues in **Table 1**, for each competitor the CMA multiplied the Parties' combined revenues in **Table 1** by each competitor's ratio.
The CMA has also considered shares of supply based on the Parties' and competitors' estimates of content recommendation revenues paid to publishers with a UK billing address. Under both revenue definitions, the CMA found there was no difference in the share of supply estimates.
[91] All the providers except for Plista submitted figures in USD. Revenues in GBP are based on Bank of England average US$/GBP exchange rate of 1/0.7844 for the period of 1 January 2018 – 31 December 2018.

| Total | [✄] | 100% |

133. **Table 1** shows that the Merger would result in the combination of the two largest players in the supply of content recommendation platform services in the UK. As a result of the Merger, the Parties would have a very high combined share of more than 80%, with an increment of [30-40]%. The table also shows that all other providers have a significantly smaller market presence than the Parties, with only one other provider having a share above 10%.

134. Given the above, the CMA considers that the Parties' combined share of supply raises *prima facie* concerns in the supply of content recommendation platform services in the UK.

Closeness of competition

135. The CMA examined the closeness of competition between the Parties in the supply of content recommendation platform services to publishers in the UK and considered within that assessment:

    (a) the views of the Parties;

    (b) the Parties' internal documents; and

    (c) third parties' views on closeness of competition.

    The Parties' submissions

136. The Parties submitted that their content recommendation services are similar but have distinct features.[92] The Parties have not commented on how closely they compete for publishers in the supply of content recommendation services, as they submitted that content recommendation is an artificially narrow segment.[93] Rather, the Parties submitted that they face strong competition from a large number of well-resourced competitors from across the digital advertising space.[94]

137. To support their argument, the Parties submitted an analysis of their revenue growth between 2016 and 2019, both globally and in the UK. The Parties submitted that this analysis shows that a majority of growth in each of the

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[92] Final Merger Notice, paragraph 52.
[93] Final Merger Notice, paragraph 180.
[94] Final Merger Notice, page 45.

Parties' revenues was not at the expense of the other, but rather from players other than the Parties and from growing business from existing publishers. The Parties noted that they were not able to decompose this analysis to focus exclusively on content recommendation as data was not available.[95]

138.   However, the CMA notes that the Parties' analysis regarding sources of revenue growth in recent years does not contradict the evidence as set out in the remainder of this section which shows closeness of competition between the Parties in content recommendation. In particular, the analysis showed that:

(a) [✂]% of Taboola's revenue growth in the UK from new publisher customers between 2016 and 2019 came from publishers switching from Outbrain[96] The CMA considers this to be a significant diversion (although it does not relate specifically to content recommendation); and

(b) while only [✂]%[97] of Outbrain's growth in the UK came from new publisher customers switching from Taboola, [✂]%[98] of Outbrain's lost revenues went to Taboola. Again, the CMA considers this to be evidence of closeness of competition between the Parties.

139.   The CMA notes that the above analysis was carried out considering the entire businesses of the Parties, rather than focusing exclusively on content recommendation. Thus, diversion between the Parties might be higher if only content recommendation revenues were analysed as, based on the evidence assessed below, the Parties do not compete as closely for publishers in other segments. The CMA further considers that the fact that the Parties' expanded revenues come from other forms of advertising does not demonstrate that the Parties do not compete closely.

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[95] Parties' Response to the CMA's Issues Letter, CRA Report, 'Outbrain/Taboola An Economic Analysis of Competitive Effects', paragraphs 111-117.
[96] The figure submitted by the Parties was [✂]%. However, the CMA noted that this proportion was calculated over a total including revenue growth from existing publishers, while competition should be measured based on new publishers won.
[97] The figure submitted by the Parties was [✂]%. However, the CMA noted that this proportion was calculated over a total including revenue growth from existing publishers, while switching by publishers between the Parties should be measured based on new publishers won.
[98] This figure results from the CMA's adjustment of the analysis submitted by the Parties:
   • First, the CMA noted that data submitted in Table 5 of the Parties' Response to the CMA's Issues Letter, CRA Report, 'Outbrain/Taboola An Economic Analysis of Competitive Effects', were different from the underlying data calculations provided to the CMA (eg in the underlying data, revenues lost to Taboola and revenues lost to other sources were respectively $[✂] and $[✂], while in the table these were $[✂] and $[✂] respectively).
   • The Parties calculated the proportion of revenues that Outbrain lost to Taboola on total revenue increase (eg including growth from new and existing publishers), while it should be calculated on revenues lost. The CMA adopted the latter approach.

Internal documents

140. The CMA has considered the extent to which the Parties view each other as close competitors based on their internal documents.

141. Overall, the CMA has seen a large number of recent internal documents which suggest that Taboola considers Outbrain to be a close, and often its closest, competitor. For example:

    (a) a Taboola document with the title [✂] from July 2019 shows that in Q4 2018 Taboola and Outbrain had a combined market share in the UK of [✂]% and in April 2019, of [✂]%. The remaining share is made up primarily of 'greenfield' customers (which the CMA considers is likely to refer to new customers) ([✂]%), with the only competitors being allocated more than [✂]% share being [✂] ([✂]%) and [✂] ([✂]%);

    (b) a document titled [✂] from September 2018 compares Taboola to 3 other competitors: Outbrain, [✂], and [✂]. Outbrain is clearly given higher ratings than the other providers, indicated to be [✂] in a number of categories. In particular, in relation to content recommendation, Taboola and Outbrain are considered [✂], while [✂] and [✂] are given [✂];

    (c) a document from June 2019 titled [✂] asks under the heading [✂], [✂]. By comparison, other providers are referred to as [✂];

    (d) a document relating to the Merger, with the title [✂] dated September 2019 notes that Taboola and Outbrain are [✂]; and

    (e) a document with the title [✂], which contains the slide [✂] sets out percentage shares over time and by country as between Taboola and Outbrain. The slide notes that [✂]. The percentage shares for the UK for Aug-Oct 2019 were [✂]% Taboola and [✂]% Outbrain.

142. The CMA has seen a number of Taboola's recent internal documents showing that it monitors Outbrain's activity and attempts to win Outbrain's customers:

    (a) a document with the title [✂] shows that in 2018 and 2019 in the UK, [✂]% of Taboola's new customers came from Outbrain;

    (b) a document from July 2019 with the title [✂] contains a slide focusing on the UK, comparing Taboola and Outbrain on a graph showing 'PV' (assumed to mean present value);

    (c) a document from June 2018, with the title [✂] from June 2018, shows Taboola tracking Outbrain's key accounts;

(d) a similar slide in a document with the title [✂] shows a table of publishers next to their estimated percentage of Outbrain's global gross revenue, with the heading: [✂] suggesting that Taboola was looking to win key accounts from Outbrain; and

(e) a document with the title [✂] which states [✂]. Outbrain is shown as competing in [✂]% of occasions, in comparison to [✂], [✂],[✂] and [✂].

143. The CMA has also seen some evidence in Taboola's internal documents that the removal of the close competition with Outbrain may be part of the rationale for the Merger:

(a) a document with the title [✂] from June 2019 (Lime is the codename for Outbrain) asks what Outbrain's potential state of mind is, speculating that it could be: [✂];

(b) a document with the title [✂] provides an Overview of the status with regard to 'Lime' (Outbrain), noting that Outbrain was [✂]; and

(c) a document with the title [✂] from December 2017 which contains a slide on [✂] and which notes the following recent activities: [✂].

144. The CMA has also seen evidence in Outbrain's internal documents that Outbrain considers Taboola to be a close, and often its closest, competitor:

(a) an Outbrain document titled [✂] and dated January 2020 describes Taboola and Outbrain's offerings as [✂] and [✂];

(b) an Outbrain document, from January 2016, title [✂] discusses the [✂] noting that Outbrain is '[✂] and that, other than Taboola, there is [✂];

(c) an Outbrain document titled [✂] from October 2018 shows that in the UK, Taboola [✂] in total conversions. The document compares Outbrain & Taboola statistics in different countries using a number of different metrics, including click-through-rate and total conversions;

(d) in the Outbrain document titled [✂] dated November 2019, only content recommendation competitors are mentioned within the competitor landscape for publishers, and the Parties are considered to be the largest players within content recommendation;

(e) a document with the titles [✂] and [✂] dated October 2017 contains slides headed [✂] which set out the benefits of Outbrain vs Taboola in relation to a number of different tools, for example, editorial controls. No other suppliers are considered; and

(f) a document titled [✂] dated July 2018 notes that Outbrain considers [✂].

145. The CMA has also seen evidence in Outbrain's internal documents of Outbrain winning or attempting to win customers from Taboola:

(a) the document with the title [✂] from February 2019, focuses on three publishers in the UK: [✂] (already served by Outbrain and are looking to renew), [✂] (currently supplied by Taboola) and [✂] (currently supplied by Taboola). In relation to the latter two publishers, the comment is made that Outbrain are [✂];

(b) an Outbrain document titled [✂] dated January 2019 shows a draft email from Outbrain to Taboola's publishers in an attempt to convert them to Outbrain. The email states [✂];[99] and

(c) a document with the title [✂] contains a slide with the heading [✂] sets out customers that Outbrain is targeting. [✂] target customers are current Taboola customers, with the remaining being [✂] (1), [✂] (1), [✂] (3), [✂] (1), and [✂] (1).

146. The CMA therefore considers that the Parties' internal documents strongly support the conclusion that the Parties consider each other to be close competitors.

Third party views

147. Publisher and competitor responses to the CMA's investigation indicated that third parties consider Taboola and Outbrain to be each other's closest competitor in the supply of content recommendation platform services to UK publishers.

148. The vast majority of publishers that currently use the Parties' content recommendation platform services, and responded to the CMA's investigation, told the CMA that the other Party would be the closest alternative if the Party from which they currently purchase were not available.

(a) A large number of publishers submitted[100] that the Parties are the market leaders in the supply of content recommendation. These publishers explained that the Parties are the only credible platforms in this market operating at scale in the UK and there are no alternatives that would replace them with an equal reputation and ability to meet demand. One

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[99] Revenue per mille (or revenue per 1,000 impressions).
[100] [✂].

explained that the Parties are the only like-for-like replacements for each other.

(b) Two publishers explained that Taboola and Outbrain are the only competitors to have reached the final stages of procurement processes for content recommendation in the past. One of these publishers told the CMA that prior to agreeing their contract with Taboola, it reviewed offers from both the Parties.

149. The responses received by the CMA from competitors responding to the CMA's investigation were in line with the views of UK publishers. All of these competitors submitted that Taboola and Outbrain compete closely in the supply of content recommendation platform services to UK publishers. The majority of these competitors expressed the view that the Parties are the largest players for content recommendation, competing head-to-head against each other to supply this service to UK publishers.[101] One competitor submitted that both Taboola and Outbrain have significant financial power and compete only against each other.

Conclusion on closeness of competition

150. On the basis of the evidence set out above, including the Parties' internal documents and third party views, the CMA believes that the Parties are each other's closest competitor in the supply of content recommendation to publishers in the UK.

Alternative suppliers

151. The CMA has assessed the constraint from alternative suppliers by taking into consideration:

(a) the Parties' views;

(b) the Parties' internal documents; and

(c) third party views.

152. The Parties submitted that they faced competition from a large number of competitors in non-search display advertising. They submitted that major competitors included Google, Facebook, Amazon, Verizon Media, Xandr (AT&T), Teads and Criteo.[102] When submitting shares of supply for content

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[101] [✂].
[102] Final Merger Notice, paragraph 2.

recommendation services in the UK, the Parties also identified the following competitors:[103] Yahoo Gemini (Verizon Media), Revcontent, Plista, Google, MGID, Zergnet, EngageYa and Steepto. The Parties also submitted that Dianomi was a competitor to the Parties.[104]

153.   As discussed below, the evidence received by the CMA indicates that none of the alternative suppliers, individually or in combination, would provide a significant constraint on the Parties post-Merger for the supply of content recommendation platform services to UK publishers. The CMA considers each of these competitors in turn.

Revcontent

154.   Revcontent is a content discovery platform mainly active in the US. Its business is focussed on content recommendation. Like the Parties, the CMA understands that Revcontent has some exclusive agreements with publishers in relation to content recommendation (though it is not clear whether these relate to the UK). Revcontent told the CMA that it competes directly with Taboola and Outbrain for publishers, but its presence in the UK is much smaller than the Parties. Revcontent explained that it had often been locked out of the UK market by the strong presence of Taboola and Outbrain.[105]

155.   The Parties submitted that Revcontent is a competitive player and that the Parties have both lost several publishers to Revcontent, including some well-known publishers.[106]

156.   Table 1 above shows that Revcontent has a share of only [10-20%] in the supply of content recommendation platform services to UK publishers. It is therefore significantly smaller than the Parties in the relevant frame of reference.

- *The Parties' internal documents*

157.   While the CMA has seen some evidence of Revcontent appearing in the Parties' internal documents, these references have been limited, and often

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[103] Final Merger Notice, Table 19. The CMA has assessed the extent of the constraint exerted by each competitor identified by the Parties as having a material market presence (ie a share above 5%).However, as discussed in paragraph 131, the Parties' estimated shares of supply are inaccurate and significantly overstate the shares of these competitors.
[104] White paper of 14 April 2020, page 35. This paper was prepared by the Parties for submission to the US Department of Justice, which is also reviewing the Merger. Given the context, the Parties did not make this submission in relation to the UK specifically.
[105] Note of a call with [✂].
[106] White paper of 14 April 2020, page 33. This paper was prepared by the Parties for submission to the US Department of Justice, which is also reviewing the Merger. Given the context, the Parties did not make this submission in relation to the UK specifically.

discuss the limitations of Revcontent in comparison with the offerings of Taboola and Outbrain, for example:

(a) a Taboola document from September 2019 titled [✂] characterises Revcontent as a [✂], whilst Outbrain is considered to be the [✂]; and

(b) a Taboola document, dated February 2019 [✂] lists Revcontent's strengths and weaknesses. For example, strengths include [✂] and [✂] and that it is [✂] and weaknesses include [✂], [✂], [✂], and [✂].

- *Third party views*

158. In response to the CMA's investigation, the majority of publishers named Revcontent as an alternative supplier of content recommendation platform services to Taboola and Outbrain. However, all but one of these publishers[107] considered that Revcontent was not as good as the Parties in terms of scale and quality. For example, two publishers submitted that Revcontent lacked a UK foothold, a good quality of advertisers and the ability to drive as much revenue as the Parties. Only one publisher identified Revcontent as the next-closest alternative to Taboola.[108] Another publisher identified Revcontent as the next-closest alternative to Outbrain, although it considered Revcontent as a weaker alternative.[109]

159. Almost all competitors[110] listed Revcontent as an alternative to the Parties, but considered it to be weaker than them. Only one competitor considered Revcontent as 'probably the next big player' after the Parties, but the submission did not refer specifically to the UK market.[111] Two competitors commented that Revcontent does not operate at the same scale as the Parties and has lower market penetration in the UK.[112]

160. Based on this evidence, the CMA considers that Revcontent may offer some constraint on the Parties in the supply of content recommendation platform services to publishers in the UK although this is likely to be of a limited nature.

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[107] [✂].
[108] [✂].
[109] [✂].
[110] [✂].
[111] Note of a call with [✂].
[112] Note of a call with [✂].

MGID

161.   MGID is a provider of native advertising, including content recommendation platform services, based in Los Angeles. MGID describes itself as 'a leader in the provision of high-quality content promotion services'.[113]

162.   MGID told the CMA that it has a similar offering type to Taboola and Outbrain. MGID explained that it expected to increase its UK presence within the next two years, in order to support newly-formed publishing partnerships.[114] However, MGID told the CMA that each of Taboola and Outbrain individually was already stronger than MGID.[115]

163.   Table 1 above shows that MGID has a share of only [5-10%] in the supply of content recommendation platform services to publishers in the UK. It is therefore significantly smaller than the Parties in the relevant frame of reference.

- *The Parties' internal documents*

164.   The CMA has seen very few references to MGID in the Parties' internal documents. Those references that the CMA has seen indicate that MGID is a small competitor. For example, an Outbrain document from November 2019 titled [✂] which collects information on 246 small-medium publishers and their partners, shows that only one publisher uses MGID whilst 169 use Taboola.

- *Third party views*

165.   A minority of publishers who responded to the CMA's investigation identified MGID as a potential alternative to the Parties for content recommendation.[116] None of them considered MGID to be a high-quality platform and all shared the view that it was a weaker alternative compared to the Parties. Only one publisher identified MGID as the next-closest alternative to Taboola.[117]

166.   A few competitors identified MGID as a competitor of the Parties for content recommendation.[118] However, one believed MGID to have a weak UK

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[113] https://www.mgid.com/about
[114] MGID's response to CMA's questionnaire.
[115] Notes of a call with MGID.
[116] [✂].
[117] [✂].
[118] [✂].

presence, if any, and considered MGID to be less attractive than the Parties.[119]

167. Based on this evidence, the CMA considers that MGID exercises a limited competitive constraint on the Parties in the supply of content recommendation platform services to publishers in the UK.

Google

168. The Parties submitted that Google is a market leader in digital advertising and that publishers' monetization options remain dominated by Google and Facebook.[120] Moreover, the Parties submitted that Google is a competitor in content recommendation services.[121]

169. The Parties explained that Google has always been an indirect competitor on publishers' webpages and that their strategy in entering content recommendation had been to differentiate their offering from that of Google and others.[122] However, the Parties submitted that Google's launch of a product in a similar format to the Parties' content recommendation product, Matched Content, increased competition and required existing operators to innovate.[123] The Parties stated that Google 'actively offer their own content recommendation advertising formats which replicate and compete closely with the Parties' offerings'.[124]

170. **Table 1** above shows that Google currently has a share of only [0-5%] in the supply of content recommendation platform services to UK publishers. It is therefore significantly smaller than the Parties in the relevant frame of reference.

171. Separately, the Parties submitted that, over the past few months, Google has pitched a footer widget, under the title 'Multiplex Ads' that is nearly identical to the Parties' offerings to several publishers.[125] The Parties submitted a 'Google Multiplex Ads Cheat Sheet', as evidence of Google having 'recently redoubled its focus on content recommendation formats'.[126] This Multiplex Ads product

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[119] Note of a call with [✂].
[120] White paper of 14 April 2020, page 18.
[121] Final Merger Notice, paragraph 81, onwards.
[122] Minute of Discussion with Parties, 17 March 2020.
[123] Minute of Discussion with Parties, 17 March 2020.
[124] Email to the CMA of 22 May 2020.
[125] Letter to the DOJ of 25 February 2020.
[126] Email to the CMA of 22 May 2020, attaching Google Multiplex Ads Cheat Sheet.pdf, which appears to be undated.

from Google is considered further in the section on entry and expansion at paragraph 325.

172. The Parties submitted that they are aware of UK publishers that Google has pitched to, although they did not specify whether these publishers are customers of the Parties.[127] The CMA notes that one of the publishers identified by the Parties as having been approached by Google took part in the CMA's investigation and did not mention Google as an alternative to Taboola and Outbrain for content recommendation. That publisher identified the Parties as the only viable players able to provide the service in the UK.[128]

173. In this section of the Decision, the CMA has focused on Google's existing 'Matched Content' tool and has considered evidence from Google, the Parties' internal documents and third party views to assess the extent to which Matched Content is a substitute for publishers that are using the Parties' content recommendation services.

174. Evidence received by the CMA from Google suggests that Google's 'Matched Content' product may exert a limited constraint on the Parties in relation to content recommendation platform services. Google submitted that [✂]. Google explained that it had taken this decision [✂].[129]

- *The Parties' internal documents*

175. The Parties' internal documents suggest that while Google is a strong player in the broader digital advertising space, it currently exercises only a limited constraint on Taboola and Outbrain in the supply of content recommendation platform services to UK publishers through its Matched Content tool.[130]

   (a) a Taboola document titled [✂] from December 2019, which appears to be a presentation prepared for Taboola by Medialink, states on a slide called [✂] that [✂]; and

   (b) an Outbrain document from November 2018 titled [✂] explains that Google ads are mainly seen in their own apps.

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[127] Final Merger Notice, paragraph 92.
[128] [✂] response to CMA's questionnaire.
[129] Note of a call with [✂].
[130] For example, (a) Taboola document: [✂]; (b) Taboola document: [✂]; (c) Outbrain document: [✂]; (d) Outbrain document: [✂]; and (e) Outbrain document: [✂].

176. Additionally, the evidence that the CMA has seen suggests that when the Parties list their competitors in relation to content recommendation specifically in their internal documents, they do not include Google.[131]

177. In an internal document with the title [✂] from September 2019, Taboola states that if Facebook and Google decided to compete with them in their core market, it would be a serious challenge. However, it notes that publishers are looking to decrease their dependence on Google and Facebook, so, in order to gain share, they would need to offer much better products and terms than Taboola and commit to doing so for years. The document also notes that Taboola has spent over a decade specializing and developing their own technology and have fended off much bigger competitors, such as [✂], during that time, so they feel their offering is very strong.

- *Third party views*

178. Only three publishers[132] identified Google as a potential alternative to the content recommendation platform services offered by the Parties. Moreover, of these three publishers, two did not consider Google to be as viable as the Parties, because Google offers a different and less accessible product. The other publisher could not comment on Google's viability because it had never used its product; however, this publisher was confident that Taboola and Outbrain were the next-best alternatives to each other for content recommendation. None of the publishers that responded to the CMA's investigation identified Google as the next-closest alternative to the Parties.

179. None of the competitors that responded to the CMA's investigation identified Google as a potential alternative to the content recommendation platform services offered by the Parties.

180. Based on the available evidence, the CMA considers that Google currently exercises only a limited competitive constraint on the Parties in the supply of content recommendation to publishers in the UK through its Matched Content product.

181. The CMA notes that the CMA's Online Platforms and Digital Advertising Market Study is ongoing, with a Final Report due by 2 July 2020.[133] The CMA considers that its findings in this Decision, that the constraint exercised by Google in relation to content recommendation platform services to publishers in the UK appears to be limited at present, is not inconsistent with that of the

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[131] See for example, a Taboola document titled [✂], a Taboola document titled [✂], a Outbrain document titled [✂], a Outbrain document titled [✂] and a Outbrain document titled [✂].
[132] [✂].
[133] CMA's Interim Report.

CMA's Interim Report, which found that Google and Facebook have a leading position in each of the broader segments of search advertising, intermediation services and display advertising respectively.

Plista

182. Plista is a provider of native advertising, including content recommendation platform services, based in Germany. Plista describes itself as offering 'proprietary real-time Recommendation Technology' which is 'able to deliver both content and advertising that matches users' individual interests – across all channels and devices'.[134]

183. [✂].[135]

184. **Table 1** above shows that Plista has a share of only [0-5%] in the supply of content recommendation platform services to publishers in the UK. It is therefore significantly smaller than the Parties in the relevant frame of reference.

- *The Parties' internal documents*

185. The evidence that the CMA has seen in the Parties' internal documents suggests that there are a number of limitations to the constraint provided by Plista. For example:

    (a) a document titled [✂] from September 2018 compares Taboola to 3 other competitors: Outbrain, Plista, and Ligatus (now owned by Outbrain). Outbrain is clearly given higher ratings than the other providers, indicated to be [✂] in a number of categories. In particular, in relation to content recommendation, Taboola and Outbrain are considered [✂], while Plista and Ligatus are given [✂];

    (b) a Taboola document titled [✂] dated February 2019, lists Plista's weaknesses. For example, [✂], [✂] and [✂]; and

    (c) Taboola's document [✂] dated September 2019 refers to Plista as a [✂], whereas Outbrain is considered to be the [✂].

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[134] https://www.plista.com/publisher
[135] [✂] response to CMA's questionnaire.

186. Only two publishers[136] listed Plista as an alternative to the content recommendation platform service they receive from the Parties in the UK. However, these two publishers considered Plista as less viable because of its limited advertising demand and less desirable commercial offering. None identified Plista as the next-closest alternative to the Parties.

187. Only one competitor listed Plista among the Parties' main competitors, although it specified that Plista mainly operates in Germany.[137]

188. Based on this evidence, the CMA considers that Plista exercises a limited competitive constraint on the Parties in the supply of content recommendation platform services to publishers in the UK.

Zergnet

189. The Parties submitted that they compete with Zergnet and that Zergnet boasts some premium publishers, including AOL.com and the New York Post.[138] The Parties also submitted that Zergnet has a history of offering high revenue shares to publishers and winning head-to-head competition.[139] Zergnet describes itself as the 'leading editorial recommendations platform on the internet' and the 'platform of choice for premium publishers'.[140]

190. Zergnet submitted that because it operates in the US, it generates very little direct revenue in the UK. It only has incidental partnerships with UK publishers and currently there are only a small number of such partnerships in place.[141]

191. Table 1 above shows that Zergnet has a share of only [0-5%] in the supply of content recommendation platform services to UK publishers. It is therefore significantly smaller than the Parties in the relevant frame of reference.

• *The Parties' internal documents*

192. While the CMA has seen some evidence of Zergnet appearing in the Parties' internal documents, these references have been limited, and often suggest

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[136] [✂].
[137] Note of a call with [✂].
[138] White paper of 14 April 2020, page 38.
[139] White paper of 14 April 2020, page 39.
[140] https://www.zergnet.com/info
[141] Zergnet's response to CMA's questionnaire.

that the Parties do not consider Zergnet to exercise a significant constraint. For example:

(a) a Taboola document from September 2019 titled [✂] refers to Zergnet as [✂] whilst Outbrain is considered to be the [✂];

(b) a Taboola document [✂] includes a slide called [✂] on which a graph shows Zergnet as being [✂]; and

(c) an Outbrain document titled [✂] from November 2019 which collects information on 246 small-medium publishers and their partners, shows that only 11 use Zergnet whilst 169 use Taboola.

- *Third party views*

193. Only a few publishers[142] listed Zergnet as a potential alternative to the Parties, although none of them considered Zergnet to be as strong as Taboola and Outbrain for content recommendation platform services, both in terms of quality and scale in the UK. One specified that Zergnet's business is US-centric.[143] None of the publishers that responded to the CMA's investigation identified Zergnet as the next-closest alternative to the Parties.

194. Some competitors[144] mentioned Zergnet as a small player providing content recommendation platform services. However, even of those, most were not able to confirm whether Zergnet was active in the UK.[145]

195. Based on this evidence, the CMA considers that Zergnet exercises a limited competitive constraint on the Parties in the supply of content recommendation platform services to publishers in the UK.

Verizon Media

196. Verizon Media offers native advertising services in the US and the UK, by running them on its owned and operated properties and by offering them to third party publishers.

197. [✂].[146]

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[142] [✂].
[143] [✂].
[144] [✂].
[145] [✂] and Note of a call with [✂].
[146] Note of a call with [✂].

198. The Parties submitted that Verizon's Yahoo Gemini platform directly competes with Taboola and Outbrain and poses a material threat to the Parties.[147] The Parties also submitted that Outbrain in particular had spent significant resources responding to Yahoo Gemini's increasing presence and 'aggressiveness' in the market.[148]

- *The Parties' internal documents*

199. While the CMA has seen references to Verizon Media in the Parties' internal documents, some of the Parties' internal documents suggest that Verizon Media (also referred to as Yahoo!) does not exercise a significant constraint on the Parties, as they target different audiences. For example, an Outbrain document from February 2019 titled [✂] highlights that Verizon Media focuses on its unique assets and content, suggesting that it only monetises its own traffic, rather than competing with the Parties for publishers. The document notes [✂] in competition with Outbrain. However, it was not clear whether these publishers are active in the UK.

- *Third party views*

200. Only one of the publishers that responded to the CMA's investigation named Verizon Media as an alternative for the content recommendation platform service they receive from the Parties in the UK. However, this publisher believed that Verizon Media's solution might not be as rooted in content recommendation.[149]

201. Only one competitor named Verizon Media as a competitor for content recommendation. Another competitor explained that Verizon Media is not a competitor because it only monetises its own traffic.[150]

202. Based on this evidence and on [✂], the CMA considers that Verizon Media does not exercise a competitive constraint on the Parties in supply of content recommendation platform services in the UK.

EngageYa and Steepto

203. The Parties listed EngageYa and Steepto as competitors when providing their share of supply estimates in content recommendation in the UK. These companies have not responded to the CMA's investigation.

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[147] White paper of 14 April 2020, page 23 and Parties' Email to the CMA 22 May 2020.
[148] White paper of 14 April 2020, page 24.
[149] [✂].
[150] Note of a call with [✂].

- *The Parties' internal documents*

204. The CMA has not seen any references to Steepto in the Parties' internal documents. The small number of references to EngageYa seen by the CMA indicate that the Parties consider it to offer a limited competitive constraint. For example, a Taboola document from September 2019 titled [✂] characterises EngageYa as a [✂] whilst Outbrain is considered to be the [✂].

- *Third party views*

205. No third parties mentioned EngageYa or Steepto as alternatives to the Parties for the supply of content recommendation platform services in the UK.

206. Based on the available evidence set out above, the CMA considers that EngageYa and Steepto do not exercise a competitive constraint on the Parties for the supply of content recommendation to publishers in the UK.

Other competitors

207. UK publishers listed a few other potential alternative suppliers[151] to the Parties for content recommendation, but in each case the competitor was mentioned by publishers only once or twice,[152] and they were considered weaker than the Parties. Reasons that the publishers gave for the low ratings related to less attractive and different offerings, inability to drive as much revenue as either Taboola or Outbrain, and lower quality of service and advertisers.

208. Further, the Parties listed a 'tail' of competitors in their estimates of shares in the supply of content recommendation in the UK.[153] However, the Parties attributed low shares of supply to these competitors and none of them, with the exception of Dianomi, who was mentioned by two publishers, was mentioned by any third parties during the CMA's investigation.[154]

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[151] Spot IM, Connatix, media.net, Dianomi, TapNative, Content Ad. The Parties also submitted that Dianomi was a competitor of the Parties and that it was perceived to have a high-quality product that attracted key publishers (White Paper of 14 April 2020, page 35).
[152] Only media.net was listed by three publishers, but they ranked this alternative very low in comparison to the Parties.
[153] Final Merger Notice, paragraph 181.
[154] Only Dianomi was mentioned by two publishers, [✂], but it received a lower rate than Parties in terms of attractiveness as a provider of content recommendation platform services. In particular, publishers noted that, though Dianomi was considered to be high quality, it was limited to business and finance content such that it can only monetise a small proportion of available inventory.

209. Based on this evidence, the CMA does not consider that any other competitors exercise a significant competitive constraint on the Parties for the supply of content recommendation to publishers in the UK.

Facebook

210. The Parties did not include Facebook as a competitor in their estimates of shares of supply for content recommendation services in the UK. However, the Parties submitted that Facebook has developed Facebook's Recirculation (Recirc), and that this is a content recommendation product that is nearly identical to the Parties' offering. The Parties submitted that Facebook has been testing this product with publishers in recent months[155] and that they have observed Facebook's Recirculation unit operating on the websites of at least 46 publishers worldwide as of February 2020.[156] The Parties submitted that they have witnessed increased competition from Facebook in the past few months: specifically, Facebook asking publishers to enter into short-term deals with them to test its Recirculation tool.[157]

211. The CMA has therefore considered the Parties' internal documents, third party views and evidence from Facebook's response to the CMA's investigation to assess the extent to which Facebook's Recirculation tool would be a substitute for publishers that are using the Parties' content recommendation services.

212. The Parties' internal documents indicate that Facebook and the Parties offer very different services and do not target the same audiences.[158] For example:

    (a) a Taboola document titled [✂] from December 2019, which appears to be a presentation prepared for Taboola by Medialink, states on a slide called [✂] that [✂];

    (b) a Taboola document titled [✂] from 2018 lists Facebook's gaps and Taboola's competitive advantages. For example, on Facebook, only those who are logged in will see the ads, whilst with Taboola, the ads are served to everyone that uses the internet; and

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[155] Final Merger Notice, paragraph 86.
[156] Letter to the DOJ of 25 February 2020.
[157] Letter to the DOJ of 25 February 2020.
[158] To the extent that Facebook is mentioned in the Parties' internal documents which appear to be discussing content recommendation platform services, the CMA has made the assumption that these documents are referring to Facebook's 'Recirculation' tool, which the CMA understands is Facebook's only product that is akin to content recommendation.

(c) an Outbrain document from March 2020 titled [✂] which lists Outbrain's strengths, highlights that Outbrain has access to more granular audience insights from organic content consumption whereas Facebook has access to Facebook formats and audiences.

213. Additionally, the evidence that the CMA has seen so far suggests that when the Parties list their competitors in content recommendation in their internal documents, they do not include Facebook.[159]

214. In an internal document with the title [✂] from September 2019, Taboola states that if Facebook and Google decided to compete with them in their core market, it would be a serious challenge. However, it notes that publishers are looking to decrease their dependence on Google and Facebook, so, in order to gain share, they would need to offer much better products and terms than Taboola and commit to doing so for years. The document also notes that Taboola has spent over a decade specializing and developing their own technology and have fended off much bigger competitors, such as [✂], during that time, so they feel their offering is very strong.

215. None of the third parties that engaged with the CMA's investigation identified Facebook as a competitor for the supply of content recommendation in the UK.

216. The Parties also submitted that Facebook has the access, relationships, experience and resources that will allow for the rapid expansion of its offerings and that it is taking steps to expand into products that are similar to those offered by the Parties.[160]

217. However, evidence received by the CMA from Facebook does not support the Parties' submissions. Facebook submitted that it does not offer a content recommendation service for third party publishers' websites like the service offered by the Parties. [✂]. Further discussion of entry and expansion is set out at paragraphs 312 onwards below.

218. Based on the evidence above, the CMA considers that Facebook does not exercise a competitive constraint on the Parties for the supply of content recommendation to publishers in the UK.

219. As noted above, the CMA's Online Platforms and Digital Advertising Market Study is ongoing, with a Final Report due by 2 July 2020.[161] The CMA

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[159] See for example, a Taboola document titled [✂], a Taboola document titled [✂], a Outbrain document titled [✂], a Outbrain document titled [✂] and a Outbrain document titled [✂].
[160] White paper of 14 April 2020, page 41.
[161] CMA's Interim Report.

considers that its findings in this Decision, that Facebook does not exercise a competitive constraint on the Parties in relation to content recommendation platform services to publishers in the UK, is not inconsistent with that of the CMA's Interim Report, which found that Google and Facebook have a leading position in each of the broader segments of search advertising, intermediation services and display advertising respectively.

Conclusion on alternative suppliers

220.   Based on the evidence set out above, the CMA considers that none of the alternative suppliers, individually or in combination, would exercise a significant competitive constraint on the Merged Entity post-Merger.

221.   The few suppliers that compete with the Parties in the supply of content recommendation to publishers in the UK are weaker and do not have comparable scale in content recommendation in the UK. The available evidence therefore does not support the Parties' submission that there are currently substantial alternatives available in the supply of content recommendation platform services to publishers in the UK.[162]

Publishers' views about the Merger

222.   Most publishers that responded to the CMA's investigation expressed concerns about the Merger.[163]

223.   These concerns are consistent with the other evidence on the effects of the Merger discussed above. The key concerns raised are summarised below:

(a)   Some publishers explained that Taboola and Outbrain are currently the only viable platforms in the content recommendation space, and that the Merger would remove any meaningful competition, creating a single reputable vendor controlling this space. Similarly, a number of publishers explained that the Parties are the two dominant platforms offering content recommendation platform services.

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[162] Parties' email to the CMA 22 May 2020.
[163] The Parties submitted that the evidence gathered by the CMA in its market testing was outdated and unreliable for the following reasons: (a) the questionnaire had already been taken over by events, namely expansion by Google; (b) the questions on substitution appear to have focussed on a crude 'total Substitution' scenario which did not account for the true flex that publishers have in negotiations; (c) confusion around the definition of content recommendation will have elicited unreliable answers; and (d) the questionnaire does not appear to have captured publishers' views on the overall landscape and the challenges generated by the presence of Google and Facebook (Parties' Response to the CMA's Issues Letter, paragraph 4.36). The CMA disagrees that its market testing generated unreliable results, and in particular would note that the majority of respondents to the CMA's investigation (including those who responded to the CMA's questionnaire and those who took part in detailed discussions with the CMA via phone calls), expressed clear and reasoned concerns about the effects of the Merger on content recommendation, as discussed in paragraph 223.

(b) Two publishers submitted that the Merger would likely lead to other vendors being squeezed out on price as the Parties are the two closest competitors in the content recommendation space. They explained that other types of advertising are not substitutable because they do not generate the same revenue.

(c) A few publishers submitted that the Merger, and the increased dominance it would create, has the potential to (i) create downward pressure on publisher revenues due to the lack of competition and alternatives, (ii) reduce the quality of advertising creatives driven by the lack of alternative partners; and (iii) negatively impact product innovation and service levels.

(d) Some publishers expressed concerns that the Merger would compromise their leverage in negotiations. For example, one publisher explained that it plays Taboola and Outbrain off against each other to drive the best deal when negotiating contracts. As such, it considered that the Merged Entity would be able to control publisher revenue shares without a direct competitor. Moreover, some of these publishers commented that, post-Merger, they would not have any alternative but to absorb any price increases.

Conclusion on horizontal unilateral effects in the supply of content recommendation platform services to publishers in the UK

224. The CMA found that the Merger combines the two largest suppliers of content recommendation platform services to publishers in the UK and would result in a very high combined share of supply of [80-90%].

225. Based on the evidence discussed above, the CMA considers that the Parties are each other's closest competitor in the supply of content recommendation platform services to publishers in the UK and that none of the alternative suppliers, individually or in combination, would exercise a significant competitive constraint on the Merged Entity post-Merger. The CMA also notes that the majority of publishers that responded to the CMA's investigation expressed concerns about the Merger, including in relation to the potential for reduced advertising revenues and a reduction in the quality of the service and levels of innovation provided.

226. The CMA therefore believes that the Merger would raise significant competition concerns in the supply of content recommendation platform services to publishers in the UK.

Theory of harm 2: horizontal unilateral effects in the supply of outstream video advertising platform services to publishers in the UK

227. In order to assess the likelihood of the Merger resulting in horizontal unilateral effects in the supply of outstream video advertising platform services to publishers in the UK, the CMA has considered:

    (a) shares of supply;

    (b) closeness of competition between the Parties; and

    (c) competitive constraints from alternative suppliers.

Shares of supply

228. The Parties submitted that their share of supply was likely to represent a de minimis proportion of the supply of outstream video advertising platform services in the UK.

229. The CMA considers that there were flaws in the approach suggested by the Parties to calculate competitors' revenues and total market size, as it was based on US data that the CMA did not consider to be necessarily reflective of conditions in the UK. The CMA therefore did not consider that the shares of supply provided by the Parties were likely to reflect current market conditions in outstream video advertising platform services to publishers in the UK.

230. The CMA asked competitors identified by the Parties to provide their revenues from the supply of outstream video advertising in the UK. The CMA was only able to confirm the revenues of Teads and Verizon Media. The CMA also partially reconstructed revenues earned by Unruly based on data provided by customers on their purchases. These are likely to underestimate Unruly's actual revenues, as some customers will have been excluded.

231. **Table 2** below shows partial estimates of shares of supply for outstream video advertising platform services to publishers in the UK.

Table 2. Partial estimates of 2018 UK supply of outstream video advertising platform services[164]

Market participants	Revenues (in million £)	Estimated share of supply (%)
Taboola	[✂]	[5-10]%

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[164] Revenues are defined as advertising revenues paid to publishers with a UK billing address, as this is a proxy for the value of the publishers' inventory space. The CMA collected this data from the Parties, competitors and publishers.

Outbrain	[✂]	[0-5]%
Combined	[✂]	***[5-10]%***
Teads	[✂]	[80-90]%
Unruly	[✂]	[5-10]%
Verizon Media	[✂]	[0-5]%
Total	[✂]	***100.0%***

Source: CMA's analysis of the Parties' and third parties' submissions.

232. **Table 2** shows that:

    (a) As a result of the Merger, the Parties' combined shares of supply of outstream video platform services to publishers in the UK would be unlikely to exceed [5-10]%, and the increment would be unlikely to exceed [0-5]%; and

    (b) Teads is the clear market leader with revenues from the supply of outstream video platform services in the UK almost [✂] times those of the Parties; and

    (c) Unruly is also at least as large as Taboola and, on the basis of evidence received from publishers (as discussed further below), the CMA believes its share is likely underestimated.

233. The CMA notes that these estimates exclude some competitors for which the CMA was not able to collect revenue estimates, including potentially large competitors such as Google and Facebook. Considering this, and the size of Teads and Unruly in comparison to the Parties, as discussed above, the total market size is likely to be understated. The Parties' shares in **Table 2** above are therefore likely to be overestimated.

Conclusion on shares of supply

234. The CMA considers that the Parties' combined shares of supply and the increment from the Merger are very low and do not raise *prima facie* competition concerns in the supply of outstream video advertising platform services to publishers in the UK.

Closeness of competition

235. The Parties did not comment on how closely they compete for publishers in the supply of outstream video platform services in the UK. However, the Parties submitted that they face fierce competition from a large number of

well-resourced competitors.[165] The constraints from alternative suppliers are assessed in paragraph 239 onwards.

236. The Parties' internal documents indicated that the Parties did not consider each other to be significant competitive constraints in relation to the supply of outstream video advertising platform services to publishers in the UK. In particular, the documents indicated that Outbrain is considered a weak competitive constraint in relation to outstream video advertising.[166]

237. Evidence from the CMA's investigation did not suggest that Taboola and Outbrain were each other's closest competitor in the supply of outstream video platform services to publishers in the UK. In particular:

(a) Only one publisher identified the Parties as the next-best alternatives to each other for outstream video advertising.[167]

(b) Most publishers identified Teads as the closest competitor to the Parties. Some publishers that responded to the CMA's investigation considered Unruly as the closest alternative to the Parties[168] and each of Connatix, GroupM and Vidoomy were mentioned as the next-best alternative to the Parties by one publisher.[169]

238. On the basis of this evidence, the CMA does not believe that the Parties are close competitors in the supply of outstream video advertising platform services to publishers in the UK.

Alternative suppliers

239. The Parties submitted that they face fierce competition from a large number of competitors. They submitted that major competitors in outstream video advertising include Teads, Google, Facebook and Verizon Media.[170]

240. The CMA assessed the constraint from these competitors and other competitors identified by third parties by considering the views of the Parties in relation to each competitor, evidence from internal documents, and third party views.

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[165] Final Merger Notice, page 45.
[166] (a) Outbrain document: [✂] (b) Outbrain document: [✂]; and (c) Taboola document: [✂].
[167] [✂].
[168] [✂].
[169] [✂].
[170] Final Merger Notice, paragraph 103.

Teads

241. The Parties submitted that Teads is the leading specialist platform providing video advertising services. They submitted that Taboola's video offering is superior to Outbrain's, but lags behind Teads'.[171]

242. The Parties' internal documents supported this. In particular, the Parties' internal documents suggested that Teads is considered a particularly important competitive constraint in the supply of outstream video advertising.[172]

243. Teads submitted that it is the leader in outstream video advertising and that it works with the world's best publishers, delivering mainly outstream video advertising.[173] Teads explained that the outstream video advertising business is very competitive because video advertising can be placed in any existing display placements. [✕].[174]

244. Evidence from the CMA's investigation also indicated that Teads is a significant player in outstream video advertising. Most UK publishers that responded to the CMA's investigation told the CMA that Teads provides a better service than the Parties.[175] Almost all publishers mentioned Teads as an alternative to the Parties.[176]

245. All competitors that responded to the CMA's investigation[177] identified Teads as a competitor in outstream video advertising and the majority of these competitors explained that they consider Teads' services to be of higher quality than those provided by the Parties.[178]

246. Based on the evidence set out above, the CMA considers that Teads is a close competitor of the Parties and imposes a significant competitive constraint in the supply of outstream video advertising platform services to publishers in the UK.

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[171] Final Merger Notice, paragraph 103.
[172] (a) Outbrain document: [✕]; (b) Outbrain document: [✕]; (c) Outbrain document: [✕]; (d) Outbrain document: [✕]; (e) Outbrain document: [✕]; (f) Taboola document: [✕]; (g) Taboola document: [✕]; (h) Taboola document: [✕]; (i) Taboola document: [✕]; and (j) Taboola document: [✕].
[173] [✕] response to CMA's questionnaire.
[174] [✕] response to CMA's questionnaire.
[175] [✕].
[176] Those that did not mention Teads were: [✕].
[177] [✕].
[178] [✕] did not provide a ranking.

Other alternative suppliers

247. The Parties submitted that there a number of other competitors supply outstream video advertising platform services to UK publishers. In particular, the Parties submitted that:

    (a) Unruly is a viable and well-resourced competitor;[179] and

    (b) Google, Facebook and Verizon Media are among the largest platforms providing video advertising services.[180]

248. Evidence from the CMA's investigation indicated that half of publishers consider Unruly as an alternative to the Parties. On average, publishers regarded Unruly as being as good as Taboola and better than Outbrain. Half of the competitors that responded to the CMA's investigation submitted that Unruly was an equally good alternative to the Parties.[181]

249. As regards the other competitors identified by the Parties:

    (a) a small number of publishers and competitors identified Google as a viable alternative to the Parties in outstream video advertising;[182]

    (b) only two third parties identified Facebook as a viable competitor to the Parties in outstream video advertising;[183] and

    (c) only one third party[184] identified Verizon Media as a viable competitor to the Parties in outstream video advertising.[185]

250. Based on the evidence set out above, the CMA considers that Unruly is a competitor of the Parties and imposes a competitive constraint in the supply of outstream video advertising platform services to publishers in the UK. However, the available evidence does not suggest that the other competitors identified by the Parties, including Google, Facebook and Verizon Media, impose a significant competitive constraint on the Parties.

Conclusion on alternative suppliers

251. Based on the evidence set out above, the CMA found that Teads and Unruly are likely to exert a significant competitive constraint on the Parties. In

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[179] Final Merger Notice, page 42.
[180] Final Merger Notice, paragraph 103.
[181] [✂].
[182] [✂].
[183] [✂].
[184] [✂].
[185] [✂].

particular, Teads and Unruly were identified by publishers as the main alternatives to the Parties in response to the CMA's investigation.

252. The available evidence also showed that other competitors are active in the supply of outstream video advertising platform services to publishers in the UK, although these competitors are likely to exert a more limited constraint on the Parties.

Conclusion on horizontal unilateral effects in the supply of outstream video advertising platform services to publishers in the UK

253. The CMA considers that the Parties' low combined shares of supply do not raise *prima facie* competition concerns in the supply of outstream video advertising platform services to publishers in the UK. The increment arising from the Merger is also very low as Outbrain has very limited presence in the supply of outstream video advertising.

254. On the basis of the evidence set out above, the CMA considers that the Parties are not close competitors in the supply of outstream video advertising platform services to publishers in the UK and the Parties will be constrained post-Merger by third parties including Teads and Unruly.

255. The CMA therefore believes that the Merger would not result in a realistic prospect of an SLC in the supply of outstream video advertising platform services to publishers in the UK.

Theory of harm 3: horizontal unilateral effects in the supply of non-search display advertising platform services (including other native advertising platform services) to publishers in the UK

256. In order to assess whether the Merger may result in horizontal unilateral effects in the supply of non-search display advertising platform services to publishers in the UK including any potential segment for the supply of other native advertising platform services (eg 'in-feed' or 'in-content' services), the CMA has considered:

(a) shares of supply;

(b) closeness of competition between the Parties; and

(c) competitive constraints from alternative suppliers.

257.	The Parties provided estimates of shares in the supply of non-search display advertising in the UK, based on eMarketer data.[186] According to these estimates, the Parties' combined share of supply would be [0-5]%.

258.	These estimates were calculated on the basis of the Parties' own data, publicly available data on Google's UK revenues in non-search display advertising,[187] and estimates for other competitors (for which no publicly available data was available).

259.	The CMA considers that the Parties' estimates for competitors other than Google might not be reliable.[188] However, the CMA notes that the publicly available data for Google shows that its revenues in non-search display advertising are more than [✂] times the Parties' combined revenues. This suggests that, before accounting for any other competitors beyond Google, the Parties' combined share of non-search display advertising would be no greater than [5-10]%. The CMA considers that the Parties' shares are likely to be much lower than [5-10]% once other non-search display advertising providers active in the UK are taken into account.

260.	On the basis of this evidence, the CMA considers that the Parties' combined shares of supply and the increment from the Merger are low and do not raise *prima facie* competition concerns in relation to the supply of non-search display advertising platform services to publishers in the UK.[189]

Closeness of competition

261.	The CMA considered evidence on closeness of competition with a particular focus on other native advertising platform services (eg 'in-feed' and 'in-content' services), where the Parties overlap. The Parties did not make any specific submissions on how closely they compete in this segment.

262.	In contrast to publishers' comments on the Parties' position in the supply of content recommendation platform services (see paragraphs 147 and 148 above), only one publisher that responded to the CMA's investigation

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186 Final Merger Notice, table 14. The CMA notes that this data includes a broader range of services than fall within the relevant frame of reference: in particular, it includes data on content recommendation platform services, which form a separate frame of reference (see section above on Frame of reference).
187 eMarketer data.
188 The Parties' estimates of the revenues of some competitors were based on global data, which may not be an accurate proxy for the UK market. Revenues of other competitors were unknown to the Parties. The Parties estimated these revenues comparing clicks received by competitors to clicks received by Taboola and assuming this relativity would apply to revenues. Further, the Parties applied some arbitrary adjustments to these estimates. For this reason, the CMA does not consider these estimates to be reliable.
189 The CMA did not receive enough evidence to reliably estimate the size of any potential segment for the supply of other native advertising platform services.

identified the Parties as each other's closest competitor in the supply of other native advertising platform services in the UK. Most publishers identified Triplelift, Adyoulike, Google, Sharethrough and Nativo as next-best alternatives to the Parties.

263. On the basis of this evidence, the CMA believes that Taboola and Outbrain are not close competitors in the supply of non-search display advertising platform services, including other native advertising platform services, to publishers in the UK.

Alternative suppliers

264. The Parties submitted that they faced competition from a large number of competitors active in non-search display advertising.[190] The Parties have not commented on their competitors in the supply of other native advertising platform services.

265. The CMA considered evidence on alternative suppliers with a particular focus on other native advertising platform services (eg 'in-feed' and 'in-content' services), where the Parties overlap. The CMA has found a number of the Parties' internal documents which refer to alternative suppliers of non-search display advertising, and in particular, other native advertising platform services, including Nativo, Sharethrough, Google, Revcontent, Facebook, Chorus, Triplelift, AdYouLike, Yahoo, Criteo, Xandr and MSN.[191]

266. Responses from publishers also identified a number of alternative suppliers of other native advertising platform services. Adyoulike, Triplelift, Nativo, Sharethorough, and Google were the alternatives mentioned most often.[192] Publishers considered all of them to be stronger than the Parties. Competitors' views were also largely in line with publishers' responses.[193]

267. Further, the CMA notes that most of the publishers using other native advertising platform services that responded to the CMA's investigation indicated that they would switch to other types of non-search display advertising services if terms were to worsen. In this wider market, the CMA's Interim Report found that Google is the second largest platform offering non-search display advertising and that Google benefits from greater scale and access to user data compared to its rivals.[194] The CMA therefore considers

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[190] Final Merger Notice, page 42.
[191] (a) Taboola document: [✕] (December 2019); (b) Taboola document: [✕] Jan 29, 2020; (c) Taboola document: [✕] July 2016; (d) Taboola document: [✕] from 2017; and (e) Outbrain document: [✕] dated August 2018.
[192] [✕].
[193] [✕].
[194] CMA's Interim Report.

that the Parties will be subject to a number of important constraints in the supply of other native advertising platform services.

268.   Based on the evidence set out above, the CMA believes that there are a number of viable alternative suppliers of non-search display platform advertising, and in particular other native advertising platform services (eg 'in-feed' and 'in-content' services) available to publishers in the UK.

Conclusion on horizontal unilateral effects in the supply of non-search display advertising platform services (including other native advertising platform services) to publishers in the UK

269.   For the reasons set out above, the CMA believes that the Parties do not compete closely in the supply of non-search display advertising platform services, or within any possible segment for other native advertising platform services to publishers in the UK and, in any case, the Parties face strong competition from alternative suppliers.

270.   Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of non-search display advertising platform services (including other native advertising platform services) to publishers in the UK.

Theory of harm 4: horizontal unilateral effects in the supply of non-search display advertising services to advertisers in the UK

271.   In order to assess the likelihood of the Merger resulting in horizontal unilateral effects in the supply of non-search display advertising services to advertisers in the UK, the CMA has considered:

(a) shares of supply;

(b) closeness of competition between the Parties; and

(c) competitive constraints from alternative suppliers.

Shares of supply

272.   The Parties provided estimates of shares in the supply of non-search display advertising, based on eMarketer data. According to these estimates, the Parties' combined share of supply would be [0-5]%.

273.   The CMA presents these estimates in **Table 3** below.[195]

Table 3. The Parties' estimates of 2018 UK supply of non-search display advertising services to advertisers

Market participants	Revenues (in million £)[196]	Estimated share of supply (%)
Taboola	[✂]	[0-5]%
Outbrain	[✂]	[0-5]%
Combined	***[✂]***	***[0-5]%***
Facebook	[✂]	[40-50]%
Google	[✂]	[10-20]%
Amazon	[✂]	[5-10]%
Verizon Media	[✂]	[0-5]%
Alibaba	[✂]	[0-5]%
Others	[✂]	[20-30]%
Total	***[✂]***	***100.0%***

Source: The CMA's analysis of the Parties' submission (Table 13 of the Final Merger Notice).

274.   The CMA notes that UK revenue data was only available for Google and Facebook. The Parties' estimates of the revenues of Amazon, Verizon and Alibaba are based on global data, which may not be an accurate proxy for the UK market.[197]

275.   Based on these eMarketer data, Facebook and Google have revenues that are, respectively, more than [✂] times and more than [✂] times the Parties' combined revenues. This suggests that, before accounting for any other competitors, the Parties' combined share of non-search display advertising would be less than [0-5]%. Moreover, the CMA considers that the Parties' shares are likely to be lower than [0-5]% because these estimates do not include a number of other non-search display advertising providers.

276.   Although estimates for other competitors are not reliable, the CMA notes that the Parties have used their own data to calculate their revenues and have relied upon UK level data[198] for Facebook's and Google's. Thus, the CMA

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[195] In Table 13 of the Final Merger Notice, the Parties submitted an estimate of the shares of supply in non-search display advertising services that included direct sales. The CMA used the Parties' approach in Table 15 of the Final Merger Notice to exclude direct sales from the total market size in **Table 3.**
[196] Based on Bank of England average US$/GBP exchange rate of 1/0.7844 for the period of 1 January 2018 – 31 December 2018.
[197] Revenues of 'other' competitors were unknown to the Parties. The Parties estimated these revenues comparing clicks received by competitors to clicks received by Taboola and assuming this relativity would apply to revenues. Further, the Parties applied some arbitrary adjustments to these estimates. For this reason, the CMA does not consider these estimates to be reliable.
[198] eMarketer data.

believes that, at a minimum, the Parties' combined revenues and Facebook's and Google's revenues can be relied upon.

Conclusion on shares of supply

277. The CMA considers that the Parties' combined shares of supply and the increment from the Merger are very low and do not raise *prima facie* competition concerns in relation to the supply of non-search display advertising services to advertisers in the UK.

Closeness of competition

278. The Parties did not make any submissions in relation to how closely they compete for advertisers in the supply of non-search display advertising services.

279. In its review of the Parties' internal documents, the CMA identified a small number of documents that suggest that the Parties are close competitors in relation to this frame of reference.[199]

280. The CMA received mixed views from third parties on whether Taboola and Outbrain are each other's closest competitors from the perspective of advertisers in the UK. In its investigation, the CMA gathered evidence on closeness of competition between the Parties in relation to each of the three advertising formats that the Parties provide to advertisers (ie content recommendation, other types of native advertising and outstream video advertising).[200] Around half of the advertisers responding to the CMA's investigation identified Taboola and Outbrain as each other's closest competitor. Most of these responses were in relation to either content recommendation or other types of native advertising. The other responses identified mainly Google and Facebook as each of the Parties' closest competitors.

281. A large majority of advertisers told the CMA that they were not concerned[201] about the impact of the Merger on advertisers because they could easily shift their budgets from the advertising services supplied by the Parties to other types of non-search display advertising services. A small number of advertisers expressed the view that the Merger could have a negative impact, although this was with regard to the impact on publishers in relation to content

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[199] (a) Outbrain document: [✂]; (b) Taboola document: [✂]; and (c) Taboola document: [✂].
[200] Some advertisers had contracts for more than one advertising service with the Parties. Most of these advertisers use both Taboola and Outbrain. Only three advertisers used only one Party.
[201] Three advertisers were concerned: [✂],

recommendation only, and they explained that advertisers would not be affected.[202]

282. Overall, the CMA considers that this evidence is consistent with the Parties being relatively close competitors that are nevertheless constrained by alternative suppliers.

Alternative suppliers

283. The Parties submitted that they face fierce competition for advertiser customers from a large number of digital advertising competitors. They submitted that major competitors included Google, Facebook, Amazon, Verizon Media, Xandr (AT&T), Teads and Criteo[203] and provided share of supply estimates for Facebook, Google, Amazon, Verizon Media, Baidu and Alibaba.[204]

284. However, the Parties did not specify whether and how these constraints from alternative suppliers differ for customers on the two sides of the platform, nor for the different advertising formats that they supply. The CMA has assessed the constraint provided by these competitors and others identified by third parties by considering:

(a) the views of the Parties;

(b) the Parties' internal documents; and

(c) third party views.

285. In its investigation, the CMA gathered evidence on alternative suppliers in relation to each of the three advertising formats that the Parties provide (ie content recommendation, native advertising and outstream video advertising). The CMA presents the results in aggregate to refer to the wider non-search display advertising market for advertisers. However, in interpreting these results, the CMA has borne in mind that non-search display advertising also includes other types of advertising (eg banners, in-stream video) to which advertisers might switch and that have not been investigated as part of the CMA's investigation. Thus, the range of alternatives available in non-search display advertising may in fact be wider than is considered below.

286. Overall, the available evidence indicates that alternative suppliers of non-search display advertising to advertisers in the UK, in particular Google and

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[202] [✂].
[203] Final Merger Notice, paragraph 2.
[204] As explained above, the CMA consider only the revenues from Facebook and Google to be reliable estimates.

Facebook, would exert a significant constraint on the Parties post-Merger. The CMA considers these alternative providers below.

Facebook

287. The Parties submitted that unparalleled user data and range of advertising formats make Facebook a 'must buy' for advertisers, who always allocate a portion of their advertising budget to it.[205] They also submitted that these characteristics made Facebook a market leader in the digital advertising market, including non-search display advertising.

288. The Parties' internal documents also show that Facebook is considered to be a strong constraint on the Parties in relation to the supply of non-search display advertising services to advertisers in the UK.[206]

289. A third of the responses the CMA received from advertisers identified Facebook as an alternative to the Parties. All advertisers that identified Facebook as an alternative explained that Facebook is as at least good as the Parties.

290. One advertiser[207] told the CMA that Facebook offers a different product from the Parties and gives access to a different audience. However, this advertiser would make greater use of the platforms it currently uses, including Facebook, as an alternative to the Parties.[208] Another advertiser said that if Facebook were out-performing its other providers, it would switch its budget to Facebook from Taboola, although this advertiser considered that the services offered by Facebook and Taboola were completely different.[209]

291. Facebook was mentioned as the next-best alternative to the Parties in about a fifth of the responses received by advertisers purchasing non-search display advertising services from the Parties.

292. The CMA's Interim Report found that Facebook is the largest owned-and-operated platform offering non-search display advertising to advertisers. Facebook's market power in this segment comes from greater scale and access to user data compared to its rivals. In the report, Facebook and

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[205] Final Merger Notice, paragraph 3.
[206] (a) Outbrain document: [✂]; (b) Outbrain document: [✂]; (c) Outbrain document: [✂]; (d) Outbrain document: [✂] (e) Outbrain document: [✂]; (f) Taboola document: [✂]; (g) Taboola document: [✂]; and (h) Taboola document: [✂].
[207] Note of call with [✂].
[208] Note of call with [✂].
[209] Note of call with [✂].

Google were the platforms that advertisers most commonly mentioned and ranked highest for non-search display advertising.[210]

293. Based on this evidence the CMA considers that Facebook would impose a significant competitive constraint on the Parties in relation to the provision of non-search display advertising services to advertisers in the UK post-Merger.

Google

294. The Parties submitted that Google's unparalleled user data and range of advertising formats make it a 'must buy' for advertisers, who always allocate a portion of their advertising budget to it.[211] They submitted that these characteristics made Google a market leader in the digital advertising market, including in non-search display advertising.

295. Google confirmed that it competes across all digital advertising segments.[212]

296. The Parties' internal documents also show that Google is considered to be a strong constraint on the Parties in relation to the supply of non-search display advertising services to advertisers in the UK.[213]

297. Half of the responses the CMA received from advertisers identified Google as an alternative to the Parties. All but one of these responses explained that the offering provided by Google was as at least good as the Parties' offerings.

298. A small number of advertisers[214] that identified Google as an alternative to the Parties told the CMA that Google does not provide the same advertising service as the Parties. However, these advertisers considered that it would not be difficult to move their budget away from these services and shift it into other types of advertising, including to services provided by Google.

299. Google was mentioned as the next-best alternative to the Parties in over a fifth of the responses received by advertisers purchasing non-search display advertising services from the Parties.

300. The CMA's Interim Report found that Google is the second largest platform offering non-search display advertising to advertisers. Like Facebook, Google

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[210] CMA's Interim Report.
[211] Final Merger Notice, paragraph 3.
[212] [✂].
[213] (a) Taboola document: [✂]; (c) Outbrain document: [✂]; (d) Outbrain document: [✂]; (e) Outbrain document: [✂]; (f) Outbrain email: [✂]; (g) Outbrain email: [✂], dated August 2017; (h) Outbrain document: [✂] (i) Taboola document: [✂]; (j) Taboola document: [✂]; (k) Taboola document: [✂]; (l) Taboola document: [✂]; and (m) Taboola document: [✂].
[214] [✂].

benefits from greater scale and access to user data compared to its rivals. In the report, Facebook and Google were the platforms that advertisers most commonly mentioned and ranked highest for non-search display advertising.[215]

301. Based on the evidence set out above, the CMA believes that Google would impose a significant competitive constraint on the Parties in the supply of non-search display advertising services to advertisers in the UK post-Merger.

Other alternative suppliers

302. The Parties included Verizon Media, Amazon, Baidu and Alibaba in their share of supply estimates for the supply of non-search display advertising to UK advertisers. The Parties also submitted that Amazon offers display advertising services and, together with Facebook and Google, has a huge volume of data behind its offerings which makes it hard for smaller firms to compete.[216]

303. The Parties' internal documents also indicated that there were a number of other alternative constraints on the Parties in relation to the supply of non-search display advertising services to advertisers in the UK.[217]

304. Just under a third of the responses the CMA received from advertisers identified Verizon Media as an alternative to the Parties. All but one of these advertisers identified Verizon Media as a good alternative to the Parties. Most of these responses were in relation to advertising services that Verizon Media provides through its owned-and-operated platform. Verizon Media was mentioned as next-best alternative to the Parties by two advertisers purchasing non-search display advertising services from the Parties.

305. None of the advertisers that responded to the CMA's investigation identified Amazon, Baidu or Alibaba as competitors in any of the sub-segments where the Parties are active (ie content recommendation, outstream video and native advertising). Two competitors identified Amazon as an alternative to the Parties, both in native advertising and outstream video advertising.

306. In the CMA's Interim Report, a few advertisers said that they used Amazon, Verizon Media, and other platforms like Snapchat, Twitter, Pinterest, TikTok

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[215] CMA's Interim Report.
[216] Final Merger Notice, paragraphs 93 and 94.
[217] (a) Outbrain document: [✂]; (b) Outbrain document: [✂]; (c) Taboola document: [✂] and d) Taboola document: [✂].

and LinkedIn for non-search display advertising. However, these platforms were not ranked as highly as Facebook and Google.[218]

307. Based on the above, the CMA considers that Verizon Media would exert a constraint on the Parties in the supply of non-search display advertising services to UK advertisers post-Merger. The CMA has not received enough evidence to consider that Amazon, Baidu and Alibaba are competitors in the sub-segments where the Parties are active (ie content recommendation, outstream video and native advertising). While it was not necessary for the CMA to consider constraints in non-search display advertising services outside of native advertising in this case, as no concerns arise even on the basis of these narrower segments, it is possible that these platforms would be a constraint on the Parties in the wider non-search display advertising market.

Conclusion on alternative suppliers

308. Based on the evidence set out above, the CMA believes that both Google and Facebook would provide a strong competitive constraint on the Parties in relation to the supply of non-search display advertising services to advertisers in the UK and Verizon Media would also exert a constraint.

Conclusion on horizontal unilateral effects in the supply of non-search display advertising services to advertisers in the UK

309. While reliable share estimates for most competitors were unavailable, evidence on revenues earned by specific competitors (ie Google and Facebook) in the UK suggest that the Parties would not have a combined share of more than [0-5]%.

310. While noting a degree of closeness between the Parties in relation to non-search display advertising services, advertisers identified several other competitors, including Google and Facebook, and were not concerned about the Merger (other than its potential impact on publishers, which is discussed in the section on Theory of harm 1).

311. Therefore, on the basis of the available evidence, the CMA believes that the Merger would not result in a realistic prospect of SLC in the supply of non-search display advertising to advertisers in the UK.

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[218] CMA's Interim Report.

Countervailing factors

Entry or expansion

312. Entry or expansion of existing firms can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.[219]

313. In its assessment of whether entry and expansion might prevent an SLC in the supply of content recommendation platform services to publishers in the UK, the CMA has considered:

    (a) the Parties' submissions;

    (b) the impact of exclusivity arrangements;

    (c) the Parties' internal documents; and

    (d) third parties' views on entry and expansion.

314. As a result of submissions from the Parties, and evidence of Google's recent launch of a new Google's Multiplex Ads product (in addition to its existing Matched Content tool discussed above), the CMA has separately considered the extent to which expansion by Google will be timely, likely and sufficient such as to prevent an SLC.

The Parties' submissions

315. The Parties submitted that barriers to entry and expansion in the wider market for the supply of digital advertising were low,[220] and in particular that Google and Facebook have the access, relationships, experience and resources to allow for rapid expansion.[221] The Parties provided more detailed submissions in relation to possible expansion by Google, which are discussed at paragraph 325 onwards below.

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[219] *Merger Assessment Guidelines*, from paragraph 5.8.1 and 5.8.11.
[220] Final Merger Notice, paragraphs 111-113.
[221] White paper of 14 April 2020, page 41.

Exclusivity arrangements

316. Some competitors raised concerns that new entry in relation to content recommendation platform services would be difficult because of the publishers' exclusive contracts with the Parties. Most publishers that responded to the CMA's investigation submitted that they have exclusive contracts in relation to content recommendation with Taboola or Outbrain. The typical length of these contracts is at least two years.[222]

317. The Parties submitted [✂].[223] However, the CMA notes that the Parties have provided examples of Taboola seeking to enforce exclusivity arrangements against [✂] publishers, eg. [✂] and [✂], and, other than these two examples, the CMA has not seen evidence of breaches by publishers.

318. The CMA considers that these agreements may act as a barrier to entry, as they prevent publishers from easily switching between platforms, making it difficult for actual and potential competitors to quickly build a customer base on the publisher side. In particular, this would require potential rivals to incur certain fixed costs of entry until the Parties' exclusivity arrangements expire before they could begin to compete for customers in earnest, making entry necessarily more gradual and therefore potentially unattractive. Due to the potential for indirect network effects, this might have a knock-on impact on the advertising side, to the extent advertisers are attracted to platforms offering greater access to publishers.

The Parties' internal documents

319. The Parties' internal documents suggest that barriers to entry and expansion may be high, and that this may be exacerbated by the Parties' exclusivity agreements and network effects:

   (a) an Outbrain slide that appears in a number of Outbrain documents produced over a number of years, most recently in December 2019[224] describes three 'Barriers to Entry' as technology, data and large promoted index;

   (b) a Taboola document entitled [✂] from March 2018, under the heading [✂], includes a circle showing that publishers' growth leads to wider reach for content providers, which leads to more data, which leads to better results for publishers and content providers, which leads to

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[222] Further detail on the Parties' exclusivity arrangements is provided at paragraph 84 onwards of the section on the Frame of Reference above.
[223] Parties' Response to the CMA's Issues Letter, paragraph 2.21.
[224] Including [✂]; [✂]; [✂]; and [✂].

publishers' growth and so on, such that the [✂] (also included in [✂] and [✂] and [✂]);

(c) a Taboola document titled [✂] includes a slide showing the number of exclusive partnerships that Taboola has with [✂]; and

(d) a Taboola document from September 2019 entitled [✂], states that [✂]. This document also states that if Facebook and Google decided to compete with them in their core market, it would be a serious challenge. However, the document also notes that Taboola has spent over a decade specializing and developing their own technology and have fended off much bigger competitors, such as [✂], during that time, so they feel their offering is very strong.

320. The Parties submitted that the documents used by the CMA to indicate that there were barriers to entry and expansion were 'historic' and did not reflect current competitive conditions.[225] However, the CMA considers that the Parties' more recent internal documents also suggest that barriers to entry and expansion are high, as is shown in the paragraphs above.

Third party views

321. The majority of the competitors that responded to the CMA's investigation considered that barriers to entry and expansion in the supply of content recommendation were material:

(a) Three competitors submitted that barriers to entry and expansion are substantial. One of them explained that expanding in the UK market could take years due to the existing exclusive content recommendation contracts that large publishers already have with the incumbent platforms. The other two expressed the view that these exclusive contracts make it extremely difficult for a new entrant to compete, even assuming it would have the technology. It was submitted that new entrants would not have enough demand to monetise for a long time.

(b) Two competitors explained that the UK is a very challenging and sophisticated market to enter, given the presence of already dominant players. One of them said that building a network with enough reach to run campaigns at the same time as having sufficient campaigns to fill the inventory was one of the barriers.

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[225] Parties' Response to the CMA's Issues Letter, paragraph 2.6.

(c) One competitor stated that they were currently developing a content recommendation product, but considered the UK regulatory environment and the economic uncertainty surrounding Brexit to be barriers to entry, as these resulted in the competitor being unable to predict if and when its new content recommendation product may be available in the UK.

(d) MGID also explained that it expected to be able to increase its UK presence within the next two years, though noted that [✕].[226]

322. Further, the Parties stated, in the context of their submissions on the benefits of the Merger, that there are strong network effects from combining data and from combining publishers and advertisers,[227] which suggests that this may present a barrier to entry for potential entrants who do not have access to the large amount of data and existing advertiser and publisher relationships of incumbent companies. The Parties also submitted that digital advertising is characterised by innovation, and that certain of these innovations are required by customers (for example, programmatic bidding). The Parties submitted that advertisers would likely exclude the Parties from their portfolio if they did not keep up with 'ad-tech wide' developments in reducing transaction costs.[228] This also suggests that there may be barriers to entry in the form of the significant resources, and substantial research and development spend in particular, required to enter.

323. Finally, the CMA notes that both the Parties took a long time to become profitable. Taboola submitted that [✕]. Outbrain [✕].[229] Many publishers have exclusivity agreements with the Parties, such that the available market for new entrants is smaller than that available to the Parties on entry. It may therefore take new entrants even longer than the Parties to become profitable. The CMA considers this to be evidence of significant barriers to entry.

Conclusion on general entry and expansion

324. On the basis of the evidence set out above, the CMA does not consider that entry or expansion in general will be timely, likely and sufficient to prevent any SLC arising in the supply of content recommendation platform services to publishers in the UK. The CMA has separately considered the potential expansion by Google below.

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[226] [✕] response to CMA's questionnaire.
[227] Salinger White paper, provided to the CMA on 26 May 2020, pages 20-25. Further submissions from the Parties on benefits arising as a result of the Merger is set out in the section on Efficiencies, below.
[228] Salinger White paper, provided to the CMA on 26 May 2020, pages 19-20.
[229] Final Merger Notice, paragraphs 36 and 38.

Expansion by Google

325.   As noted above in relation to alternative suppliers of content recommendation platform services, Google is already active in the supply of content recommendation platform services with its Matched Content tool, and has been for some years.

326.   The Parties have submitted that Google is looking to expand its content recommendation offering with the introduction of its Multiplex Ads product, described in promotional materials as 'customizable, cross-screen grids of native ads that offer a brand safe replacement for content recommendation materials'.[230] The Parties submitted that this product is poised to dominate content recommendation services and provided the example of Taboola losing a portion of its business with [✂] in the US to Google as an example of Google's expansion having a material impact on Taboola's revenues and impressions.[231] The Parties provided a number of internal documents as evidence of the threat posed by Google and the roll-out of Google's Multiplex Ads product in particular.[232]

327.   The Parties submitted that the CMA's Interim Report found that Google was dominant in search and display advertising, had a dominant SSP/Ad Exchange, a dominant Demand-Side Platform for advertisers, and dominant publisher ad server.[233] The Parties also submitted that Google can leverage its dominant publisher and advertiser ad servers to channel demand into new advertising formats, and that this was corroborated by the CMA's Interim Report.[234,235] Finally, the Parties submitted that none of the barriers to entry identified by the CMA (including exclusivity arrangements, network effects, access to data, or financial constraints) would be of any significance to Google.[236]

328.   The CMA has considered in detail whether expansion by Google, through its Multiplex Ads tool, might prevent an SLC from arising in relation to the supply of content recommendation platform services to publishers in the UK. Google has told the CMA, in response to a request using the CMA's formal information-gathering powers, that [✂].[237]

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[230] Parties' Response to the CMA's Issues Letter, paragraphs 4.4 to 4.20.
[231] Parties' Response to the CMA's Issues Letter, paragraph 4.12.
[232] Parties' Response to the CMA's Issues Letter, Table 4.
[233] Parties' Response to the CMA's Issues Letter, paragraph 4.17.
[234] The Parties' interpretation of the CMA's Interim Report includes some inaccuracies. The report does not talk about Google channelling its demand into new advertising formats, nor it discusses leveraging theories in relation to the advertiser ad server.
[235] Parties' Response to the CMA's Issues Letter, paragraph 4.14.
[236] Parties' Response to the CMA's Issues Letter, paragraph 4.18.
[237] [✂].

329. Given that the Google's Multiplex Ads tool is still in alpha testing, it is not yet clear whether this tool would constitute content recommendation, or another form of native advertising. However, the CMA considers the description of the service provided by Google would fall within the definition of, or is similar in nature to content recommendation (see paragraph 56 above) and the CMA has therefore conducted its analysis on the basis that Google's Multiplex Ads may constitute, or include, content recommendation. However, it has not been necessary for the CMA to conclude on this classification of Multiplex Ads because it found that, even if Google's Multiplex Ads were to constitute content recommendation, expansion by Google would not be sufficient to prevent an SLC.

330. In assessing whether expansion by Google, and in particular through its Multiplex Ads tool, would be timely, likely and sufficient such that it would prevent an SLC, the CMA has considered:

    (a) the Parties' submissions;

    (b) the Parties' internal documents; and

    (c) evidence provided by Google.

    Timely

331. In terms of timeliness, the CMA's guidelines indicate that the CMA may consider entry or expansion within less than two years as timely, but this is assessed on a case-by-case basis, depending on the characteristics and dynamics of the market, as well as on the specific capabilities of potential entrants.[238]

332. The Parties submitted that Google is already having a substantial competitive impact on Taboola (noting Taboola losing a portion of its business with [✂] to Google in particular) and that this will intensify once Google's Multiplex Ads tool leaves alpha phase.[239] The Parties also submitted a number of internal documents as evidence of the current competitive threat posed by Google's Multiplex Ads and provided examples of its use by publishers, in particular:

    (a) email from [✂] (Taboola) to Taboola's Strategy team on 5 May 2020 attaching a Multiplex Ads Cheat Sheet and stating [✂];

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238 *Merger Assessment Guidelines*, paragraph 5.8.11
239 Parties' Response to the CMA's Issues Letter, paragraph 4.11.

(b) email from [✂] (Taboola) to [✂] (Taboola) on 8 May 2020 referring to an industry report on Google testing [✂].[240] It further states that [✂];

(c) email from [✂] (Taboola) to [✂] (Taboola) on 17 May 2020 attaching screenshots of [✂]; and

(d) email from [✂] (Taboola) to [✂] (Taboola) on 19 May 2020 attaching a screenshot of Google's Multiplex Ads unit in the middle of an article on a Polish publisher's website.

333. The CMA notes that the timing of the Google's Multiplex Ads alpha testing means that the large majority of the Parties' internal documents discussing the competitive constraint that it poses were created after the Merger was in contemplation; indeed some were created as recently as 19 May 2020, mid-way through the CMA's phase 1 investigation and during the investigations by the US and Israeli competition authorities. The CMA is cautious about relying on internal documents that support the Parties' arguments when those documents are produced by the Parties during the period of contemplation of the Merger, in particular during the period of the CMA's investigation or that of other competition authorities.

334. Google submitted that [✂].[241]

335. Given the evidence set out above, and in particular Google's submissions regarding [✂], the CMA believes that expansion by Google in the market for content recommendation platform services to publishers in the UK may be **timely**.

Likely

336. The Parties submitted that expansion by Google was likely for the following reasons:

(a) the Parties have seen evidence of Google's launch of Multiplex Ads' alpha testing with a Taboola publisher [✂];[242]

(b) Google has steadily expanded across digital advertising formats over the past five years, culminating in the launch of Multiplex Ads;[243] and

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[240] The CMA understands this to refer to User Experience.
[241] [✂].
[242] Parties' Response to the CMA's Issues Letter, paragraphs 4.12-13.
[243] Parties' Response to the CMA's Issues Letter, paragraph 4.16.

(c) none of the barriers to entry identified by the CMA in its Issues Letter would apply to Google.[244]

337. In its assessment of the likelihood of Google's expansion of its Multiplex Ads product beyond alpha testing and [✂], the CMA has had regard to statements made by Google in submissions to the CMA and in its internal documents. In particular, Google noted that the [✂].

338. The CMA has seen evidence in Google's internal documents regarding the [✂]. Google's internal documents describe how [✂].[245] While the CMA has also seen some evidence suggesting that there remain a number of obstacles for Google to overcome prior to full release, for example [✂][246,247] overall, there is nothing in Google's internal documents to suggest that Google is currently considering halting the expansion of its Multiplex Ads product.

339. The CMA considers that the barriers to entry and expansion described above would apply to Google. In particular, the CMA notes that while Google's deep pockets and advertising experience may mean that it has an advantage in comparison to other rivals or potential entrants, Google would still have to overcome the barriers discussed above in order to expand in the market for the supply of content recommendation platform services to publishers in the UK. The CMA notes in this regard that Google only has a minimal presence in the supply of content recommendation platform services in the UK despite having been active through its Matched Content product for many years.

340. Finally, as noted above, in relation to Google as an alternative supplier of content recommendation platform services, while third parties did not list Google as a competitor in relation to content recommendation platform services, one competitor was of the view that Google would be able to enter the market without any difficulty. However, the competitor did not believe Google would have an interest in doing so.

341. Given the evidence set out above, and in particular Google's internal documents discussing [✂], and Google's [✂], the CMA believes that expansion by Google in the market for content recommendation platform services to publishers in the UK may be **likely**.

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[244] Parties' Response to the CMA's Issues Letter, paragraph 4.18.
[245] [✂].
[246] Though the document also suggested that Google had taken steps to overcome this obstacle.
[247] [✂].

Sufficient

342. The CMA has also considered whether expansion by Google in the supply of content recommendation platform services to publishers in the UK will be sufficient to prevent a realistic prospect of an SLC as a result of the Merger.

343. The Parties submitted that Google's expansion will be sufficient given, as recognised by the CMA's Interim Report, Google is the leading provider in a range of other segments relating to digital advertising.[248]

344. While the CMA has taken into account Google's overall strength and market power in relation to digital advertising, the CMA has considered whether its expansion in the supply of content recommendation platform services to publishers in the UK would be sufficient to prevent an SLC arising from the Merger on the basis of the available evidence. In carrying out this assessment, the CMA has considered:

   (a) the constraint provided by Google on the Parties in relation to content recommendation to date (via its Matched Content tool);

   (b) the extent to which Google's expansion (in particular the launch of its Multiplex Ads tool) will mean that it competes closely with the Parties' activities in relation to content recommendation; and

   (c) the strength of the Parties in relation to the supply of content recommendation platform services and the extent to which they would remain each other's closest competitors following expansion by Google.

   - *The constraint provided by Google on the Parties in relation to content recommendation to date (via its Matched Content tool)*

345. In its assessment of the sufficiency of any expansion by Google into the supply of content recommendation platform services in the UK, the CMA has also had regard to Google's current position in content recommendation through its Matched Content tool, as described further in paragraphs 168 onwards above. In particular, the CMA notes that Google has been active in the provision of content recommendation through its Matched Content tool for a number of years and does not appear to have provided a significant constraint on the Parties during that time. In particular, the CMA notes that the constraint currently provided by Google in relation to content recommendation

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[248] Parties' Response to the CMA's Issues Letter, paragraph 4.17.

platform services is significantly more limited than that provided by each of the Parties. As noted above:

(a) Google's Matched Content tool accounts for just [0-5]% of the market, in comparison to the Parties' combined shares of [80-90]%;

(b) the CMA has not seen any evidence in the Parties' internal documents to suggest that Google exercises a significant constraint on Taboola and Outbrain in the supply of content recommendation to UK publishers; and

(c) only a small number of the publishers that responded to the CMA's investigation considered Google to be an alternative to the Parties in relation to the supply of content recommendation platform services.

346.   At this early stage in the development of Google's Multiplex Ads product, it is unclear to the CMA what the impact of the Multiplex Ads product will be on the limited constraint already provided by Google in the form of its Matched Content tool..

- *The extent to which, following Google's expansion, it will closely compete with the Parties' activities in relation to content recommendation*

347.   The CMA has considered the extent to which the launch of Google's new Multiplex Ads tool will result in Google becoming a close competitor of the Parties. In making this assessment, the CMA has considered the Parties' submissions, the Parties' internal documents, Google's submissions to the CMA, and Google's internal documents.

348.   **The Parties' submissions**: The Parties submitted that Google is 'poised to dominate' content recommendation services through its recently-introduced Multiplex Ads. The Parties submitted that this tool is positioned to replace publishers' existing content recommendation services.[249]

349.   **The Parties' internal documents**: The majority of the Parties' internal documents do not discuss Google's Multiplex Ads product in detail. However, a small number of the Parties' internal documents suggest that the Parties do consider Google's Multiplex Ads tool to be similar to a content recommendation offering (though as noted above, the CMA has had regard to the fact that some of these documents were created while the CMA's merger investigation was ongoing):

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[249] Parties' Response to the CMA's Issues Letter, paragraph 4.9.

(a) email from [✂] (Taboola) to [✂] ([✂], one Taboola's major publishers) on 22 April 2020 explaining that Taboola had noticed a number of [✂] and [✂];

(b) email from [✂] (Taboola) to [✂] (Taboola) on 8 May 2020 referring to an industry report on Google testing [✂];[250] and

(c) email from [✂] (Outbrain) to [✂] (Outbrain). [✂] on 17 October 2019 notes that a contact at [✂] let him know that [✂].

350. However, the Parties' internal documents also suggest that there may currently be limitations to Google's Multiplex tool. For example, the email from [✂] (Outbrain) to [✂] (Outbrain), [✂] (Outbrain), [✂] (Outbrain), [✂] (Outbrain), and [✂] (Outbrain) on 5 March 2020 discussing Google's continued testing of Multiplex states [✂] and [✂] and concludes [✂].

351. **Google's submissions**: As noted above, Google has stated in submissions to the CMA that [✂]. While the CMA considers that the description of the service provided by Google would be likely to fall within the definition of or be similar in nature to content recommendation (see paragraph 56 above), it is not clear the extent to which the product will differ (if at all) from that provided by the Parties.

352. **Google's internal documents**: Google's internal documents appear to suggest that Multiplex Ads would be similar in nature to content recommendation and note the similarity of placement with those services offered by the Parties:

(a) Google's [✂][251] [✂]; and

(b) Google has produced a 'Multiplex Ads Cheat Sheet' which states 'Multiplex Ads are customizable, cross-screen grids of native ads that offer partners a brand safe replacement for content recommendation ads'.

353. On the basis of the evidence set out above, the CMA considers that, due to the early stage of development of Google's Multiplex Ads product, it is not clear whether (and if so, the extent to which) the Multiplex Ads tool will be differentiated from the Parties, for example, whether Google will be able to match the Parties' quality[252] and whether the adverts included in Google's Multiplex Ads tool will be more native in style, and less focused on editorial

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[250] The CMA understands this to refer to User Experience.
[251] [✂].
[252] See, as noted above, the Outbrain email from [✂] (Outbrain) to [✂] (Outbrain), [✂] (Outbrain), [✂] (Outbrain), [✂] (Outbrain), and [✂] (Outbrain) on 5 March 2020 which states [✂] and [✂] and concludes [✂].

and advertorial[253] content, such that it offers a more limited competitive constraint.

- *The strength of the Parties in relation to the supply of content recommendation platform services and the extent to which they would remain each other's closest competitors following expansion by Google*

354. Finally, the CMA has considered the weight of the evidence set out above in relation to Theory of harm 1, which suggests that the Parties are each other's closest competitor and indicates that the Parties will have a very strong position in the supply of content recommendation platform services to UK publishers post-Merger. In particular, the evidence as set out in relation to Theory of harm 1 above, indicates that, absent expansion by Google, there are no material competitors to the Parties. In such circumstances, the CMA would need strong evidence of sizeable and significant entry or expansion in order to consider that such expansion would be sufficient to prevent a realistic prospect of an SLC occurring as a result of the Merger.

355. In particular, Google would have to expand to such a level that the loss of competition that would be experienced between Taboola and Outbrain as a result of the Merger could no longer be considered substantial. In light of the market concentration (see the section on Shares of supply in relation to Theory of harm 1 above), the Parties' very high combined shares of supply, the closeness of competition between the Parties, and the existing limited constraint from other providers, any increase in the constraint from Google would have to be very significant to prevent a realistic prospect of an SLC from arising. The evidence in relation to the extent of the constraint that would be provided by Google on the Parties following the launch of Multiplex Ads is not sufficient to reach this conclusion.

356. As noted above, the CMA's Online Platforms and Digital Advertising Market Study is ongoing, with a Final Report due by 2 July 2020.[254] The CMA's conclusions on the insufficiency of Google's expansion are consistent with the CMA's Interim Report. The CMA's Interim Report recognises that Google appears to have the incentive and ability to leverage its market power in general search and social media into other related services. Such market power may well make it easier for Google to enter a market than other, smaller, entrants. However, Google will still face certain barriers to expansion

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[253] As noted above, an Advertorial is a newspaper or magazine advertisement giving information about a product in the style of an editorial or objective journalistic article.
[254] CMA's Interim Report.

and the evidence set out above does not support a finding that its expansion would be sufficient to prevent an SLC arising from the Merger.

- *Conclusion on sufficiency*

357. On the basis of the available evidence, the CMA believes that expansion by Google in the supply of content recommendation platform services to publishers in the UK would **not be sufficient** to prevent a realistic prospect of an SLC as a result of the Merger.

Conclusion on entry and expansion

358. The CMA believes that there are significant barriers in place, which will not allow timely, likely and sufficient entry/expansion of competitors to prevent any SLC from arising as a result of the Merger.

359. In particular, the CMA considers that the Parties' exclusivity agreements may act as a barrier to entry, as they prevent publishers from easily switching between platforms. The CMA also considers that this is a market characterised by strong network effects and innovation, suggesting that entry or expansion, particularly by smaller companies, is likely to be difficult.

360. The CMA also considers that it is possible that the Merger could deter entry by smaller rivals, who would be competing with a very strong incumbent, with considerable market power, and the advantages of network effects, which it is able to leverage in the form of exclusivity agreements.

361. In relation to possible expansion by Google in the supply of content recommendation platform services to UK publishers, in particular through the launch of its Multiplex Ads product, the CMA believes on the basis of the available evidence that such expansion would not be sufficient to prevent a realistic prospect of an SLC arising as a result of the Merger.

Efficiencies

362. While mergers can harm competition, they can also give rise to efficiencies. Efficiencies arising from the merger may enhance rivalry, with the result that the merger does not give rise to an SLC. For example, a merger of two of the smaller firms in a market resulting in efficiency gains might allow the merged entity to compete more effectively with the larger firms. Efficiencies may also be taken into account in the form of relevant customer benefits.[255]

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[255] *Merger Assessment Guidelines*, paragraphs 5.7.1 to 5.7.4.

363. The Parties submitted that the Merger will offer significant benefits, allowing the Merged Entity:

(a) to combine publishers and advertisers. The Parties argued that having access to a larger advertiser base will increase the bidding density and lift up publishers' RPM;[256]

(b) to select the best matching algorithm and improve the quality of advertising targeting for one of the Parties;[257]

(c) to have increased access to user data that will improve targeting services;[258]

(d) to reduce opportunity costs of contracting on both sides of the market by increasing scale and the combination of ancillary services;[259] and

(e) to eliminate duplicative innovation and R&D costs, enabling accelerated development of more effective personalisation algorithms and user interfaces.[260]

364. The CMA considers that it has not received sufficiently compelling evidence to indicate that any rivalry-enhancing efficiencies would be timely, likely and sufficient to prevent an SLC. In particular:

(a) evidence provided by the Parties to support their submissions on efficiencies is not of the standard needed at phase 1 to meet the compelling evidence threshold;[261]

(b) the efficiencies that the Parties have submitted (in particular, scale and network effects) do not appear to be Merger-specific;

(c) the CMA considers that the Parties' submissions with regard to accessing a larger advertiser base as a result of the Merger are weakened by the large number of advertisers already multi-homing between the Parties;[262] and

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[256] Parties' Response to the CMA's Issues Letter, paragraph 3.48. CRA Report, 'Outbrain/Taboola An Economic Analysis of Competitive Effects', paragraph 120.
[257] Parties' Response to the CMA's Issues Letter, CRA Report, 'Outbrain/Taboola An Economic Analysis of Competitive Effects', paragraph 122.
[258] Parties' Response to the CMA's Issues Letter, paragraph 3.47. CRA Report, 'Outbrain/Taboola An Economic Analysis of Competitive Effects', paragraph 123.
[259] Parties' Response to the CMA's Issues Letter, CRA Report, 'Outbrain/Taboola An Economic Analysis of Competitive Effects', paragraph 124.
[260] Parties' Response to the CMA's Issues Letter, paragraph 3.49.CRA Report, 'Outbrain/Taboola An Economic Analysis of Competitive Effects', paragraph 125.
[261] *Merger Assessment Guidelines,* paragraph 5.7.4.
[262] A very large proportion of the advertisers that responded to the CMA's investigation are currently multi-homing between the Parties for content recommendation.

(d) while there may be benefits to some of the Parties' advertiser customers, there is insufficient evidence that such benefits would exceed the potential anticompetitive effects of the Merger.

Third party views

365. The CMA contacted customers (both advertisers and publishers) and competitors of the Parties. A number of these third parties raised concerns regarding the Merger, referencing, for example, the reduction in the options available to customers in relation to content recommendation platform services, the creation of a monopoly provider, the ability of the Parties to reduce revenues available through the revenue sharing agreements and the potential impact on the quality of the services that the Parties provide.[263] In particular:

(a) one competitor and a large number of customers noted that competition in relation to content recommendation platform services will cease to exist because the Parties are the biggest two companies in the market and the Merger would therefore create a monopoly provider;[264]

(b) many customers observed that as result of the Merger, publishers' revenues share will likely decrease;[265]

(c) one competitor and a number of customers commented that publishers will no longer have the ability to negotiate higher revenue shares by playing the Parties off against one another;[266] and

(d) some customers also considered that the reduction in competition between the Parties could impact on the quality of the end user experience because the Merged Entity may feel less pressure to provide publishers with a better product and the advertising quality required.[267]

366. Third party comments have been taken into account where appropriate in the competitive assessment above.

Conclusion on substantial lessening of competition

367. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC as a result of

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[263] See paragraph 222 on Publisher's views for further detail.
[264] [✕] responses to CMA's questionnaire.
[265] [✕] responses to CMA's questionnaire.
[266] [✕] responses to CMA's questionnaire.
[267] [✕] responses to CMA's questionnaire.

horizontal unilateral effects in relation to the supply of content recommendation platform services to publishers in the UK.

Decision

368. Consequently, the CMA believes that it is or may be the case that (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of an RMS; and (ii) the creation of that situation may be expected to result in an SLC within a market or markets in the United Kingdom.

369. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under section 73 of the Act instead of making such a reference.[268] The Parties have until 3 July 2020[269] to offer an undertaking to the CMA.[270] The CMA will refer the Merger for a phase 2 investigation[271] if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides[272] by 10 July 2020 that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

Joel Bamford
Senior Director, Mergers
Competition and Markets Authority
26 June 2020

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[268] Section 33(3)(b) of the Act.
[269] Section 73A(1) of the Act.
[270] Section 73(2) of the Act.
[271] Sections 33(1) and 34ZA(2) of the Act.
[272] Section 73A(2) of the Act.