

FINANCIAL TIMES GROUP

RESPONSE TO CMA / DIGITAL MARKETS TASKFORCE ("DMT") CALL FOR INFORMATION

31 JULY 2020

EXECUTIVE SUMMARY

1. The FT welcomes the CMA's recommendation for a Digital Markets Unit ("DMU"), its proposals for a Code of Conduct and additional 'pro-competitive' ex-ante regulatory powers in order to remedy the issues facing the digital markets sector.
2. As recognised by the CMA, there are a number of issues to address within the digital markets (including with digital advertising and beyond) which are of the utmost urgency in ensuring the plurality of news media.
3. It is disappointing that the CMA has decided not to open a full market investigation which may have represented the most expedient route to achieving some of the more necessary changes required to address the issues facing digital markets.
4. However, the FT acknowledges that a full market investigation would itself have been time consuming and considers that urgent action is required. The CMA's proposals represent the next best option in order to address the issues facing the digital publishing sector. Establishing the DMU and related regulatory framework will provide a significant opportunity to re-balance key relationships within the publishing sector and guarantee consumer choice and access to quality journalism.
5. As set out in more detail below, it is important that the parameters of the DMT's recommendations are not drawn too narrowly and that the Code is not limited to being a form of 'soft law.' Otherwise this would represent a missed opportunity in both addressing the issues facing digital advertising, and access to digital markets in a broader sense.
6. In addition, the CMA's market study focuses on large online platforms which rely on digital advertising revenues (i.e. Search – Google, and Social Media - Facebook). However, this neglects the third major digital route for access to publishing - transactional marketplaces such as the Apple App Store and its related aggregation service, Apple News (and Apple News+).

7. The CMA recognises¹ that the definition of Strategic Market Status (SMS) may need to incorporate business models outside the scope of its study. The FT encourages the DMT to consider this seriously in order to take advantage of this opportunity.
8. Digital markets extend beyond digital advertising and there are significant issues facing other business models such as subscription-based publishing and other direct to consumer services. These business models offer the most sustainable source of revenue for publishers and are now seen as a critical contributor to the future of the news media ecosystem. Yet content funded by subscription is rarely treated by the platforms on the same basis as free/ad-funded content. There is a risk that without intervention a variety of business models, offering consumers genuine choice, will fail to gain the traction needed to create a sustainable news ecosystem.
9. We summarise some of our key concerns below.

CMA Report

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20. [Confidential]

¹ CMA Final Report paragraph 7.64

App Stores/Apple News

21. As noted above, the FT has also experienced significant difficulties in dealing with the Apple, its App Store and Apple News. The FT is not alone in its concerns and notes that the European Commission has recently opened an investigation into Apple's App Store practices following a complaint from Spotify.
22. [Confidential]
 - 22.1 [Confidential];
 - 22.2 [Confidential];
 - 22.3 [Confidential];
 - 22.4 [Confidential];
 - 22.5 [Confidential];
 - 22.6 [Confidential];
 - 22.7 [Confidential];
 - 22.8 [Confidential].
23. [Confidential].
24. The ACCC concluded that "Apple may also be a possible candidate to be a designated platform in the future, given the continued growth in use of Apple News and the issues surrounding Apple".² The FT considers that there is a strong case for the inclusion of Apple as a platform with SMS within the UK (either in relation to Apple News or its App-Store in their own right); and that the Code could be used to address some of the issues it faces with Apple's practices. If the DMT concludes not to make this recommendation, then (i) the definition of SMS should be sufficiently wide so to enable its inclusion at a later date; and (ii) the wider "pro-competition" intervention regime should be designed with these issues in mind allowing for complaints and investigations in an appropriate manner.
25. The FT encourages the CMA, DMT and Government to approach these issues with the degree of importance and expedience required. We respond to the specific questions asked by the Call for Information below.

² ACCC's Final Report - Page 255

Response to Call for Information

Scope of a new approach

Question 1

What are the appropriate criteria to use when assessing whether a firm has Strategic Market Status (SMS) and why? In particular:

- **The Furman Review refers to 'significant market power,' 'strategic bottleneck,' 'gateway', 'relative market power' and 'economic dependence':**
 - **How should these terms be interpreted?**
 - **How do they relate to each other?**
 - **What role, if any, should each concept play in the SMS criteria?**
 - **Which, if any, existing or proposed legal and regulatory regimes, such as the significant market power regime in telecoms, could be used as a starting point for these criteria?**
 - **What evidence could be used when assessing whether the criteria have been met?**
1. Existing regimes such as in the telecoms sector serve as a useful comparator; however they should not necessarily be used as a precedent for future regulation. We understand that the characteristics of 'significant market power' in the telecoms sector have many similarities to dominance within competition law. For example, they include market share, absence of countervailing buyer power, absence of potential competition, barriers to entry etc.
 2. This approach is understandable given the history of the telecoms sector (i.e. the existence dominant ex-state monopolies), well established market definitions and the relative similarity of business models between the largest players.
 3. However, the FT considers that the DMT should not necessarily be overburdened by a desire to adhere to 'established' regulatory principles. New regulation is required for new markets. Digital markets are complex and dynamic, with a range of business models and issues to address. Therefore regulation needs to be flexible.
 4. The FT understands that the 'gatekeeper' characteristics proposed by the EC (relating to the Digital Markets Act and proposed New Competition Tool), include the presence of significant network effects, the size of the user base and the ability to leverage data across markets.

These are not necessarily tied to established concepts of dominance, but are all areas that the CMA has considered in detail in its report³.

5. The Furman Report suggested a number of terms as noted above which represent somewhat of a halfway position. For example, requiring 'relative market power' and 'economic dependence' suggests that a platform with SMS does not need absolute market dominance, but rather power relative to certain trading partners to impose abnormal trading conditions (for example Apple does not require certain companies such as Deliveroo/Uber to adhere to some of its more onerous conditions, but it does for most other companies offering digital content).
6. From the FT's perspective the terminology used by the CMA in its report is a suitable starting point:
 - 6.1 "We would envisage the SMS designation criteria to include firms that have obtained gatekeeper positions and have enduring market power over the users of their products"⁴; and
 - 6.2 "which hold the largest amount of consumer data, are used by the most consumers, and consumers find it most difficult to avoid using"⁵.
7. Similar principles from the Interim Report are also appropriate:
 - 7.1.1 "the platform acts as an important gateway for businesses to access a significant portion of consumers; and
 - 7.1.2 businesses depend on the platform to access users on the "other" side of the market".⁶
8. In particular in relation to publishing, the ability to (i) utilise a platform which can direct consumer attention; combined with (ii) the power to choose which information is displayed to consumers or otherwise set the terms on how information is displayed, are also important elements of the definition. Journalism is dependent on fair and equitable discovery; however

³ For example, there are considerable network effects that exist within the Apple ecosystem. These include effects both due to the size of its user base (at both a consumer and third party app level), but also Apple's actions to increase the use of Apple Sign-In and Apple Pay. Apple Sign-In operates in a similar way to Facebook and Google sign-in, in that it reinforces how much it knows about consumers, even if the third party service being provided to the consumer actually competes against the platform). However. Apple recently required all publishers who offer third party log-in functionality on their apps to offer Apple Sign-In.

⁴ CMA Final Report - Paragraph 7.56

⁵ CMA Final Report – Summary paragraph 96

⁶ CMA Interim Report paragraph 6.30

the terms of access are currently controlled by these platforms. Any of the major platforms have the ability to materially change the terms of access, or what information is presented to consumers; which can have a material impact on channel profitability and readership.

9. However, the FT considers that traditional concepts such as 'economic dependency' are arguably less relevant. It is not necessary for a company to hold such an important trading position that other firms are economically reliant on it for it to hold significant market power; particularly where a company acts as a gatekeeper to an important route to market in the digital space (i.e. in either search, social media or apps).
10. With regards appropriate evidence, the FT considers that the CMA's proposals are a useful starting point. For example, the share of consumer time spent on the platform; level of reach of consumers; share of digital advertising revenues; control over the rules or standards which apply in the market, and the ability to obtain and control unique data that is applicable outside the market.⁷ These standards would apply equally to at least Google, Facebook and Apple. Although the CMA ranks Apple of lesser significance to Google and Facebook in terms of time spent on the platform. If the CMA compared figures solely in relation to the consumption of news-related content, we would expect that the statistics would be much more heavily skewed towards Apple's ecosystem (e.g. either Apple News and/or Apple based news apps).

Question 2

What implications should follow when a firm is designated as having SMS? For example:

- **Should a SMS designation enable remedies beyond a code of conduct to be deployed?**
 - **Should SMS status apply to the corporate group as a whole?**
 - **Should the implications of SMS status be confined to a subset of a firm's activities (in line with the market study's recommendation regarding core and adjacent markets)?**
11. Yes, in order to ensure that the regulatory regime retains sufficient flexibility to address issues across digital markets remedies beyond a code of conduct are required. The FT agrees that the Code itself should include a complaints procedure, an effective arbitration/dispute mechanism, the ability to order conduct and issue financial penalties for non-compliance with DMU orders and, where appropriate, for non-compliance with the Code⁸.

⁷ CMA Final Report paragraph 7.57

⁸ Final Report paragraph 7.69

12. The FT is also broadly supportive of the "pro-competitive" regime proposed by the CMA.
13. Without additional powers, the underlying causes behind much of what the Code will seek to address will continue to exist. As the CMA has decided not to open a market investigation (at least for the time being), the only other existing avenue for taking remedial action is a Competition Act investigation. As noted by the CMA⁹, these are time consuming and apply ex post, long after harm has occurred and positions have become entrenched. Remedies are also designed based on historic information and are fixed in time, but the conduct or related technology may have already evolved or become redundant.
14. The FT agrees that SMS status should apply to the corporate group as a whole. With regards its application to a subset of a firm's activities, the FT would comment that this subset should not be too narrowly construed, and will need to be sufficiently flexible to ensure that changes in future business practice are captured. The FT considers that there should be a positive obligation platforms with SMS to regularly disclose to the DMU any new businesses/activities which could fall within the core/adjacent business categories.
15. The FT considers that if Apple were to be designated as a platform with SMS either in relation to Apple News or its App-Store, the two areas of Apple's business are clearly inter-related in connection with the publishing sector; and therefore the Code should apply equally across both parts of the business.

Question 3

What should be the scope of a new pro-competition approach, in terms of the activities covered? In particular:

- **What are the criteria that should define which activities fall within the remit of this regime?**
- **Views on the solution outlined by the Furman Review (paragraph 2.13) are welcome.**

16. The FT considers that both the CMA (paragraph 7.7) and the Furman Report (paragraph 2.113) contain useful scopes for the new pro-competition approach. In particular, in the Furman Report, the idea that firms with "strategic market status are operated and developed in a way that considers and promotes the interests of the consumers and businesses that use them."
17. Protecting consumer's access to information through consumer choice and the plurality of the media are essential. As noted in the executive summary above, there are a variety of ways in which these are being impeded.

⁹ Final Report paragraph 7.33

18. The FT considers that the scope of the CMA's pro-competitive approach should not be confined to digital advertising markets, but should focus on supporting a variety of business models in order to foster greater consumer choice.
19. There is currently a significant disparity between the way in which platforms promote 'free'/ad-funded content and subscription based content, with a clear bias towards promoting free/ad-funded content which tends to drive 'recirculation', and keep the consumer within the platform's environment for longer. There are consumer protection requirements for publishers to ensure that they make it clear to consumers when they are benefitting from the content they produce (e.g. by making clear where content contains advertising, or is a paid-for endorsement etc). In contrast, algorithmic curation is completely opaque as to the commercial interests behind why certain content is receiving greater prominence on platforms.
20. It is important to ensure that competition takes place on the merits of what is valued by the consumer, rather than the platform. Therefore, platforms should: (i) provide for equal treatment of free vs paid content within search/discovery algorithms; (ii) encourage a range of business models (i.e. by not offering exclusive or preferential treatment solely to publishers that provide free content); and (iii) not discourage certain business models (e.g. by insisting that certain content must be free, monetised in a certain way, or in available in particular format). This will ensure that consumers are offered a free choice between ad-paid and subscription-paid services.
21. In relation to Google, there have been some positive changes in this regard. For example, subscription-funded content can now be fully indexed (i.e. is discoverable in search) following the relaxation of their "First Click Free" requirements¹⁰; although this does not guarantee that the content is actually promoted on an equal basis¹¹. Google also now engage in discussions about subscription business models and have made investments in (i) a fund, via the Google News Initiative, to support the development of paid content capabilities (including successful partnerships with the FT to support other European publishers to develop subscription models); and (ii) developing capabilities such as 'Subscribe with Google', a subscription enablement technology which represents a fairer exchange with publishers.
22. Nevertheless, these efforts have been limited in scale and scope and have not yet been sufficient to fundamentally improve the subscription businesses of the vast majority of publishers, nor do they address the opacity and imbalance in the value exchange inherent in Google's search ranking product, as referenced in point 10 of the executive summary. News

¹⁰ <https://www.theguardian.com/technology/2017/oct/02/google-to-ditch-controversial-first-click-free-policy>

¹¹ <https://support.google.com/webmasters/answer/7532484?hl=en>

businesses can only survive if quality journalism is discoverable by potential and existing subscribers, and the dominance of Google search is extremely significant in this sense.

23. In contrast, Facebook have not engaged on subscription models in any meaningful sense. It continues to incentivise publishers to provide free content to keep users within its closed ecosystem whilst increasing publishers' reliance on its platform. Its ability to change its algorithm and demote news content overnight is well publicised and has reportedly resulted in significant losses to numerous publishers.

Question 4

What future developments in digital technology or markets are most relevant for the Taskforce's work? Can you provide evidence as to the possible implications of the COVID-19 pandemic for digital markets both in the short and long term?

24. As noted in the executive summary above, the FT is concerned about so-called “voice assistants” and voice assisted search functions, in particular that they represent a more extreme example of the aggregation and curation issues previously discussed. Mobile device manufacturers, and manufacturers of other smart devices, use certain virtual assistants by default. There is an inherent risk in the level of control this affords to manufacturers in terms of what information is presented to consumers and from which sources. This ranges not only from news-related media, but just about every facet of life such as health, politics and retail.
25. On a macro level this could have significant consequences. However, focusing purely in relation to publishing, it creates potential issues on the reliability of the information presented (as consumers are not aware of where the source information has been taken from). In addition, in comparison to current news aggregators, there is no brand visibility or scope for publisher monetisation *at all*. This could only further exacerbate the issues already facing the industry.
26. It is worth noting that voice assistants represent one form of aggregation that existing today. It is likely that other forms will materialise as platforms seek to provide a more personalised service.
27. In relation to Covid-19, the impact on the publishing sector has been profound¹². As a consequence of lower economic activity, there is less demand for advertising space (in particular from travel/tourism/hospitality businesses) particularly in print media where newspaper circulation has been limited.

¹² <https://www.ft.com/content/b6fdec4c-e3e7-43b9-a804-03c435de65bb>

28. In addition, consumers are likely to have less disposable income, and therefore be less inclined to pay for subscriptions. If a consumer does opt to pay, they are likely to only subscribe to one service. This was the case before the crisis (in 2019 Oxford University's Reuters Institute for the Study of Journalism noted that subscription journalism was a 'winner takes most market'). Following the crisis this is only more likely to be the case. Therefore, it is essential the companies are able to compete for subscription revenues (and, indeed, against ad-paid services) on an equal footing.
29. In addition, the net result of lowering traditional advertising revenues only further highlights the growing dependence on online revenues to the publishing sector. The CMA has recognised that its impact on platforms has been relatively muted in comparison to elsewhere. It is essential that over the course of the recovery, the platforms are not able to use current market conditions to further solidify their position. For example, it is important for there to be a level playing field in search/social media/apps for the promotion of paid content vs. free/ad based content; this is not currently the case.

Remedies for addressing harm

Question 5

What are the anti-competitive effects that can arise from the exercise of market power by digital platforms, in particular those platforms not considered by the market study?

30. Please see above regarding the FT's concerns in the Executive Summary above.

Question 6

In relation to the code of conduct:

- **Would a code structure like that proposed by the market study incorporating high-level objectives, principles and supporting guidance work well across other digital markets?**
- **To what extent would the proposals for a code of conduct put forward by the market study, based on the objectives of 'Fair trading', 'Open choices' and 'Trust and transparency', be able to tackle these effects? How, if at all, would they need to differ and why?**

31. The FT considers that the CMA's three tiered approach of broad objectives, with more targeted 'principles' addressed to specific companies, and detailed guidelines, provides sufficient flexibility so that it would be helpful in other digital markets, such as in relation to app-stores, Apple News etc.
32. For example: in relation to 'Fairness' this could be used to address:

- 32.1 the discriminatory way that Apple treats developers of digital content (as explained above);
 - 32.2 its use of the 'Apple Tax'; and
 - 32.3 [Confidential].
33. In relation to 'Openness', this could be used to address:
- 33.1 the mandatory use of Apple's in-app payment system (coupled with strict rules that limit other forms of e-commerce sales);
 - 33.2 the mandatory use of Apple sign-in where an app developer has allowed third party log-in;
 - 33.3 the 'choice architecture' Apple has employed with regards the relationship with the consumer. For example, the default that data will not be shared and the lack of clarity with regards the benefits of consumers opting to share data with the app developer such as cross-platform subscriptions or future subscription upgrades/discounts. This could be improved either at the app store sign up stage and/or via clearer in-app messaging at a later stage; and
 - 33.4 the bundling of Siri as its default assistant and lack of transparency as to content source.
34. In relation to 'Transparency', this could be used to:
- 34.1 encourage greater access to emerging content trends and insights and the disclosure of meaningful and reliable data sets;
 - 34.2 allow greater regulation of Apple's algorithm and display of articles with Apple News; and
 - 34.3 [Confidential].

Question 7

Should there be heightened scrutiny of acquisitions by SMS firms through a separate merger control regime? What should be the jurisdictional and substantive components of such a regime?

35. Yes, there are a variety of options that are being widely debated in relation to most major merger control regimes. While the FT understands that the CMA's approach to the 'share of

supply' test is relatively broad; there is a risk that without amendments to the current regime, the test will not be adequate to allow review of all potentially problematic mergers. In addition, as the UK merger regime is voluntary, it is possible for a transaction to complete and for a degree of integration to have taken place. While the CMA has powers to impose 'hold-separate' orders and unwind integration, this is arguably not as effective requiring prior notification of the transaction.

36. Previous mergers in digital markets have widely been criticised, in particular in relation to the amount of data held by the merged entity. The impact of access to data on competition and access to markets, and the network effects generated by increasingly large user bases, have arguably not been given sufficient weight. There are several options worth exploring for example:

36.1 A lowering of the thresholds for acquisitions made by platforms with SMS similar to those otherwise used in relation to particular industries such as dual-use technology, quantum computing and computing hardware¹³;

36.2 The adoption of a minimum transaction value threshold (regardless of turnover) in relation to acquisitions made by platforms with SMS in order to avoid so called 'killer acquisitions' or acquisitions of companies that do not have traditional revenue-generation models;

36.3 A positive obligation on platforms with SMS to notify all acquisitions and/or prove that the transaction would not result in a substantial lessening of competition or why the aggregation of data sets would not cause material harm; and/or

36.4 A power similar to the US regulator whereby problematic acquisitions made by platforms with SMS could be unwound at a later date if anti-trust issues arose in the future¹⁴.

37. Any combination of these options would represent a positive step forward.

38. **Question 8**

What remedies are required to address the sources of market power held by digital platforms?

- **What are the most beneficial uses to which remedies involving data access and data interoperability could be put in digital markets? How do we ensure these remedies can effectively promote competition whilst respecting data protection and privacy rights?**

¹³ For example, a turnover test threshold of £1m.

¹⁴ For example, the DOJ's review of the Parker-Hannifin/Clarcor Inc.

- **Should remedies such as structural intervention be available as part of a new pro-competition approach? Under what circumstances should they be considered?**

39. The FT has noted its concerns above with regards the impact of digital platforms not only on the digital advertising market, but more broadly in relation to subscription news publishing.
40. The FT considers that a number of the options available to the CMA/DMU with regards data access etc, could be dealt with either by the Code or the pro-competitive intervention regime. However, it is important to allow sufficient flexibility in the pro-competitive intervention regime so that all areas which could otherwise be covered by the Code can also be covered in the wider intervention regime where the DMU considers it appropriate (i.e. to ensure that valuable tools which could apply, with proper consideration, to either SMS and non-SMS entities are not lost).
41. In relation to data, one of the FT's key concerns relates to the lack of information available from platforms with regards: (i) the volume of traffic to publishers' websites generated from platforms; (ii) the volume of page impressions when a platform is the originator; (iii) the impact of algorithmic changes to traffic and page discovery ; (iv) ecosystem wide (or market specific) data sharing regarding how discovery of journalism is changing on platforms (i.e. without wider industry context, it is not possible to discern whether a decrease in traffic results from something the publisher has done regarding its content, or whether the platform is penalising the publisher/all publishers for any reason); and (v) data on free/ad-paid vs subscription content consumption across platforms. This makes it difficult for publishers to understand that true value exchange that exists between publishers and platforms. While a better understanding would not necessarily resolve the power that platforms have to impose conditions of trade, it would go some way to facilitating meaningful discussion. These data sets could be made available by platforms on an aggregated basis (and so would not pose any data protection concerns).
42. In relation to other data-related interventions proposed by the CMA¹⁵; there is always benefit enabling consumer choice (whether in relation to personalised advertising or otherwise relating to consumer mobility). However, given the entrenched position that each of the major platforms now hold, it is debateable how material the impacts will be on competition, at least in the short to medium term, particularly in the publishing sector. Nonetheless, there are options which are worth exploring. For example: (i) platforms developing a common interchange format for media consumption data that would allow consumers to 'take your reading history' with you between news providers and platforms; or (ii) the ability to switch native sign-in identity provider so a consumer could choose to close their account (e.g. Facebook account) and migrate all of the connected accounts to a different identity provider

¹⁵ Final Report paragraph 7.111.

(i.e. ideas relating to data portability/interoperability should go beyond simply looking at the exchange of search query data).

43. In relation to mandating data separation one potentially helpful intervention could be to mandate that data collected from third party publisher content (remarketing pixels, ad server technology, social logins) is not used to competitive advantage over the publisher. If Google, Facebook or Apple collect data on what news a publisher's customers consume (due to a number of the control mechanisms they have in place as noted above) then have they have a stronger negotiating position with the publisher, and greater ability to market their news service to the publisher's customers.
44. For example, Apple recently required all publishers who offer third party log-in functionality on their apps to offer Apple Sign-In as a method of authenticating in-app log-ins. This new requirement risks publishers' data being used by Apple News (or Apple News+) to the detriment of the publisher, either as it (i) effectively discloses a new customer list to Apple allowing it to more effectively target its marketing campaigns; or (ii) prejudices the publisher's position with regards its own negotiations with Apple News.
45. In relation to consumer choice and default remedies, the FT broadly supports these in principle. Potentially helpful uses could include: (i) the removal of the requirement for in-app payments to be mandated via a specific platform; (ii) the removal of default settings for news discovery on Apple devices that favours Apple News – whether via Siri or other notifications; (iii) platforms pro-actively supporting interoperable standards for the delivery of content rather than offering priority to proprietary platform-specific technology (e.g. for “web apps” instead of just native apps, and for the web, optimised mobile web rather than AMP or Facebook IA standards); and (iv) offering consumers the opportunity to suggest improvements/personalisation to relevance algorithms deployed by platforms. For example if a consumer holds a subscription, a consumer could opt for the search/social/news discovery platform to favour content relating to that subscription rather than the platform having sole control over ranking.
46. In relation to structural remedies, these should be available where necessary. The CMA's report represents an appropriate balance as to when these remedies should be available.

Question 9

Are tools required to tackle competition problems which relate to a wider group of platforms, including those that have not been found to have SMS?

- **Should a pro-competition regime enable pre-emptive action (for example where there is a risk of the market tipping)?**

- **What measures, if any, are needed to address information asymmetries and imbalances of power between businesses (such as third-party sellers on marketplaces and providers of apps) and platforms?**
 - **What measures, if any, are needed to enable consumers to exert more control over use of their data?**
 - **What role (if any) is there for open or common standards or interoperability to promote competition and innovation across digital markets? In which markets or types of markets? What form should these take?**
47. The FT's concerns with regards marketplaces / providers of apps are set out above; these apply equally whether such companies are considered to be platforms with SMS or not. As previously noted it is important that the pro-competitive intervention regime is sufficiently wide so to enable the DMU, where it deems appropriate, to capture and remedy behaviours which would otherwise fall under the Code (in particular as there are areas of potential overlap between the Code and the pro-competitive intervention regime).
48. In relation to 'tipping markets', there will need to be a delicate balance between intervention and allowing markets to develop freely. However, there is a clear rationale behind enabling further regulation where necessary. One of the issues faced by the CMA, which itself recognises, is that the market position of the major platforms is such that its existing powers are not sufficient to adequately remedy its concerns. It is important similar issues do not arise in the future if they can be avoided.
49. Apple News could represent one such market. As noted above, Apple is able to use the benefits of its platform to promote its own news platform. In contrast, it continues to offer restrictive practices to publishers who want to offer their own subscription app service.

Procedure and structure of a new pro-competition approach

Question 10

Are the proposed key characteristics of speed, flexibility, clarity and legal certainty the right ones for a new approach to deliver effective outcomes?

50. Yes, the FT agrees with these characteristics.

Question 11

What factors should the Taskforce consider when assessing the detailed design of the procedural framework – both for designating firms and for imposing a code of conduct and any other remedies – including timeframes and frequency of review, evidentiary thresholds, rights of appeal etc.?

51. The FT does not intend to offer a detailed opinion at this time, but highlights the importance of ensuring that actions under both the Code and pro-competitive intervention regime should aim to be more expedient than the current competition regime, so not to lose one of the key benefits of the new regime.
52. Procedures under other 'Code-based' regimes, such as the Grocery Suppliers Code¹⁶, may serve as some form of guide to timescales and procedural frameworks (e.g. no mandatory timescales but investigations typically complete as soon as reasonably practicable having regard to the circumstances and, in any case, in less than 12 months).

Question 12

What are the key areas of interaction between any new pro-competitive approach and existing and proposed regulatory regimes (such as online harms, data protection and privacy); and how can we best ensure complementarity (both at the initial design and implementation stage, and in the longer term)?

53. The FT supports the CMA's proposal to work with the ICO to ensure that these important issues are dealt with in an appropriate manner.
54. There are some similarities between some of the data remedies proposed by the CMA (e.g. allowing users of their services to opt out of personalised ads) and existing rules under the GDPR. More stringent enforcement of existing rules may serve as an immediate solution whilst the new regime is being implemented.
55. One of the main challenges to consider in the future, if consumers are given the ability to control privacy setting through browsers, is that Google and Apple control both of the main browsers used by consumers. There would be an inherent risk of placing the privacy setting process (which could impact all businesses) within the control of the companies whose market power such a remedy would be designed to counter.

¹⁶

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/511676/GCA_Statutory_Guidance_updated_March_2016.pdf

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