



ITV PLC Response to Digital Markets Taskforce Call for Information

Summary

ITV's vision is to be a digitally-led media and entertainment company that creates and brings brilliant content to audiences wherever, whenever and however they choose. As a PSB we offer the best UK content to everyone, for free, provoking, hosting and shaping national conversations. ITV has changed rapidly as a business in recent years, modernising at pace.

The new world of streaming and online content, like the multichannel TV revolution before it, has brought many benefits for consumers. But the emerging global system of content distribution also endangers both the visibility and viability of the national PSB services and content that are a key part of a plural TV ecosystem.

Increasingly TV is being distributed globally online by a small number of major global distributors and aggregators. This online distribution is in the process of revolutionising TV across the world. In simple terms, the increasing centrality of the online distribution of TV is bringing to TV many of the same issues around data, competition (or lack of it) in advertising ecosystems, and exploitative terms of access to platforms. But it is not too late to act decisively in relation to TV and video distribution.

The interfaces people use to choose TV are increasingly controlled by global companies, including Amazon, Google, Apple, Comcast/Sky/NBC as well as Samsung. These platforms increasingly have unbeatable scale, colossal technology and marketing budgets as well as having the patient capital to invest in content on a global basis for the long term.

The acute risk is that the TV content that UK audiences can access most easily on their TV sets and other devices will be determined by deals for inclusion and global prominence between a small number of global content providers – Netflix, Apple, Disney – and these powerful global TV distributors – such as Google and Amazon. This will reduce choice for consumers and plurality of media for UK citizens, endangering effective competition between the national and the global in the medium term.

The simple issue is not that national/PSB content isn't popular or that people don't still want to find it but that the economics of free to view national content vs global pay-tv content is asymmetric in a world which will be increasingly dominated by global distributors. The national and the global can and should continue to co-exist in the UK in the long term without one imperilling the other. But for that to happen will require intervention otherwise the global will crowd out the national.

In this context, ITV welcomes the opportunity to comment on the CMA's final report and the work of the new Digital Markets Taskforce (the 'Taskforce'). In this short submission we explain why the creation of a Digital Market Unit with powers to ensure digital markets operate fairly, is crucial as part of broader efforts to continue to safeguard a thriving national audiovisual media content market in the UK, with a thriving public service broadcasting (PSB) system at its heart in competition with powerful global operators.

Some of the necessary intervention in this area will certainly be for Ofcom (either alone or in concert with the CMA) and be sector specific—ensuring the maintenance and strengthening of the PSB system overall for the medium to long term. But clearly there is a strong case for a joined up approach to such intervention, recognising the different approaches that are required to drive different outcomes. In particular, arguably the PSB intervention requires a degree of preference for PSBs (as the current EPG prominence regime delivers) as compared to more of a level playing field approach by the CMA to all other players.

But at the same time, there will be broader, market wide, intervention that will be required beyond the narrowly defined PSB system. In this context, we ask that, as a minimum, any new regulatory framework provide this 'Digital Regulator' with powers to ensure:

- Platforms with SMS guarantee all AV providers access to online audiences on fair terms;
- Content providers have fair access to and control over the data necessary to compete for audiences and advertisers; and
- Greater competition in digital advertising.

In short, the Taskforce would do well to ask itself - will the new regulatory framework prevent the AV sector suffering the same fate as news?

Context

ITV's vision is to be a digitally-led media and entertainment company that creates and brings brilliant content to audiences wherever, whenever and however they choose. As a PSB we offer the best UK content to everyone, for free, provoking, hosting and shaping national conversations.

ITV has changed rapidly as a business in the last few years, modernising at pace. We have invested substantially in our online services, ITV Hub and in launching our SVOD offer, BritBox, in partnership with the BBC. Our production business ITV Studios is producing innovative shows – from 'Bodyguard' to 'Queer Eye' – for streamers, broadcasters and cable companies globally. And as an ad-funded, free to air broadcaster, we are offering our brand partners, through investments in technology, more data-rich, targeted advertising, including via our online ad serving platform Planet V.

The new world of streaming and online content, like the multichannel TV revolution before it, has many benefits for consumers. The scale of content and technology spend amortised across the world has created very high-quality online TV offers to the great benefit of consumers. ITV is proud to be a content supplier to these new players.

But the emerging global system of content distribution also endangers both the visibility and viability of the national PSB services and content that are a key part of a plural TV ecosystem. Increasingly TV is being distributed globally online by a small number of major global distributors and aggregators. The interfaces which people use to choose TV are increasingly controlled by global companies, including Amazon, Google, Apple, Comcast/Sky/NBC as well as Samsung and LG. These platforms increasingly have unbeatable scale, colossal technology and marketing budgets as well as having the capital to invest in content on a global basis.

The acute risk is that the TV content that UK audiences can access most easily on their TV sets and other devices will be determined by deals for inclusion and global prominence between a small number of global content providers – Netflix, Apple, Disney and these powerful global TV distributors such as Google and Amazon. The net result, absent intervention, will be:

- That PSB channels and content gradually disappears from view on user interfaces and other ways of accessing TV content, in favour of global players with deep pockets and global commercial deals for the most prominent and visible positions on platforms; and
- That the economics of commercial PSB are undermined by these powerful TV distribution platforms who demand so much value from those whose content they offer that it is not viable to make and distribute high quality PSB content of particular appeal to a national audience. Clearly this is a variation on the commercial experience of the newspapers in seeking to deal with powerful global online distributors.

We see both of these trends already.

The simple issue is not that PSB content isn't popular or that people don't still want to find it but that the economics of free to view national content vs global pay-tv content is asymmetric in a world which will be increasingly dominated by global distributors.

The example of the difficulties that newspapers and even online players such as BuzzFeed have had at the hands on the platforms should be instructive in this context. As ViceMedia's CEO observed when announcing a raft of job cuts recently:

"...we aren't seeing the return from the platforms benefiting and making money from our hard work. Now, after many years of this, the squeeze is becoming a chokehold. Platforms are not just taking a larger slice of the pie, but almost the whole pie... 36,000+ lost jobs in journalism is enough to take your breath away..."

ITV is doing everything in its power to modernise its business for the online era but we also need the policy framework to move at pace too to recognise the new realities and market power of global platform operators.

If PSB is to survive and flourish, the government – supported by the Digital Markets Taskforce – will need to take action rapidly and decisively to ensure that future generations can continue to enjoy the benefits of a flourishing national PSB ecology, in parallel with all the choice of content that a global TV market can offer. The two can and should co-exist in the UK in the long term without either imperilling the other. But for that to happen will require intervention otherwise the global will crowd out the national.

In this context, ITV welcomes the opportunity to comment on the CMA's final report and the work of the new Digital Markets Taskforce (the 'Taskforce').

ITV is supportive of many of the CMA's recent findings

The CMA's findings represent a significant and welcome development. In particular, there can no longer be any doubt that Google and Facebook are dominant, gatekeeper platforms who exert undue power over all digital life and that a new regulatory framework is required, absent which, the digital economy will become an increasing monoculture with less innovation and choice for consumers than would otherwise be the case.

In this context, the CMA was right to draw particular attention in its report to the impact that digital platforms have had on news publishers. The CMA found that the platforms have had a significant detrimental impact on the provision of quality journalism. This is unsurprising given the level to which news publishers have become dependent on a small number of digital platforms for both access to audience and revenue:

- Digital platforms decide what audiences see - CMA found that together Google and Facebook mediate almost 40% of online traffic to large publishers;¹
- Digital platforms control the flow of advertising revenue - with 35% of digital display advertising revenue extracted in the advertising intermediation supply chain which is mainly controlled by Google;² and
- Digital platforms can inflict 'life' or 'death' decisions - small changes to algorithms can impact traffic by as much as 40-50%.³

It is clear that the impact has been profound. The move of audiences online has unsurprisingly resulted in a massive drop in traditional revenue, with revenue from print advertising falling

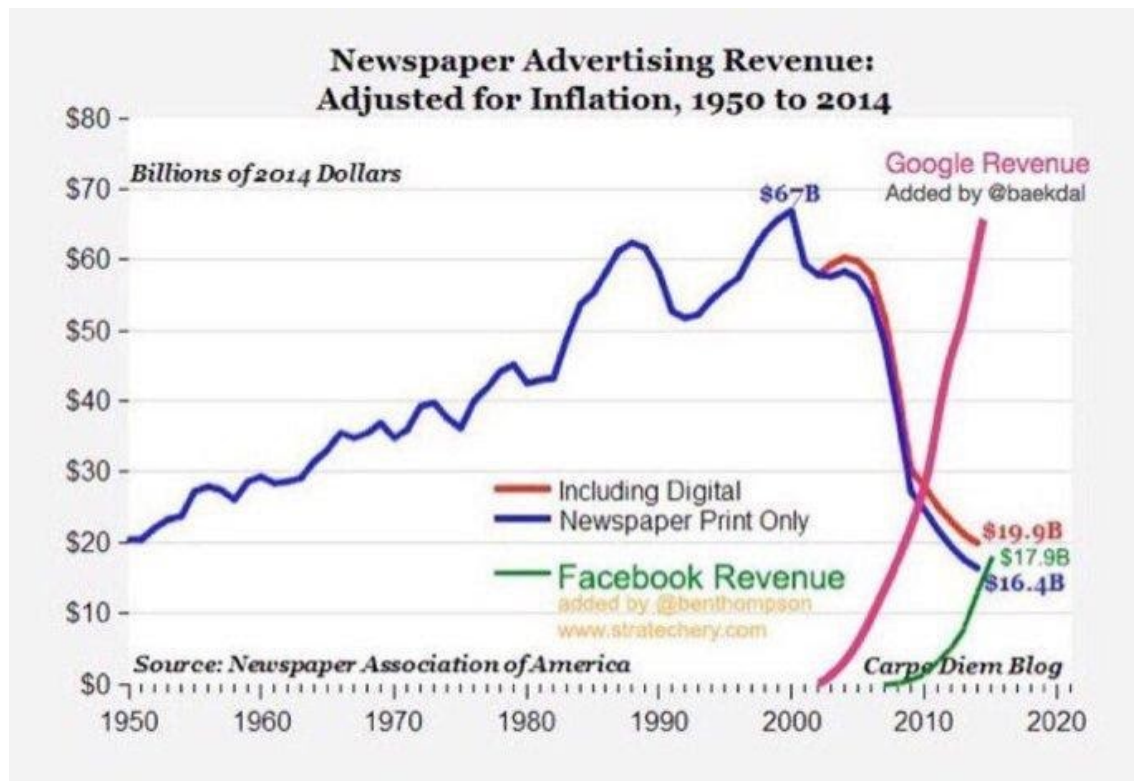
¹ CMA Report, para 51

² CMA Report, para 5.376

³ [PPA Response to CMA Interim Report](#) and CMA Report para 51

by 69% between 2007 and 2017.⁴ For most publishers, online advertising has not come close to compensating for this decline.⁵

This has had a profound impact on the range and quality of UK journalism. The conclusions from Dame Frances Cairncross' review into the sustainability of quality journalism are stark: faced with falling revenues, publishers have reduced the number of journalists by 35% since 2007 (with a greater loss of experienced journalists) which has had significant consequences for the provision of public interest reporting with local news most under threat.⁶ The following (although US-focussed) is particularly illustrative:⁷



For the audiovisual ('AV') sector, this is not simply a cautionary tale but a call to arms. In this context, comments made by News Corp's COO David Dinsmore before the House of Lords' Select Committee hearing on the future of journalism were particularly resonant:

"Commercial TV broadcasters [will] probably find themselves in the position we were in 10 years ago... if you are ad-funded, in the new world with all the money going to Google and Facebook it becomes increasingly challenging".⁸

In fact, digital TV advertising - around high quality long-form audiovisual content - is the last frontier for the large digital platforms who have come to dominate all other forms of digital advertising.

⁴ Mediatique Report for the Cairncross Review: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/778155/180621_Mediatique_-_Overview_of_recent_dynamics_in_the_UK_press_market_-_Report_for_DCMS.pdf

⁵ Cairncross Report, chapter 3

⁶ Cairncross Report, chapter 5

⁷ <https://gigaom.com/2013/04/11/two-charts-that-tell-you-everything-you-need-to-know-about-the-future-of-newspapers/>

⁸ <https://committees.parliament.uk/oralevidence/580/pdf/>

Many companies in the existing TV advertising markets are building innovative digital television advertising products - including ITV's Planet V and Sky's AdSmart. But, as we explain below, the platforms are competing aggressively and, absent intervention, it is highly likely that platforms will leverage their dominance to exert similar control over choice, customer relationships and revenue. Indeed, as Google seeks to move into the \$170bn global TV ad market there is already disquiet in the industry about its likely approach⁹.

Value and evolution of the AV sector

Maintaining a thriving national AV sector is vital for the benefits it brings to consumers, the economy and society:

- The defining purpose of public service broadcasting is to provide the UK public with trusted, accurate and impartial national and local news and programmes that connect the nation and mirror our country and the diverse experiences of its people. The public clearly values this. Research conducted recently by Freeview revealed that 80% of the viewing public (and 74% of 16-34 year olds) say that public service broadcasters play an important role in bringing the nation together in times of crisis and see their content as more important than streaming services.¹⁰ Enders Analysis stated (before the COVID-19 lockdown):

“it cannot be overstated how important the linear TV ecosystem is to all audiences, whether - as per the Reithian values - to inform, to educate or to entertain.”¹¹

- UK TV is a huge driver of the wider economy, punching above its weight with international exports estimated at close to £1bn; the second highest exporter of TV content after the US and the biggest exporter of programme formats. This strength supports a vibrant and thriving content production ecology across the UK.
- Finally, as the CMA rightly points out, *“the health and plurality of the media industry is important for the contribution it makes towards a well-functioning democratic society”*.¹²

It is clear that in many ways digitisation has been hugely beneficial to the UK AV sector. IP-based distribution and the advent of subscription on demand (SVOD) and other forms of content disaggregation has brought greater choices for TV audiences and for advertisers. This choice has been made manageable through personalisation, with service providers able to tailor their offering to their specific customers: personalised content recommendations help audiences find something they want to watch; personalised advertising helps brands/businesses land their marketing messages with a receptive audience.

ITV has been at the forefront of these changes, taking advantage of digitisation to build closer relationships with consumers and developing new advertising opportunities for brands:

- ITV has engaged with consumers online by investing in AVOD through its ad-supported product ITV Hub and ad-free service ITV Hub;

⁹ <https://digiday.com/future-of-tv/newly-won-partnership-france-signal-googles-broader-tv-ambitions/>

¹⁰ <https://www.freeview.co.uk/corporate/news/freeview-research-value-of-pbs-during-lockdown>.

¹¹ Enders Analysis - *Media Consumption: the 'surprising' endurance of broadcast media*, 25 February 2020

¹² CMA Final Report, para 6.43

- ITV has expanded its activities into SVOD through BritBox, a collaboration with the BBC to give consumers the ‘best of British’ on demand;
- ITV has worked in partnership with other broadcasters in the development of Freeview Play, underpinned by extensive long-term investment, delivering an aggregated content discovery service that brings together DTT and IP delivery into a single user experience that can be built into smart TVs and set-top-boxes;
- On the advertising side, ITV recently announced the launch of an innovative addressable advertising platform Planet V that allows advertisers and agencies to manage, in real time, their advertising campaigns across ITV’s online inventory.¹³

Recent analysis shows that compared to their European peers, UK providers, including ITV, are leading the way in online innovation.¹⁴ But these developments will be meaningless if ITV does not have fair access to online audiences and online advertising markets.

We are increasingly moving into an ‘IP future’ for TV in which platforms will play an increasingly pivotal role in the AV supply chain. In 2019, 80% of UK homes had a fixed broadband connection and more than half (53%) watching through a device connected to the internet.¹⁵ Independent forecasters predict rapid growth in IPTV homes by 2023. Even where linear live TV is still delivered to consumers by broadcast networks (and we anticipate substantial broadcast-delivered linear viewing for some time¹⁶), consumption will increasingly be via IP-enabled devices. While estimates vary, around half of UK homes already watch TV via some form of connected device and we anticipate this will be nearer 80-90% before the end of the decade. In this world, the platforms are perfectly placed to dominate all levels of the AV value chain:

- **Networks:** Google and Facebook are exploring various options to deliver network connection from high speed cable,¹⁷ to atmospheric balloons.¹⁸
- **Devices:** mobiles/tablets aside, it has been clear for some time that the platforms want to control the consumer relationship through their own devices which mediate a TV/content experience (Apple TV, Google Android TV, Amazon Fire stick) or which could be easily modified to do so in the future (Facebook Portal TV, Voice-assistant-controlled smart speakers).
- **Operating Systems:** Google (Android TV) and Amazon have ambitions, through increasingly widespread arrangements with OEMs to become the default provider of operating systems for a potentially wide range of connected (IoT) devices: connected TVs, soundbars and speakers etc.¹⁹

¹³ <https://www.itvmedia.co.uk/making-an-impact/planet-v#:~:text=Planet%20V%20will%20launch%20externally,to%20agencies%20with%20ITV%20support.>

¹⁴ <https://advanced-television.com/2020/07/20/report-uk-is-europes-leading-bvod-market/>

¹⁵ Ofcom Media Nations 2019: https://www.ofcom.org.uk/_data/assets/pdf_file/0019/160714/media-nations-2019-uk-report.pdf

¹⁶ In 2019, 67% of long form TV programme requests were via the TV (ITV Analysis based on 3Reasons Spring 2020 market model). In addition, experts predict that in 2028, broadcast will still be an important video distribution method. This will be driven mostly by an aging population, with 85% of video consumption being via broadcast for adults 55+. But broadcast will continue to be important to younger audiences too representing approx. 20% of video viewing. Enders: *The future of video: forecast to 2028*, 6 March 2019.

¹⁷ <https://www.theverge.com/2016/10/12/13255858/google-facebook-submarine-cable-trans-pacific>

¹⁸ <https://www.bbc.co.uk/news/technology-53321007>

¹⁹ <https://www.androidheadlines.com/2018/05/android-tv-googles-living-room-ambitions-are-now-clearer.html>;
https://techcrunch.com/2020/01/06/fire-tv-edition-expands-to-more-soundbars-plus-cars-cable-boxes-and-more/?qucounter=1&quce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xILmNvbS8&quce_referrer_sig=AQAAAGq3w7ibKU36IINMXN19D8TL67az03C_Q-

- **User Interfaces:** consumers are increasingly turning to content curation services to help them decide what to watch when and on what device.²⁰ Apple and Amazon are already active in the content curation space through their Apple TV+ and Amazon Fire TV/Prime Video products.²¹ Google and Facebook are rumoured to be evolving their connected-TV devices (Chromecast and Portal) to include curation of streamed AV content.²²

For a time, our expectation is that operators at each layer of the supply chain will jostle for ‘control’ over the consumer relationship, looking for opportunities to keep user attention within their ecosystem for as long as possible.

Absent intervention, however, in the medium term an ‘IP future’ is one in which the AV experience is dominated by a small number of global online platforms, to which AV content providers like ITV are dependent on for access to consumers; where AV content is mediated through algorithms that can be ‘bought’ and where revenue streams can be easily diverted to those same platforms at the expense of investment in the UK creative economy and real choice for consumers. It’s a world which, absent intervention, will be characterised by powerfully vertically integrated global platforms and global deals with a small number of global bidders reducing choice and variety for consumers.

A small number of platforms will dominate the AV value chain

As the CMA rightly observed, platform business models are driven by the ability to collect huge volumes of user data which can then be monetised through the provision of personalised advertising.²³ This creates incentives for platforms to control the consumer relationship and exclude competitors. As a result, it is clear that left unchecked, we will see the same behaviour that has reinforced the dominance of a small number of global platforms in Search, Social Media and Digital Advertising into the online provision of long form TV content.

The CMA has adduced clear evidence that Google and Facebook dominate digital markets:

- Google has controlled over 90% of search traffic for over a decade;²⁴
- Facebook generated over half of the UK’s display advertising revenue in 2019, with its next largest competitor (YouTube) earning between 5 and 10%;²⁵
- 80% of digital advertising revenues generated in the UK were spent with Facebook or Google.²⁶

[28gEOBJW4UwJZ_J5DOAag1kbYNqhnToR42QDna8DPx0OLe_2KMVT07SpRIHX_LeU5uO4pmz4KqLccZMxpEZNtvxTOHPB JWZLgq_3terxmH2FOfH83qKUdgsWY50jVV7IteWBTAE_MT](https://www.wired.co.uk/article/how-do-netflixs-algorithms-work-machine-learning-helps-to-predict-what-viewers-will-like)

²⁰ 80% of all content discovery on Netflix is via recommendations meaning how you get content is subject to black box and potentially monetizable <https://www.wired.co.uk/article/how-do-netflixs-algorithms-work-machine-learning-helps-to-predict-what-viewers-will-like>

²¹ <https://www.androidauthority.com/apple-tv-plus-969001/>; <https://www.techradar.com/news/amazon-fire-tv-update-significantly-improves-its-live-tv-offering>

²² <https://9to5google.com/2020/03/10/exclusive-2nd-gen-chromecast-ultra-android-tv/>; <https://www.forbes.com/sites/martineparis/2019/12/10/facebook-portal-tv-expands-streaming-options-amazon-video-goes-live/#5a481afe62f8>

²³ CMA Final Report, para 2.11

²⁴ CMA Final Report, para 18

²⁵ CMA Final Report, para 19

²⁶ CMA Final Report, para 16

It is also clear from comments made by the CMA before the House of Lords Select Committee on Communications and Digital that Google and Facebook are now so dominant, that they can act independently of the competition and market forces:

*“for a number of years there has been a view that, while these platforms had a major market share, they were still subject to competition because somebody else could come and replace them at any point...on the basis of the analysis we have done and the position of the digital advertising market, which underpins those platforms, we do not believe that is a realistic, credible way to conceive of the market. **The roles of Google and Facebook are now best seen as entrenched. Their competitive positions are effectively unassailable. That prospect of competitive entry, of looking to your heels for another alternative coming round the corner, is no longer there.**”²⁷*
(emphasis added)

ITV is pleased to note that the Taskforce intends to investigate conditions of competition in online marketplaces and app stores.²⁸ These are markets that display similar characteristics identified by the CMA as having the potential to restrict competition. In particular, Amazon and Apple are able to gather large amounts of data in their ‘primary’ markets and both have shown a strong desire to leverage that position to restrict competition in other activities:

- It is widely alleged that Apple leverages its dominance in provision of its iOS app store to charge exploitative access fees²⁹ and give prominence to its own apps at the expense of competition;³⁰
- It is widely alleged that Amazon leverages its dominance in the provision of an online marketplace to give prominence to its own goods and services at the expense of competition.³¹

Amazon and Apple are well placed to leverage their dominance into control of AV content mediation through their Amazon Fire TV and Apple TV+ services. We trust that the Taskforce’s ongoing investigation will generate strong evidence that Amazon and Apple are (like Google and Facebook) providers with SMS and which should be subject to regulatory intervention from the outset. This small group of global digital platforms have already started to expand aggressively into all levels of the AV value chain and are using the same tactics as were identified by the CMA to exploit their dominance and exclude competition.

In this respect ITV identifies two key themes where regulatory intervention is crucial for competition in the AV sector to thrive:

- **Theme 1:** access to consumer markets including the data necessary to compete effectively
- **Theme 2:** access to revenue streams through greater competition in online advertising

In the remainder of this submission we discuss, under each of these themes, the potential harms to competition from the behaviour of the large global platforms and the specific

²⁷ <https://committees.parliament.uk/oralevidence/666/pdf/>

²⁸ Digital Markets Taskforce, call for information, para 1.27

²⁹ https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1073

³⁰ <https://www.nytimes.com/interactive/2019/09/09/technology/apple-app-store-competition.html>

³¹ https://ec.europa.eu/commission/presscorner/detail/en/IP_19_4291

interventions required to maintain the competition necessary to deliver choice, innovation and quality in the provision of AV services.

Theme 1: access to consumer markets

All of the main global online platforms have developed or are developing devices and services that will mediate the experience of TV viewing audiences. Given the 'IP future' of television described above, content providers such as ITV will become increasingly dependent on those platforms for: access to AV devices (and so to consumers); for discoverability on these devices (access to user interfaces and prominence in key parts of the user interface will be crucial); and for the ability to monetise our services.

By controlling the viewer experience, these platforms are able to monetise through the placement of advertising, payment for prominence³² and also through the extraction of 'rents'. The CMA report notes the power of 'defaults' and the high price that can be charged for prominence in the user interface.³³ Similarly, key parts of the user interface (e.g. recommendations, 'top picks' and feature rotators) are highly monetizable commodities, out of the reach of all but the largest global players. In fact, Netflix (a large player with global reach) was (in 2011) one of the first to recognise the power of prominence, paying large sums to obtain a dedicated button on connected TV remote controls;³⁴ other operators, notably Amazon, have followed this approach to locking in prominence.

Content providers - whether paying for prominence or not - are also increasingly required to trade other commodities, notably control of the consumer relationship, and data. These commercial arrangements are generally conducted under strict confidentiality restrictions meaning it is not possible to give details of specific arrangements, but ITV notes the following trends:

- Platforms require content providers to share vast amounts of customer behaviour data (e.g. preferences, viewing history). This high quality 'first party' data can be used in conjunction with data gathered from other activities, to augment a platform's 'knowledge graph'. This enables platforms to systematically develop better personalisation of consumer-facing services (both in AV and elsewhere), better audience segmentation for advertising services and to power platform algorithms and other consumer-facing features and functionality (e.g. resume viewing, play next) than any content provider can.
- This data transfer is hugely one-sided; while content providers are obliged to share valuable first party data, they have little to no visibility of how audiences interact and engage with their content on the platform - information and insight which the platform operator harvests and keeps for itself. As a result, content providers have limited ability to gauge the value of their content to online audiences, which is

³² E.g. <https://www.agilitypr.com/pr-news/public-relations/is-amazon-shifting-toward-pay-to-play-and-what-does-it-mean-for-brands/> and <https://www.wired.co.uk/article/bbc-prominence-netflix-streaming>

³³ CMA notes that Google paid \$1.2bn for being the default search engine on Safari (CMA Final Report para 33)

³⁴ https://www.engadget.com/2011-01-04-netflix-one-click-remotes-coming-to-nearly-every-device-it-str.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cudGhldmVyZ2UuY29tLw&guce_referrer_sig=AQAAAM0Jh4B2DAYJ0X3maqW8L_MjghVkodfcOKDyxEuNDiJZf5awSbCb_vKwVDsNzDfVmGASU51Hop0pJWC9tmYhXh3FYkJKDYaT_in8DkkT14x8CMKTOAEufbOs4fh1IOPY1Lz_xSg1_YBMxrfisS-xOEYMVgZ6SdC4JXxNvS3eo9ek

essential to future development of their products and services in an increasingly personalised digital space.

- Platforms require that consumers access content through a platform-controlled login, thereby severing the direct connection between the consumer and the content provider. By controlling the consumer relationship, platforms can connect content consumption to other activities a user engages in across the platform ecosystem, again creating a huge data advantage over others.
- Platforms require certain consumer activities (e.g. resume viewing) happen within their proprietary ecosystem, thereby ensuring the platform maintains consumer attention for longer and enabling the platform to re-route the consumer to other services within its ecosystem rather than enabling the consumer to return to the content provider's interface.

The combination of these actions prevents content providers accessing consumers or makes such access conditional on punitive terms that mean content providers are at a competitive disadvantage when it comes to monetising interactions with their content. The playing field is anything but level. For a regulatory framework to be successful, it must ensure any regulator has the power to ensure content providers have:

- Fair access to online customers
- Fair access to data

Access Remedies

We have described above the behaviours that typify the current content provider/platform relationship. The fear is that faced with regulation that prevents platforms from behaving this way, platforms may simply refuse to grant AV content providers access to customers on these platforms. This is obviously as undesirable an outcome as the status quo.

Again, there needs to be intervention here both by Ofcom in the context of the maintenance and strengthening of the PSB system in the UK, but also more generally by the CMA. Clearly there is a strong case for a joined-up approach to such intervention, recognising the different approaches that are required to drive different outcomes. In particular, arguably the PSB intervention requires a degree of preference for PSBs (as the current EPG prominence regime delivers) as compared to more of a level playing field approach by the CMA to all other players.

An essential part of any regulatory framework must, therefore, be an acknowledgment in the legislation that access to platforms controlled by operators with SMS cannot be unreasonably withheld.

Conditions for such access must also be fair, which means:

- An 'out-of-the-box' experience that gives prominence to AV services of national importance (rather than have such defaults set according to global standards or based on which operators can afford to pay for prominence);
- Search, curation and recommendation algorithms (including in Voice-assisted curation and content discovery tools) that do not give undue prominence to platforms' own content services or are unduly commercialised (i.e. giving preference purely to those

that can pay for it regardless of the effect on competition, choice and national interest);

- Restrictions on forced disaggregation of content meaning content providers maintain control over onward journeys;
- Autonomy on direct viewer relations (i.e. ability to control user sign-in, consents and the ability to track interaction with content and advertising);
- Control over automated content recognition;
- Ability to serve own ad inventory and retain revenues in full (i.e. no forced revenue or inventory shares – see theme 2 below).

Data Remedies

As explained above, personalisation is key to both consumer-facing content services and advertising services and ITV has invested heavily in developing personalised services which meet its consumer and business customers' needs. However, ITV's ability to compete depends on its continued access to high quality data. In fact, the close relationship ITV develops with its audiences and the high quality of 'first party' viewing data developed with these audiences is a huge competitive advantage for ITV, enabling it to develop compelling products for consumers and advertising customers.

However, and as explained above, the global online platforms have identified this competitive advantage and are doing everything they can to chip away at it forcing content providers to choose between access to online audiences or having access to consumption data. If content providers are to remain competitive it is crucial they have access to data on the consumption of their content regardless of where the content is consumed, regardless of whether it was consumed by a consumer 'logged-in' to a specific content service and regardless of what device the content was consumed on. In developing a new regulatory regime, the Taskforce should ensure that content providers are not placed in a 'Catch-22' situation of having to choose between access to audiences and access to data.

Theme 2: competition in digital advertising

As platforms move into the provision of content curation services, they are perfectly placed to monopolise the supply of advertising. Just as platforms look to control the consumer relationship, they will also look to control all advertising relationships. In the future, access to online platforms could become conditional on the use of a platform's proprietary ad serving services. For instance, Amazon's standard published terms³⁵ for Fire TV Ad-Enabled Apps states that:

"Within six months of Amazon's request, Fire TV Ad-Enabled Apps must remove all third-party ad network monetization software and may only access third-party ad networks through Amazon Publisher Services."

³⁵ <https://developer.amazon.com/docs/policy-center/fire-tv-advertising.html>

In addition, it is becoming increasingly common practice for platforms to require advertisers to hand over a significant proportion (30%+) of their ad inventory (i.e. online ad spots within a broadcasters' own app) to the platforms for them to serve ads against³⁶.

The CMA has demonstrated through its analysis of news publishers that control over the advertising supply chain enables platforms to extract huge value by way of commission and fees for advertising services. The CMA estimates that 35% of the revenue generated by online advertising is extracted in the advertising intermediation process, which is heavily controlled by Google.³⁷ This is money that is taken out of the hands of content producers, with the potential to have a significant impact on the development of new content be it high quality news, information or investment into the creative economy of the UK. The upshot of that is less choice for UK consumers.

Once again, for a regulatory framework to be successful, it must ensure any regulator has the power to promote competition in advertising markets through:

- Fair access to advertising markets
- Fair access to data

Access Remedies

The CMA discusses at length the need to ensure greater choice in consumer-facing digital markets. In particular, the CMA proposes that the Digital Regulator has the power to limit an SMS platform's ability to give prominence to its own products and services at the expense of competitors. ITV believes that similar powers should extend to ensuring competition *within* the advertising supply chain and, specifically:

- Prevent platforms from making access to online audiences conditional on the use of their own proprietary advertising services; and
- Require platforms to make their own advertising inventory open to competition, i.e. enable third party advertising service providers to serve ads inside platform-controlled content services.

Data Remedies

It is widely accepted that having been left unchecked for over a decade, the large global platforms have collected a 'pool' of data the scale and scope of which it would be difficult for a competitor to replicate. As the CMA itself noted in its submissions to the House of Lords' Select Committee and in its Final Report, market forces alone cannot counter this competitive advantage leaving platforms to operate without fear of competitive pressure. If the Taskforce is serious about stimulating competition, this must be addressed.

One option would be to give competitors access to the global platforms' pool of data, e.g. through remedies similar to those used in the retail banking sector, requiring platforms to make certain information available in a standardised form that could be used by intermediaries to provide innovative advertising services.

³⁶ <https://developer.amazon.com/docs/policy-center/fire-tv-advertising.html>

³⁷ CMA Final Report, para 5.376

Critics noted that ‘open banking’ remedies were slow to take off for two reasons: first, there were few existing intermediaries poised to take advantage of the opportunities created by the intervention; and second, consumers were nervous to trust their highly sensitive data to companies with no track-record.³⁸ Neither of these barriers are present in the AV sector:

- First, broadcasters like ITV have substantial experience serving advertising clients and have developed tools like Planet V that are perfectly poised to take advantage of the opportunities presented by open-data. One of the key benefits of Planet V’s architecture is that it enables brands to integrate their data sets with data gathered by ITV itself. This system could be re-purposed to support standardised customer and transaction IDs so as to integrate with platform data.
- Second, the data of most use to ITV would relate to consumers’ interaction with ITV content which is unlikely to be considered sensitive. Moreover, ITV is a trusted brand with long-standing consumer relationships meaning consumers may feel more confident to make their data available in this context than they would in relation to financial services.

However, we appreciate that this is a complex remedy that will require a reasonable time to implement and a fair degree of complexity to agree standards and interoperability. We fear that by the time such a remedy comes into effect, it may be too late and the global online platforms will have already monopolised advertising around AV services on their platforms.

We therefore recommend the Digital Regulator pursues an ‘interim’ remedy: restricting the use that platforms can make from data gathered in relation to the consumption of AV content and, in particular, that this data cannot be used for the provision of online advertising or monetised in any other way. Platforms are likely to see such a remedy as draconian and may argue that this inhibits their ability to innovate. ITV strongly believes that implementing such a remedy on an interim basis would incentivise the platforms to implement more complex data access remedies.

Finally, it is crucial that the Digital Regulator has the power to impose structural remedies including the power to separate the global platforms’ consumer facing and advertising services. Although such remedies should only be contemplated as a ‘last resort’, ITV fears that without this threat, the platforms are likely to delay and dissemble, losing valuable time during which the fate of a national AV sector hangs in the balance.

³⁸ <https://www.ft.com/content/a5f0af78-133e-11e9-a581-4ff78404524e>