



***Call for information - Digital Markets Taskforce
Response from Verizon Media EMEA
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1. Introduction

- 1.1. Verizon Media appreciates the opportunity to comment on this call for information.
- 1.2. The CMA's final market study report contains detailed evidence and thoughtful analysis, which reflects our lived experience of competition in the digital advertising market. It will, however, take time to fully consider its contents and recommendations. The consultation invites us to consider how proposed remedies could be applied to other markets and this is new work.
- 1.3. We also note that Government has yet to formally respond to the CMA's market study and will do so before the Taskforce makes its recommendations.
- 1.4. We therefore provide high level comments here, with some initial thoughts on the consultation questions. We may add to these comments during the course of the Taskforce's work up to the end of the year.

2. Scope of new approach

- 2.1. The proposed framework aims to stand the test of time and evolve as new markets and changes materialise. We agree it is important to undertake further assessment of the digital advertising market and build on the market study. The advertising market is evolving, in particular the relationship between advertisers and agencies and how advertisers contract with the programmatic ecosystem.
- 2.2. The Covid-19 pandemic has had a very significant impact on competing ad intermediaries and the ecosystem at large, as well as those who rely on revenues from digital advertising such as publishers. The pandemic is expected to accelerate change in the structure of the market, commercial relationships and the competitive landscape. The new approach will need to continue to monitor, and be responsive to, these changes.
- 2.3. We note the intention to examine other digital markets and consider how the CMA's recommendations for digital advertising might also be applied to platforms not funded by digital advertising and to other digital markets. It is difficult to comment on these without knowing which other digital markets are being considered and without an equivalent evidence base about them. We would ask that the CMA make available any evidence gathered about these markets and that Government also

share analysis undertaken by the DCMS in partnership with Prof. Furman. We can then be more specific in our feedback.

- 2.4. The CMA market study noted the likely impact of Google's proposals for phasing out third party cookies on Chrome browsers over the next 18 months. The ability of browsers to set the terms of trade for digital businesses is worthy of further examination by the Taskforce.

3. Codes

- 3.1. In our response to the CMA's interim report, we recommended that priority should be given to remedies that solve issues *at source*. The recommendation that codes serve as the principal mechanism for targeting regulation to firms with strategic market status would be a more proportionate and nuanced approach than untargeted, broad market regulation. This approach would minimise the impact on competitors, the ecosystems that sustain them, and the competition that subscale and challenger firms seek to provide. We welcome this.
- 3.2. While the CMA has indicated that codes will be limited to entities with incentives and ability to restrict competition - i.e.: those with strategic market status - their design and implementation requires careful consideration for wider impacts. The context within which these codes operate and their effect on market dynamics, incentives of firms with strategic market status, and subscale players are all relevant considerations. The design should address the risk, for example, that codes incentivise firms with strategic market status to cascade burdens through the wider ecosystem.
- 3.3. The administration and enforcement of codes should be designed with the resources and capabilities of competing firms in mind. The process should be open and informed by close consultation with interested stakeholders as to content and target outcomes. The process should avoid design features that could tip the balance in favour of firms with strategic market status, for example by creating new barriers via certain contractual terms or controlling standards-setting processes. The implementation body should include challenger firms as well as the firms with strategic market status in the process to avoid such outcomes.
- 3.4. The DMU should monitor the implementation of codes on an ongoing basis, including their impact on competing firms and the wider ecosystem. To the extent this includes powers to gather evidence, the DMU would need to carefully balance the burden of information requests and consultations on competing firms with the desired competition benefits.

4. Pro-competitive interventions

- 4.1. We understand that the pro-competitive interventions are intended to complement the codes, with codes for firms with strategic market status remaining the core of the new approach to be implemented as a priority once the DMU is established.

We believe this emphasis is consistent with the goal of addressing barriers to competition at source.

- 4.2. The market study proposes that the DMU have powers to impose pro-competitive interventions on firms without strategic market status. This power should come with a high threshold for intervention and require the DMU to consult closely with non-SMS firms and demonstrate that the competition benefits outweigh the cost and impact. The DMU should be required to undertake fresh evidence-gathering on how the market was functioning under the code and clearly identify any gaps which require intervention beyond firms with strategic market status. This evidence gathering should include modelling user behaviour, both consumers and business users (such as advertisers), in order to assess the likelihood of the proposed intervention being successful.
- 4.3. The CMA's recent response to the *Reforming Regulation Initiative* notes the link between regulation and levels of competition. In the market study, the CMA identified the GDPR as an example of regulation whose design and implementation disadvantaged competing firms and advantaged those with strategic market status, particularly in the ad intermediation market. The DMU should therefore have specific duties to consider the interaction with other areas of policy, regulation, and enforcement, such as data protection. These requirements should mean that these interventions are used infrequently and used against firms without strategic market status as a last resort.
- 4.4. The DMU should also be required to consider proportionality and whether a more targeted approach could achieve the same outcome. The DMU should be able to target pro-competitive interventions to groups of companies or sub-sectors of the market in order to minimise impact. While the codes require legal underpinning, the DMU should be free to consider alternative approaches for firms without strategic market status including wider adoption of industry standards or other collective action. This would also serve to incentivise a commitment to raising standards over time and investment in new industry schemes.

5. Wider DMU powers

- 5.1. The market study recommends that the DMU have powers to make very specific market interventions, including to introduce different forms of separation or to introduce standards. Some of these powers would extend to firms without strategic market status.
- 5.2. Where a new measure would require market-wide adoption we would expect the threshold for intervention to be set very high. As noted above, the DMU should have the flexibility to consider alternatives such as industry-led standards or other collective action which could deliver the desired outcome in a quicker and less costly way.

6. Publisher/platform code

- 6.1. The market study examined potential synergies between codes to regulate the behaviour of firms with strategic market status and the approach recommended by the Cairncross Review on the sustainability of news. The CMA concluded that the enforceable codes set out in the market study could be a suitable vehicle for taking forward the proposal for codes under the Cairncross Review.
- 6.2. Verizon Media is a publisher of original news content through HuffPost UK and Yahoo News, Yahoo Finance and Yahoo Lifestyle. In addition, Yahoo partners with UK news publishers to distribute and monetise their content via Yahoo in English-speaking markets, including the US. It is important for both these business models that the codes address the competition barriers to discovery, distribution and monetisation on platforms with strategic market status while avoiding impact on competing content distribution services or disrupting adjacent markets in new ways.
- 6.3. The ACCC has recently opened a consultation on a draft mandatory code of conduct to address bargaining power imbalances between Australian news media businesses and digital platforms. The DCMS is also consulting publishers on preferred approaches for the UK news distribution market.
- 6.4. These discussions show support among some publishers for a code which not only addresses the imbalance of negotiating power around distribution and monetisation of articles, but also extends to, among other things:
 - 6.4.1. Broadening the definition of ‘use of news’ to include snippets and hyperlinks, to equate to a new neighbouring right with consequences for the wider news market and search market (similar to the EU Copyright Directive),
 - 6.4.2. Granting news publishers exemptions from competition law to allow for collective bargaining and collective licensing which may favour large publishers,
 - 6.4.3. Incentivising Google and Facebook to recognise certain sources of news as “quality news” and grant them greater prominence in search results or social media feeds over news from other sources.
- 6.5. The design of these codes needs careful attention, in particular with respect to options that go considerably further than is necessary to address the imbalance of negotiating power with respect to the current relationship with firms with strategic market status, and risk creating new competition barriers in the news market which would disadvantage competing news providers or act as a barrier to market entry. Risks to competing distributors of news content without strategic market status must also be considered.

- 6.6. We therefore favour the approach put forward by the CMA market study based on competition law principles and focused on firms with strategic market status which specifically addresses the imbalance of negotiating power, unexpected changes to Google's search algorithm and the requirement to give up valuable data without reciprocation.

7. Other issues

- 7.1. The CMA's market study leaves open the institutional structure of the DMU, noting that this could be a new or an existing institution, or even that the functions could be assigned across several bodies. It is vital that the DMU operates independently of Government and is free of political and media impulse. Housing it in a single body would allow it to build expertise, making the CMA the preferred location for the DMU particularly given the in-depth expertise it now has on the digital advertising market and its dual role to promote competition and consumer protection.
- 7.2. The CMA's market study and the call for information uses the term "platforms" in different ways. This is a widely used term which has come to mean different things to different people and in different contexts. As a basis for legislation, however, this term is far too general and risks ensnaring business models beyond those in scope of the proposed approach. It may also be used as a basis for other legislation relating to digital services and that could be laden with further unintended consequences. It would be preferable for competition legislation to refer to specific markets in the way the CMA's final report does in recommending interventions to regulate firms with strategic market status in the ad intermediation, search and display advertising markets.
- 7.3. The call for information notes the interaction between the proposed pro-competition approach and existing consumer and competition law, as well as proposed new frameworks such as the one set out in the Online Harms White Paper. It should be within the role of the DMU to opine on tensions between digital policy and competition, and to undertake rapid assessments of evidence for Government departments to inform new digital regulation.
- 7.4. Routine competition impact assessments of new policy would ensure that the design and implementation of future policy does not impact competition in the way the market study found. A culture of front-loading policy development with an intense period of broad stakeholder engagement, problem identification and evidence-gathering would form the strongest possible foundation for targeted and well-crafted digital policy in the future.
- 7.5. Dialogue with stakeholders to inform new policy should be carefully structured to ensure that there is a close dialogue with competing firms - modelled on the CMA approach - which provides a safe space to discuss policy matters and their competition impact. Only by understanding what it is like to compete with firms with strategic market status can future policy be designed and implemented to promote innovation, growth and the long term health of the UK's digital economy.

- 7.6. Finally, the Taskforce's work provides an opportunity to rethink perceptions of industry standards and collective action and the role it can play in addressing issues arising in digital markets. Self-regulation has become disfavoured but in our view should be reconsidered. Policy discussions are quick to focus on the shortcomings of industry schemes rather than on what it achieves which formal domestic regulation could not.
- 7.7. While statutory regulation can struggle to secure widespread compliance in complex markets, industry schemes can use the contracting process to cascade and network compliance among myriad interconnected entities including those beyond the reach of UK jurisdiction. These schemes are cost effective in lean, low margin digital markets and are highly scalable, providing a meaningful first layer of enforcement which would exceed the resources of any regulator. These schemes could be a useful contribution to Government's work on wider policy challenges and worthy of consideration in the Taskforce's recommendations to Government. As suggested above, the DMU should have flexibility to consider the most effective, and least incidentally harmful, approaches to deliver specific market or consumer outcomes involving firms without strategic market status.