

# Appendix A: Informing the taskforce advice

## Overview

1. This appendix provides an overview of the sources which have informed our advice and recommendations to government, both on the design of a pro-competition regime for the most powerful digital firms and on measures to strengthen competition and consumer protection laws.

## What did we seek to learn?

2. In developing our advice, we have sought information on:
  - the types of concerns in relation to digital markets our proposals need to be capable of addressing; and
  - how a regulatory regime could best be designed to address these concerns.
3. As we set out in the next section, we have drawn on a rich existing literature in both of these areas, and have sought to build on this thinking throughout our work.
4. A range of different concerns were raised in relation to digital markets, including unfair and imbalanced terms and conditions; self-preferencing; and concerns in relation to the collection, use and sharing of data. However, the taskforce was not tasked with investigating to what extent such concerns are borne out in practice or with forming a view on exactly how they should be addressed or whether particular remedies should be applied. Rather our focus has been on designing a regulatory regime with tools capable of addressing such concerns when they have harmful effects.

## Key sources informing our advice

5. The key sources which we have drawn on to inform our advice are:
  - responses to the call for information we issued at the outset of this work and questionnaires to marketplace retailers and app developers;
  - stakeholder engagement including bilateral meetings and roundtable discussions;

- existing reports and proposals for regulation including the CMA's market study into online platforms and digital advertising<sup>1</sup> and other reports, for example the Furman Review;<sup>2</sup>
- evidence in relation to the design of existing regulation, for example in the communications, financial services and groceries sectors;
- information provided to us by the largest digital firms;
- workshops and discussions with international counterparts; and
- interviewing experts to better understand how digital markets are evolving.

**Figure A.1: Summary of key sources informing our advice**



6. We now provide an overview of these sources.

### ***Our call for information & questionnaires***

7. On 1 July 2020, we published our call for information<sup>3</sup> seeking information on the harms that can arise in digital markets, including from the exercise of market power by digital firms, as well as on the scope, remedies and powers needed as part of a new regulatory regime to address these concerns.

<sup>1</sup> CMA's market study into online platforms and digital advertising, [final report](#).

<sup>2</sup> Furman Review (2019), [Unlocking Digital Competition](#).

<sup>3</sup> [Digital Markets Taskforce Call for Information](#).

8. We received 64 responses to our call for information from a wide range of stakeholders, including digital firms of a range of sizes and trade bodies that represent them, other large firms with experience of being regulated, experts, commentators, and consumer and user representative bodies. Published call for information responses can be found on our case page.<sup>4</sup> Responses to our call for information have been considered in detail in forming our recommendations and advice and we thank those who responded for providing such thoughtful consideration to the questions posed.
9. To support our work in understanding the range of concerns in relation to the most powerful digital firms our regime needs to be capable of addressing, we undertook questionnaires of app developers and marketplace retailers. We focused on these sectors given these were not covered by the market study and are sectors where concerns have frequently been raised in other reports and cases pursued in other jurisdictions.
10. We received relatively few responses to these questionnaires: 52 responses to the online marketplace questionnaire; and 15 responses to the app store questionnaire. While there were only a small number of responses, we found the responses useful by providing individual real-life perspectives and illustrating the nature of concerns which can arise. We recognise that these responses represent a small fraction of the users of such platforms. Accordingly, we have not considered the points raised to be representative of all users. We sought to supplement the responses to these questionnaires through our wider stakeholder engagement (see more below).

### ***Bilateral meetings and roundtables***

11. To complement and probe the evidence and views in call for information and questionnaire responses, we held a large number of stakeholder meetings and roundtables. We heard from a broad range of stakeholders, including some who had indicated a greater capacity for meetings rather than providing a written response.
12. Our meetings with stakeholders served a variety of purposes including to cover their views on the shape and design of a new regulatory regime and to discuss and test different proposals and ideas.
13. We held around 70 meetings across approximately 50 different parties, comprising of small and large digital businesses, academics, trade, business

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<sup>4</sup> [Digital Markets Taskforce case page](#).

and consumer associations, commentators, advisory and consultancy companies.

14. In addition to these meetings we also hosted or participated in 14 roundtable discussions. Most of these roundtables were targeted at various groups of stakeholders, either by their area of expertise, the sector or market they represented, or their members were active in, or where they had expressed an appetite for further discussion. Topics for the roundtables included:
  - consumer concerns in relation to digital platforms, how consumers may be prevented from driving competition and how this might be addressed;
  - data remedies in digital markets including exploring data remedies such as interoperability and portability;
  - an economic perspective on an *ex ante* regime for digital markets;
  - legal considerations for a new regime (in particular procedural aspects);
  - investor perspectives and potential implications of regulation; and
  - app store developer inputs including on the effects of app stores' terms and conditions on business users.
15. These discussions proved incredibly fruitful in helping us better understand different perspectives on how we should approach the design of the regime and to test and discuss the range of possible options. We thank those we engaged with for their time.

### ***Drawing from existing literature***

16. A strong body of literature provides evidence of the harms in digital markets and the need for reform. We did not seek to replicate the work done in these earlier reports, but rather our focus was on understanding how best to design a regime to deliver change and address the harms identified.
17. In developing our advice, we have particularly drawn on the Furman Review and the CMA's own market study into online platforms and digital advertising. The taskforce was asked to base its advice around the proposals put forward in the Furman Review, which published its findings in March 2019.<sup>5</sup> The Furman Review recommended the establishment of a digital markets unit

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<sup>5</sup> Furman Review (2019), [Unlocking Digital Competition](#).

(DMU), tasked with securing competition, innovation, and beneficial outcomes for consumers and businesses.

18. The work of the Furman Review was further developed in the CMA's own market study into online platforms and digital advertising. The market study conducted a detailed assessment of the market position of Google and Facebook in relation to digital advertising, and in doing so further supported the case for a new pro-competition regime that is ex ante in nature. Moreover, it was able to provide 'proof of concept' for the high-level proposals of the Furman Review. We welcome the government's response to the market study.<sup>6</sup>
19. We have also drawn upon a number of other expert reports including the Special Advisers to the European Commission Report,<sup>7</sup> the Stigler Report,<sup>8</sup> and the US House Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary report.<sup>9</sup>

### ***Insights from existing regulation***

20. In considering the design of a regulatory regime for the most powerful digital firms, we sought to learn from the effectiveness of existing regulatory approaches, in particular in communications, financial services and groceries.
21. Respondents to our call for information identified elements of existing regulation in these sectors which they felt should be considered by the taskforce, in particular the Significant Market Power (SMP) regime in communications, the approach of the Groceries Code Adjudicator (GCA), and the FCA's approach to regulation.
22. We have sought to learn from these regimes and have benefited from extensive discussions with these regulators about elements of their approach. We thank those regulators we engaged with for their time in this regard.

### ***Information provided by digital firms***

23. To support our work, we sought information from the largest digital firms. This was largely aimed at understanding the range of activities they engage in as well as focusing in on their activities in relation to the provision of app stores, online marketplaces and operating systems. These activities were chosen on

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<sup>6</sup> [Government response to the CMA's market study into online platforms and digital advertising](#), November 2020.

<sup>7</sup> Jacques Cremer, Yves-Alexandre de Montjoye and Heike Schweitzer (2019), [Competition policy for the digital era, final report for the European Commission](#).

<sup>8</sup> Stigler Center (2019), [Committee on Digital Platforms Final Report](#)

<sup>9</sup> [US Antitrust House Subcommittee Investigation of Competition in Digital Markets, 2020](#).

the basis that they are where concerns have most commonly been raised in other reports and jurisdictions. Our work sought to understand at a high level the way in which these markets operate. This supplemented the extensive evidence contained in the CMA's online platforms and digital advertising market study.

### ***Engaging with international counterparts***

24. Competition and consumer authorities across the globe are tackling a range of concerns in relation to digital markets. Through our work we sought to engage with these authorities to better understand these concerns and to consider whether our proposals would be capable of addressing them. We also discussed approaches being developed in their respective jurisdictions to tackling these concerns and the rationale informing these approaches, for example:

- We held a workshop with the German Bundeskartellamt to understand their work in digital markets as well as proposed reforms to the German Competition Act to enable stronger powers to deal with undertakings of 'paramount significance for competition across markets'.<sup>10</sup>
- We engaged with the European Commission in relation to their work in digital markets including their proposals for a new ex ante regime for large gatekeeper platforms and a new competition tool.<sup>11</sup> The CMA responded to the Commission's public consultations on these proposals.<sup>12</sup>
- We engaged with the Dutch Authority for Consumers and Markets to learn more about their work in relation to app stores.<sup>13</sup>
- We engaged with the Australian Competition and Consumer Commission (ACCC) to understand more about the work of their newly established Digital Platforms Branch.<sup>14</sup>
- In the US, we engaged with authors of the recently published House Antitrust Subcommittee report on competition in digital markets to understand more about their work and findings.<sup>15</sup> We also engaged with

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<sup>10</sup> Press release: [Bundeskartellamt welcomes Economic Affairs Ministry's plans to modernise competition law](#). The German Federal Ministry for Economic Affairs and Energy officially presented its draft bill for the 10th amendment to the 'German Act against Restraints on Competition' on 24 January 2020.

<sup>11</sup> The European Commission, [The Digital Services Act package](#).

<sup>12</sup> [The CMA's response to the European Commission's consultations in relation to the Digital Services Act package and New Competition Tool](#).

<sup>13</sup> ACM (2019). [Market Study into mobile app stores](#).

<sup>14</sup> ACCC (2019). [Digital Platforms Inquiry](#); Australian Government (2019), [Regulating in a Digital Age](#).

<sup>15</sup> [US Antitrust House Subcommittee Investigation of Competition in Digital Markets, 2020](#).

the Department of Justice and a number of State Attorney General's Offices who are looking specifically at the conduct of some of the largest digital firms.<sup>16</sup>

### ***Considering how digital markets are evolving***

25. To help ensure our proposals are sufficiently future-proof, we conducted interviews with 23 organisations about how they see digital markets evolving and possible future developments. These organisations included industry, regulators and civil society.<sup>17</sup>
26. We used a seven questions futures technique<sup>18</sup> to capture information on future developments and emerging trends in digital markets, including drivers of change and critical issues for the future. The interviews were collated and analysed to identify relevant themes on how digital markets are evolving, along with implications for the taskforce's advice.
27. We combined the insights from the interviews with our own research on how technology firms around the world and across jurisdictions have grown and expanded into a range of different markets.
28. Examples of developments in digital markets identified through this work include:
  - rapid expansion by large firms into new markets, leveraging large existing user-bases to quickly establish strong positions. This includes expanding through developing add-on services and functionality, as well as through acquisitions.
  - new technology, including artificial intelligence and machine learning, connected devices and edge computing opening up new opportunities.
29. Key reflections for our work from these interviews and own research include:
  - The importance of ensuring flexibility within the regime, for example ensuring the SMS test is flexible enough to capture the potential SMS firms of tomorrow, not just today. This can be achieved by not constraining

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<sup>16</sup> The United States Department of Justice, 20 October 2020, '[Justice Department Sues Monopolist Google For Violating Antitrust Laws](#)'.

<sup>17</sup> Interviews were held between August and October 2020. Interviewees included a representative from the Nesta, OECD, UCL, TechUK, Innovate UK, Wikimedia, a CMA director of data science, Coadec, a UK venture investor, DCMS, London School of Economics, ICO, FCA, Demos, CBI, Ofcom, Regulatory Horizon Council & BT, Capital Enterprise, UCL, Citizens Advice, University of Birmingham, and Digital Catapult.

<sup>18</sup> This technique is one of several methodologies designed for gathering intelligence about the future that are detailed in the [Government Office for Science "Futures Toolkit"](#).

SMS designation to a narrow range of activities (for example only online search or online marketplaces).

- The importance of the DMU acting as an expert across digital markets, not just in relation to the activities where a firm is designated as having SMS. This is key to ensuring the DMU understands how markets are evolving and can enable swift intervention to ensure that markets are competitive.
- The importance of regulators responsible for different sectors and with different policy objectives working closely together. Digital is not a clearly defined sector and there are large digital firms across the economy, with the potential to operate across sectors and activities. Our advice makes initial recommendations to enable regulators to work together, for example by sharing information. This will be explored further through joint work being undertaken by the Digital Regulation Cooperation Forum.