

CMA Final Report: Online Platforms and Digital Advertising Market Study

Introduction and summary

Key recommendations:

- new legislation to implement a new regulatory regime for platforms;
- a Code of Practice; and
- a new cross-government approach to digital matters and pro-competitive interventions.

A cross-government task force was formed in March 2020 in response to the CMA's Interim Report, called the Digital Markets Taskforce (DMT). The DMT is intended to be the precursor to a Digital Markets Unit (DMU). The CMA-led DMT will now be considering and consulting on all online platforms, those funded by transactions as well as by advertising.

What does this alphabet soup of activity mean? In short, it is a welcome development. The fact is that change is now taking place. Historically, governments of all types have acted on CMA recommendations and there appears to be cross-party support for change. Many have commented that the change will be too slow and that effective action is need now. However, industry participants have until 31st July 2020 to provide their input suggesting an appetite to establish the DMU within six months.

It is also noted in the Report that a priority at the time of publication is for the CMA to work with the ICO on the interaction between competition and data protection regulation in digital advertising markets, including in particular how to respond to and engage with Google's proposals for phasing out third party cookies on Chrome browsers over the next 18 months.

Possible Immediate Action

The CMA's response is that it can and will now take individual enforcement cases but that the problems identified require holistic solutions and point interventions to address point failure will not be enough.

However, the CMA has also made it clear that it sees online markets as a priority and stands ready to take suitable cases.

Moreover, the courts have a parallel jurisdiction in competition law. Third parties that have been and continue to be harmed may take actions in the courts. The findings in the report and the evidence put forward may be valuable in such cases.

What are the CMA recommendations?

- Recommendation 1: Establish an enforceable code of conduct for platforms having strategic market status (SMS). The code would aim to meet three high-level objectives of fair trading, open choices and trust and transparency.
- Recommendation 2: Establish the requirement for a DMU to undertake SMS designation, introduce and maintain the code based on objectives set out in the legislation, and produce detailed supporting guidance.
- Recommendation 3: Give the DMU the necessary powers to enforce the principles of the code on a timely basis and amend its principles in line with evolving market conditions.
- Recommendation 4: Give the DMU the necessary powers to introduce a range of pro-competitive interventions, which should include:

- a. Data-related interventions (including consumer control over data, interoperability, data access and data separation powers)
- b. Consumer choice and default interventions
- c. Separation interventions

The CMA's Central Findings

The CMA Final Report is c.440 pages which together with annexes run to over 1500 pages. Compiled over the course of a year with extensive input from industry it represents a considerable, and considered, body of evidence and findings of adverse effects on competition in online advertising markets.

Its central findings are that both Google and Facebook have market power and there are aspects of their structure and behaviour that adversely affect competition. Specific remedies are therefore needed. Both “interventions” and behavioural remedies are necessary.

The report identifies both adverse effects on competition and the need for separation (disaggregation or break up of parts of the vertically integrated entities) as well as behavioural remedies such as stopping the platforms from discriminating in favour of their own products at the expense of rivals products offered over the same platform.

The report finds that the CMA's current powers under which a code of practice can be ordered are insufficient and the Government needs to legislate to address the competition issues identified.

Government has already, in March, set up a task force and the report was published simultaneously with announcements about coordinated working across different government departments that will be led by the CMA to work on the next steps.

The CMA has also stated that it stands ready to take individual action in the meantime. What that individual action will be will presumably depend on individual cases being brought forward alleging individual infringement of the existing law.

Next Steps: Legislation.

The next stage in the process will be legislation to support a new code of practice. Previous codes have been based on their own primary legislation; see for example the [Small Business Enterprise and Employment Act 2015](#) which is the basis for the pubs code of practice. Designated retailers are required to comply with the [Groceries Code of Practice](#), which is contained within Schedule 1 of the CMA Order made following a Market Investigation into supermarkets practices. The Groceries code provides detail on how designated retailers should manage their relationships with suppliers, to ensure compliance with both the CMA Order and the Code.¹ However, the CMA considered that such an approach would be insufficient to address the wide range of issues identified in the report, and in light of the more international dimension of the markets affected and the requirement for international coordination in terms of remedies.

Numerous submissions were made that the CMA should use its own powers to establish a code, avoiding parliament and delay, as was done with relation to the Groceries Code. However, the decision has been taken to go via parliament and new legislation. This raises the risk that the remedies will be delayed and the effects of anticompetitive practices will continue; raising the need for interim enforcement to preserve the status quo and ensure that markets do not deteriorate further in the short term.

¹ In accordance with section 138 of the Act and in exercise of the powers conferred by sections 161 and 164 and Schedule 8, and for the purpose of remedying, mitigating or preventing the adverse effects on competition concerned and for the purpose of remedying, mitigating or preventing detrimental effects on customers so far as they have resulted from, or may be expected to result from, the adverse effects on competition, can make an order provide that the CMA has already identified an adverse effect on competition- which are contained in the Final report.

The main findings in the Final Report are provided below.

Scope of Study: Key Questions Raised

To assess the markets for search, social media, and digital advertising, the CMA focused on three questions:

- Do Google and Facebook have market power in search and social media?
- Do consumers have adequate control over the use of their data by online platforms?
- Does lack of transparency, conflicts of interest and the leveraging of market power undermine competition in digital advertising?

CMA Findings

The CMA made the following key findings:

- Google and Facebook are dominant in their respective markets;
- consumers do not have adequate control over their data; and
- both lack of transparency, vertical integration and leveraging and other actions have adverse effects on competition.

Google has maintained its market share and generated around 90% or more of UK search traffic each year over the last ten years, generating over 90% of UK search advertising revenues in 2019. Google also has a very strong position in various segments of the open display market

Facebook (including Instagram, which it bought in 2012) generated over half of UK display advertising revenues in 2019. For comparison, its largest competitor, YouTube (owned by Google), earned between 5 and 10%.

The power of online platforms is noted to be an existential threat to many businesses, with increased advertising costs reflected in the prices consumers pay for hotels, flights, consumer electronics, books, insurance, and many other products that make heavy use of digital advertising. However, the impact on innovation is likely to be the largest source of consumer harm.²

The CMA's analysis indicates that Google's and Facebook's market power has already had a significant impact on prices and revenues. Notably, Google appears to be making excessive monopoly profits. Google's revenue per search in the UK has more than doubled since 2011, and in-depth analysis of Google and Bing's search prices suggest that Google's prices are 30-40% higher on desktop and mobile when comparing like-for-like search terms. Facebook's ARPU in the UK has risen tenfold in 8 years: from less than £5 in 2011 to over £50 in 2019. This also suggests excessive profitability consistent with exploitation of market power. The CMA found that the profitability of both Google and Facebook is excessive when it is remembered that their the cost of capital for both Google and Facebook was around 9% and they are making returns on capital of over 40% for Google and around 50% for Facebook. The CMA would expect these excess profits to be shared more freely with consumers in a more competitive market.

The CMA found that consumers receive inadequate compensation for their attention and the use of their personal data by online platforms ***"...in a well-functioning market, consumers might be offered a reward for their engagement online, or offered a choice over the amount of data they provide or adverts they receive."***³

² Para 7 as informed by Furman Review (2019), Unlocking digital competition. Stigler Center (2019), Committee on Digital Platforms Final Report.

³ Para 11, Final Report

Limited choice and limited competition have the consequence that people are less able to control how their personal data is used, and may effectively be faced with a 'take it or leave it' offer when it comes to signing up to a platform's terms and conditions.

The strength of Google and Facebook's positions are such that they are likely to be sustained over time. The CMA identified certain characteristics of these markets that inhibit entry and expansion by rivals and undermine effective competition. These include network effects, economies of scale, consumer decision making and the power of defaults, unequal access to user data, lack of transparency, the importance of ecosystems, and vertical integration, and resultant conflicts of interest. The effect of any of these characteristics in isolation would be substantial, but the CMA found they are mutually reinforcing and in combination provide an unassailable incumbency advantage.

User Data

Google collects data from user-facing services (it provides over 50 such services, including search and Gmail); mobile devices running Android, Google's operating system; and from the analytical technology placed on third-party sites and apps (tags). Facebook gathers user data from the three main services it provides in the UK (Facebook, Instagram and WhatsApp) and from Facebook analytics technology placed on third-party sites (pixels).

Google offers in-depth targeting options, driven by its unique sources of data, while Facebook can target specific audiences based on demographic characteristics, interests, and location. This creates a substantial competitive advantage for Google and Facebook. Both have access to more extensive datasets than their rivals.

User data used for targeting digital advertising is highly valuable to advertisers and publishers. For example, Google ran a trial in 2019 to compare the revenue publishers received from personalised advertising with revenue from non-personalised ads. CMA analysis of the results suggests that UK publishers earned around 70% less revenue when they were unable to sell personalised advertising but competed with others who could.

The ability to measure the effectiveness of advertising is important to decisions about advertising spend. The CMA finds **that advertisers need to be able to track user actions online using tags and pixels**. Google tags and Facebook pixels are widely available on advertiser websites and apps. Google tags are found on over 80% of the most popular websites, and Facebook covers between 40-50%. Both dwarf other platforms' very limited coverage. In addition, Google's mobile data also allows it to track user actions offline (for example, to identify visits to physical shops). This means that Google and Facebook are better able to track users and demonstrate the effectiveness of using their platforms relative to others.

The CMA found that, by virtue of this position, and their market power, large platforms such as Google and Facebook increasingly appear to be setting the rules around data sharing not just within their own ecosystems, but for other market participants. **Google's recent announcement that it was phasing out support for third-party cookies on the Chrome browser, restricting publishers' ability to offer personalised advertising, is an important example of this.**

The CMA's concern is that such platforms have an incentive to interpret data protection regulation in a way that entrenches their own competitive advantage, including by denying third parties access to data that is necessary for targeting, attribution, verification and fee or price assessment while preserving their right to use this data within their walled gardens.

Lack of Transparency

One consequence of this reliance on 'black box' algorithmic decision-making is that market participants find it difficult to understand or challenge how decisions are made by the platforms and to exercise choice effectively. Newspapers can be dramatically affected. The CMA found that

Google and Facebook provide almost 40% of the traffic to large publishers. Unexpected changes to the Google Search and Facebook News Feed algorithms have resulted in dramatic reductions in traffic to certain newspapers overnight.

Neither Facebook nor Google allows full independent verification. They 'mark their own homework' in measuring ad impressions on their inventory. This could weaken competition, and potentially result in advertisers over-paying.

The issue is particularly severe in the open display market. In open display advertising, publishers and advertisers rely on intermediaries to manage real-time bidding. Publishers and advertisers cannot observe directly what the intermediaries are doing. Advertisers typically do not have visibility of the fees charged along the entire supply chain. This limits their ability to make optimal choices on how to buy or to sell inventory, reducing competition among intermediaries.

The Importance of Ecosystems in Reinforcing Market Power

Google and Facebook have built large 'ecosystems' of complementary products and services around their core services. For example, in addition to search, Google has a strong position in browsers (through Chrome), operating systems (through Android), and video streaming (through YouTube). From its origins as a social network, Facebook has expanded into messaging, devices, gaming, and retail.

Integration can deliver efficiency savings and improve consumer experience. However, integration also means that platforms can leverage their position into downstream or adjacent markets, giving themselves an advantage over potential competitors and undermining competition in those markets. Complaints indicate that:

- Facebook is using its position in social media to leverage into adjacent markets;
- Google is using its position in general search to undermine competition in different forms of specialised search, including online travel agents and shopping comparison services; and
- Platforms can use ecosystems to protect their most profitable services from competition.

By expanding the breadth and variety of online services provided, Google and Facebook are able to gather increasing amounts of the two critical inputs to the digital advertising market: consumer attention and data. This in turn results in greater advertising revenues, enabling them to invest at a greater rate than their rivals, which creates a feedback loop that further cements their powerful position.

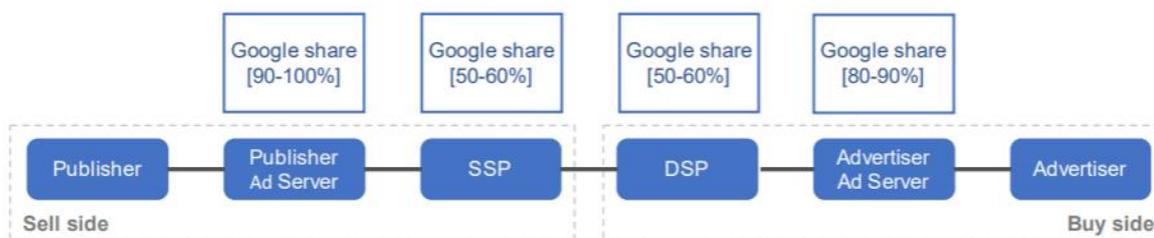
Vertical Integration and Conflicts of Interest

The vertically integrated platforms run integrated sales functions, often based on the use of quality-adjusted second-price auctions, for the sale of their own advertising inventory. This is generally referred to as 'owned and operated' inventory. In contrast, in the open display market, publishers and other content providers compete to sell advertising inventory using a wide variety of third-party intermediaries and exchanges.

Vertical integration can give rise to conflicts of interest; allowing companies with market power at one stage of the value chain to use it to undermine competition at other stages. The CMA's concerns focus on Google which, as shown in Figure 2, controls a share of [90-100]% of the publisher ad server segment, [80-90]% of the advertiser ad server segment and [50-60]% in supply-side platforms (SSPs) and [50-60]% in demand-side platforms (DSPs).⁴

⁴ Para 63, Final Report

Figure 2: Google's roles in advertising intermediation



Source: CMA: We include Google AdX, Google Ad Sense and Google AdMob in our definition of SSPs and Google DV360 and Google Ads in our definition of DSPs.

Google's market power stems from three main sources: its inventory of search and display advertising and large base of advertisers, its data on users, and its strong position in intermediation, as the largest publisher ad server, initially through the acquisition of DoubleClick and other intermediary businesses.

The CMA identified two main concerns.

- 1) First, Google has been able to use its market power in search and its wider ecosystem to build its position as a DSP. This has involved leveraging its user data and large base of advertisers (from Google Ads) to favour its DSP and tying access to YouTube to use of its DSP services.
- 2) Second, Google's position at each level of the value chain means it has the ability and incentive to exploit its position on both sides of a transaction to favour its own sources of supply and demand. Google's market power gives it the ability to exploit these conflicts by discriminating in favour of (aka self-preferencing) its own activities, further reinforcing its market power.

Specific concerns raised include:

- restrictions on publishers' ability to access the bid data required to compare the performance of Google's SSP with rivals; and
- the imposition of restrictions on publishers' ability to set differential price floors.

A Pro-Competition Regulatory Regime for Platforms

The CMA finds that Google and Facebook have such entrenched market power due to self-reinforcing entry barriers. The CMA finds that its current powers to take enforcement action against individual practices and concerns are not sufficient to address the scale of the issues faced.

The CMA therefore recommends a new pro-competition regulatory regime with strong and clear ex ante rules, which can address a wide range of concerns holistically, can be enforced rapidly by a dedicated regulatory body, and can be updated and refined as required.

The recommended regime comprises two broad categories of intervention:

- an enforceable code of conduct, governing behaviour; and
- a range of pro-competitive interventions, which are designed to tackle the structural sources of market power and promote competition and innovation.

Interventions include:

- the provision of third-party access to data and measures to increase interoperability;
- consumer control over data; and

- separation of vertically integrated activities.

Behavioural change

The code is proposed in the form of high-level principles rather than detailed and prescriptive rules. Overly prescriptive rules could soon become redundant or fail to anticipate important new developments. The code would have a statutory basis, with powers given to the DMU to suspend, block and reverse decisions of SMS firms and order conduct in order to achieve compliance with the code, backed up by financial penalties for non-compliance. The DMU's investigations would be completed quickly (expected to be within 6 months) so as to act before there is significant competitive harm.

Three principles are proposed: Fair trading, open choices, and trust and transparency. Fair trading is intended to address exploitative behaviour. The open choices principle is intended to address exclusionary behaviour, while the trust and transparency principles are designed to ensure that a SMS platform provides sufficient information to users, so that they are able to make informed decisions.

The CMA considers that each SMS platform would have its own tailored code in that published guidance for each SMS platform would provide more detail on practical application of the principles to the markets within which the SMS platform would operate. While not formally part of the code, an initial draft of the guidance would be published alongside the code, and it would be updated by the DMU as the market evolves.

The CMA considered that its proposed approach would enable the DMU it to cover a much wider range of concerns holistically; the ability to address concerns more rapidly and before they result in competitive harm; a greater focus on remedies and remedy design; and greater clarity for platforms and other market participants over what represents acceptable behaviour when interacting with users and competitors. Having a dedicated DMU focus on the sector should also help pro-competitive interventions.

Structural Separation?

The key objective of the code is to mitigate the effects of market power by governing the behaviour of platforms with SMS; to stop the exploitation of users and the exclusion of competitors. However, pro-competitive interventions would aim to tackle sources of market power directly, by overcoming barriers to entry and expansion.

Differential access to data is at the heart of important barriers to entry and expansion. The DMU therefore needs powers to implement a range of data-related remedies including data mobility, systems with open standards and open data. The main data-related interventions needed are following:

- Increasing consumer control over data, which includes providing choices over the use of data and facilitating consumer-led data mobility;
- Mandating interoperability to overcome network effects and coordination failures;
- Mandating third-party access to data where data is valuable in overcoming barriers to entry and expansion and privacy concerns can be effectively managed; and
- Mandating data separation / data silos, in particular where the data has been collected by the platforms through the leveraging of market power.

To address the power of defaults, the CMA finds that the DMU should have the power to introduce consumer choice and default interventions, which would allow it to restrict platforms' ability to secure default positions and to introduce choice screens.

To address potential conflicts of interest arising from vertical integration, the CMA finds that the DMU should have the power to introduce different forms of separation intervention, from

operational separation, to full ownership separation. develop regulatory expertise and understanding over time.

Specifics: Search

The CMA recommends that the DMU should **have the power to restrict Google’s ability to secure default positions, to restrict the monetisation of default positions on devices and to introduce choice screens. The DMU should also have the ability to influence and approve the design of any choice screens introduced.**

The DMU should have the power to require Google to provide click and query data to third-party search engines to allow them to improve their search algorithms, thus helping to overcome Google’s scale advantages in data. Such an intervention could be designed in a way that does not involve the transfer of personal data, and hence without raising privacy concerns.

Specifics: Social Media

The CMA finds that Facebook’s market power is derived from a large network of connected users, and strong network effects stemming from the limited interoperability it allows to other social media platforms. Restrictions of interoperability limit competition and the CMA recommends the DMU be given powers to mandate interoperability.

Consumer Control Over Data

The CMA finds that consumers value privacy and want control over their data, but many social media platforms do not allow consumers to turn off personalised advertising. Those platforms that do provide a choice use defaults and choice architecture that make it difficult for consumers to exercise this choice.⁵ To address these concerns, the DMU is to be given powers to introduce two interventions to increase choice:

- the choice requirement remedy, requiring platforms to give consumers the choice not to share their data for personalised advertising; and
- the ‘Fairness by Design’ duty, placing a duty on platforms to ensure that they are maximising users’ ability to make informed choices about the use of their personal data.

Under a choice requirement remedy, platforms would be required to offer consumers the choice of a basic service without personalised advertising. The DMU should also be able to approve the way in which the choice is presented, including whether the default is to allow personalised advertising or not. The platforms would be able to offer consumers incentives to accept personalised advertising, as this should both benefit consumers and help platforms manage potential revenue implications. The Fairness by Design duty would require platforms to design choice architecture in a way that encourages free and informed consumer choice. It would be subject to a rigorous trialling and testing and monitoring regime, to ensure it provides the intended support for consumers in practice.

Conflicts of Interest and Exploitation of Market Power in Digital Advertising

The ‘fair trading’ objective, is intended to be used to address concerns around the potential for auction manipulation, particularly where platforms exercise considerable discretion on bidders’ behalf, such as through automated bidding.

Under the ‘open choices’ objective, the code could be used to address self-preferencing concerns within search advertising and ad tech intermediation. For instance, it could require platforms not to prefer their own customers over third parties who use other intermediaries.

⁵ See also the decision of the Supreme Court in Germany in June 2020 in the case brought by Facebook against the BKA; the conclusion of which is that the BKA was correct to bring the case and more consumer choice is to be required.

A strong case is seen to exist for the power to introduce separation and access interventions in the open display market. The strong position of Google's publisher ad server, SSP and DSP, and its unique access to Google's ad inventory, means that each of these businesses potentially faces a conflict of interest, potentially acting on the advertiser side, on the publisher side and on Google's own account. Further, Google can increase its market power by tying access to YouTube to use of its DSP services. The CMA suggests two broad forms of intervention to address these concerns in open display advertising:

- Separation of the function of ad serving from the advertising advisory function (DSP), where the ad server has market power; and
- The prohibition of a DSP restricting access to its inventory, where that inventory is sufficiently important to generate market power for the DSP.

The CMA recommends the DMU have powers to implement ownership separation and operational separation and to oblige parties to provide access to inventory on reasonable terms. Various forms of separation could be imposed from full ownership separation to operational separation, which would include management separation and 'firewalls' between different businesses under common ownership; or restrictions directly targeted at conflicts of interest, where intermediary firms are not allowed to act on both sides of a single transaction.

This is a highly interventionist remedy and the DMU would need to consider the feasibility of the UK acting unilaterally given the international structure of the industry.

Data Access and Transparency in Digital Advertising

Many concerns in digital advertising markets relate to data. First, many of the basic functions of digital advertising, such as pricing and ad verification, are characterised by a lack of transparency and information asymmetries, inhibiting effective demand-side engagement and leading to a lack of trust. Secondly, the CMA found that differential access to data for targeting and attribution creates a substantial barrier to entry and expansion in digital advertising, with Google and Facebook enjoying a much wider variety of sources of such data and restricting other parties' access to it, sometimes on the basis of data protection regulation.

As a solution, the CMA notes a strong case for greater transparency over fees and verification data. In relation to fees, it is suggested that fees charged by ad tech intermediaries should be provided to contracted parties, and that a move to more widespread publication of data on average fee or take rates could help bring a degree of confidence to market participants. The CMA considers that this would be an appropriate role for the DMU to take on.

The CMA also recommends that the DMU should have the power to introduce a transaction ID but suggests that further work would need to be undertaken by the DMU to assess how such a common user ID could be designed to avoid potential privacy concerns.

In relation to verification, CMA recommends that Google and Facebook should give advertisers access to the tools or information necessary to carry out their own, independent verification of advertising purchased on the inventory owned and operated by Google and Facebook and that all sides work to secure the necessary contractual arrangements to ensure that this is done in a way that is consistent with the requirements of GDPR.

To address concerns relating to Google's and Facebook's greater access to user data for targeting advertising and assessing its effectiveness, the following forms of intervention are identified:

- data separation (or data silo) interventions which would prohibit platforms from combining certain categories of data within their ecosystems;
- user ID and data access interventions, which would provide for the creation of a secure common digital ID that market participants could use to assign to their own data;

- data access interventions, which would require platforms to provide third parties access to certain categories of data; and
- data mobility interventions, which would allow consumers to share the data that platforms hold on them with other parties, potentially both promoting competition and increasing consumer control over their data.

Further work with the ICO is proposed because each of these interventions would improve competition, but they differ in terms of their potential implications for effective targeting and data protection and privacy. Proportionality means that they need to be tailored to circumstance. For example, data separation is most likely to be appropriate where the linking of the data constitutes a significant barrier to entry and expansion, where the data has been collected through the exercise of market power and where there are significant privacy concerns and limited efficiency benefits from the data being combined. The case for user ID and data access interventions is stronger where there are strong competition and efficiency benefits in sharing the data, and privacy concerns can be managed through aggregation or anonymisation. The potential use of these interventions is a key focus of CMA's proposed further work with ICO, as discussed below.

Enforcement Action

The CMA is currently actively considering possible enforcement cases in the digital sector, drawing on the work of the market study. More broadly, the CMA will also continue to consider any examples of digital platforms exploiting their market power or otherwise engaging in anti-competitive conduct and will stand ready to take enforcement action where it identifies evidence of anticompetitive conduct.

Digital Markets Taskforce and ICO Actions

The CMA formally published a consultation with a response date of 31 July 2020. The CMA will also work with the ICO on the interaction between competition and data protection regulation in digital advertising markets, including in particular how to respond to and engage with Google's proposals for phasing out third party cookies on Chrome browsers over the next 18 months.

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