



**Computer & Communications
Industry Association**
Tech Advocacy Since 1972

**CCIA's Response to the CNMC's Public Inquiry
relating to Online Advertising**

May 24, 2019

1. Your information

- In what capacity or on behalf of whom do you participate in this public consultation? *
- Full name (of the individual or institution represented) *
- Would you like to publish the name next to your answer or keep it confidential (in which case it will be published as an anonymous reply)? *
- Contact e-mail (will be kept confidential) *
- Brief justification of the interest of the individual or institution on the online advertising sector (maximum 1,000 characters) *
- With what companies do you relate in this field? (maximum 1,000 characters) *
Do you want to make this information publicly available or keep it confidential so that your response is published without this information? *
- Who do you consider to be a main player in the sector in one of the various capacities?: advertisers, digital platforms, mediation agencies, etc.? (maximum 1,000 characters) *

Brief explanation of the reasons for the specific interest of the individual's or the institution's interest in online advertising

The Computer and Communications Industry Association (CCIA) welcomes the opportunity to submit comments to the Spanish Competition Authority's (CNMC) inquiry into online advertising.

CCIA represents large, medium, and small companies in the high technology products and services sectors, including computer hardware and software, electronic commerce, telecommunications, and Internet products and services¹.

CCIA's members are leading innovators of what some refer to as the 'digital economy' (bearing in mind that that whole economy is becoming digital). Many operate so-called multi-sided business models where it is often the advertising revenue generated on one side of the business that funds the innovations valued by consumers. Many advertising services offered by CCIA's members created benefits and efficiencies for both consumers and advertisers alike.

With which firms do you deal in this sector?

As stated above, CCIA is a nonprofit trade association that represents large, medium, and small companies in the high technology products and services sectors, including computer hardware and software, electronic commerce, telecommunications, and Internet products and services.

¹ A complete list of CCIA's members can be found here: <http://www.ccianet.org/about/members/>.

Our members employ more than 750,000 workers and generate annual revenues in excess of \$540 billion. CCIA remains committed to protecting and advancing the interests of our members, the industry as a whole, as well as society's need to benefit from the positive contributions that our industry, which encompasses the digital economy, can make².

Which undertakings would you consider to be the most important in the different segments: advertisers, digital platforms, intermediary agents, etc.?

There are numerous stakeholders that play an important role in the advertising sector since the Internet has offered a plethora of new, digital advertising opportunities including to those actors that have previously operated solely offline. The advertising ecosystem has never been as dynamic as it is today with many online services (as well as offline channels) fiercely competing for advertisers' money, and Spain is no exception to this trend.

² A complete summary of CCIA's mission statement can be found here: <http://www.ccianet.org/about/ccias-mission/>.

2. General Evaluation

Express your opinion on these issues (where "0" means "strongly disagree" and "5" means "strongly agree")

- The developments in the online advertising sector represents, in net terms, a positive impact on competition and efficiency; 5
- Advertisers can reach the final consumer at a lower cost; 5
- Advertisers can reach the target consumer more effectively because of the greater targeting/segmentation capacity of the audience; 5
- There is a greater variety of services/options to engage in an advertising campaign; 5
- There is a greater number of agents that can be hired for the purpose of advertising placement services; 5

If you wish, you can provide additional comments to your previous answers (maximum 4,000 characters)

Competition for consumer attention, and in turn, advertising revenue, remains fierce between mediums such as online and offline advertising. According to David Evans, Professor of Law at the University of Chicago and University of College London, 24% of a 100 dollar advertising campaign is spent online, while the rest is spent on television, print, outdoor/billboard, radio and other advertising vehicles³. As Evans puts it, “advertisers base decisions about the level and allocation of their budgets on formal or informal analyses of the rate of return on investment”. Targeted advertising, which is advertising that allows companies to present an ad campaign to a relevant audience, is found both online and offline; this creates higher efficiencies for advertisers in addition to increased consumer welfare, since consumers prefer personalized and relevant ads⁴.

In addition to competition between online and offline advertising, even within the digital advertising sector, operators compete with a variety of services for user attention in the digital space, all of which have the opportunity to display relevant advertising. This includes services such as messaging, gaming, streaming, various search engines, social media, and video, both on the desktop and mobile, with new arrivals appearing regularly.

³ David Evans, *Antitrust Issues Raised by the Emerging Global Internet Economy*, 102 Northwestern U. L. Rev. Colloquy 285 (2008)
https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1095&context=nulr_online.

⁴ Holly Paucer, *71% of Consumers Prefer Ads*, Adlucent (May 12, 2016), accessible at <https://www.adlucent.com/blog/2016/71-of-consumers-prefer-personalized-ads>.

Tyler Cowen, professor of economics at George Mason University, argues that not only is digital advertising competitive, but Google and Facebook are helping disrupt monopolies in other sectors:

Then there's the digital advertising industry that the two companies lead. But that's not a monopoly, either: Google as an advertising platform still competes with Facebook, television, radio, circulars, direct mail and, for that matter, e-mail and word of mouth. Insofar as Google has taken a big share of the ad market, it is because its ads are cheaper and better targeted than alternatives. When it comes to ads, Google is fundamentally a price-lowering institution for small and niche businesses that can now afford more reach for less than ever before. By boosting small startups elsewhere in the economy, Google and Facebook actually serve as major forces acting against monopolies in other sectors.⁵

New technologies and innovation will continue to disrupt the advertising marketplace. For example, television advertising will increasingly take advantage of new tools such as granular set-top box data to personalize ads to the viewer. It is important, therefore, to acknowledge that the advertising sector comprises online and offline channels and that new mediums will have to be taken into account as innovation continues to open new mediums for advertising campaigns to be launched. In essence, advertising depends essentially on consumers' attention, and companies engaging in advertising campaigns compete for attention across a variety of channels including some unthinkable of some years ago, e.g. intelligent house appliances.

⁵ See Tyler Cowen, *Breaking Up Big Tech Would Be A Big Mistake*, The Globe & Mail (Apr. 12, 2019), <https://www.theglobeandmail.com/opinion/article-breaking-up-big-tech-would-be-a-big-mistake/>.

3. Impact on the consumer

Greater personalization associated with online advertising has a positive impact for the consumer, who will presumably receive information and promotions more suited to their needs. Research conducted has shown that consumers prefer ads that are tailored to their personalized interests and shopping habits. There are several advantages to targeted advertising, such as reducing irrelevant advertising, helping consumers discover new products, and making online searching and shopping faster and easier. Therefore, consumers looking to buy something value a search engine more if the search engine provides advertisements that are more relevant to their search; at the same time, companies value advertising on a search engine more if they are more likely to reach potential consumers⁶.

Furthermore, if advertisers can place more effective and relevant ads, they will pay more to show them. This means that the websites that consumers visit can earn the same revenue with fewer and better ads and reduce the money spent on the wrong audience. In turn, these websites and applications can continue to provide content and services either for free or with subsidized costs. For example, Hulu offers Hulu with Ads at \$5.99 a month, while Hulu with No Ads at \$11.99. Search engines and email services are free for the consumer, and helps advertisers reach the right audience.

Express your opinion on these issues (where "0" means "strongly disagree" and "5" means "strongly agree")

- Online advertising generates more advantages than disadvantages for the final consumer; 5
- Online advertising is a more efficient way of providing advertising content; 5
- The greater efficiency in the online advertising sector translates into lower prices and / or better quality of final goods and services; 5
- The consumer has more and better information to make better decisions; 5
- The consumer receives more personalized advertising and according to their preferences and needs; 5
- The consumer receives more personalized promotions that translate into discounts and other benefits; 5
- The advantages of online advertising for the consumer compensate for the possible costs for a potential loss of privacy or for the excess of attention required 5

**If you wish, you can provide additional comments to your previous answers
(maximum 4,000 characters)**

Advertising has historically been used by many businesses, including multi-sided business models such as newspapers to financially support non-advertising services such as news

⁶ *What is Hulu (No Ads?)*, accessible at https://help.hulu.com/s/article/hulu-no-ads?language=en_US.

media, television, social media or search engines. These business models that have long existed have garnered greater attention in the digital world thanks to innovation that has made advertising a more valuable tool for consumers and businesses.

Online advertising has generated unprecedented advantages for businesses and end consumers alike. The advertising business model that characterizes many of the digital companies helps to ensure that the right incentives exist for these companies to continue to invest in providing consumers with a positive experience. Advertisers value Google because it reaches many people; in turn, Google reaches many people because it provides highly relevant search results in a digestible format. And this is possible thanks to the financial support Google obtains from digital advertising, which it in turn invests in R&D.⁷

Digital advertising has become a personalized advertising channel thanks to behavioural advertising powered by data analytics. In fact, target advertising is now ubiquitous throughout the digital advertising space, offering businesses a more efficient channel to reach out to interested customers. At the same time, individuals receive relevant advertising tailored to their own needs.

Therefore, it can be stated that the digital economy has improved the advertising experience for all stakeholders involved in it. Thanks to ad-supported business models, consumers enjoy goods and services for a lower price, often times even for free. By the same token, many customers are able to have access to advertising campaigns in the digital space for a lower price, as the advertising offer has increased in the digital space, and therefore, more competition has brought about more tailored-made offers for companies and individuals willing to advertise themselves.

There are studies that provide evidence that consumers prefer to receive ads instead of paying for online services. For example, as recently highlighted by the United States Department of Justice Antitrust Chief Makan Delrahim, nearly 80 percent of respondents in one study reported in Recode represented that they would choose an ad-supported Facebook over paying \$1/month.⁸ Furthermore, thanks to the investments in technology, consumers usually receive relevant advertising to them, as targeted advertisements have become extremely accurate. And this more personalized experience is highly valued by consumers⁹.

⁷ David Balto, *Internet Search Competition: Where Is The Beef?* DC Antitrust Law (June 24, 2011), <http://www.dcantitrustlaw.com/assets/content/documents/googlesearchfinal-Balto.pdf>.

⁸ Makan Delrahim, *Assistant Attorney General Makan Delrahim Delivers Remarks at the Antitrust Division's Public Workshop on Competition in Television and Digital Advertising*, U.S. Dept. Justice (May 2, 2019), <https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-remarks-antitrust-divisions-public>.

⁹ *Id.*

Advertisers continue to purchase advertising on various media operators which serve different purposes. However, it is important to bear in mind that different advertising channels often compete against each other. And even if online advertising, due to its personalization feature, offers unprecedented opportunities to businesses, it is important not to analyze this medium in an isolated bucket, a convergence of the different channels is actually what is taking place in reality.

Data collection and data analytics to accurately provide consumers with a personalized experience is a distinguishing characteristic of the digital advertising space, and is attracting the attention of many competition authorities. This is the reason why CCIA believes it is very important to understand the role that customer data plays in the digital advertising sector, which we develop in the next section.

4. Competition specific problems

Online advertising has a disruptive effect due to the possibilities of personalization and the greater capacity to measure and monitor its effects. This is the main reason why new competitors that are more familiar with digital environments have entered the online advertising market, which can be positive from a competition perspective. However, it can also lead to greater network externalities and economies of scale that increase market concentration and bring about competition risks.

Some experts and authorities who have studied the online advertising sector raise some competition concerns. For example, network effects can lead to the bigger players to acquire a significant market position by targeting a wider audience, becoming virtually indispensable, and eventually being able to impose anti-competitive conditions.

On the other hand, online advertising increases the supply of advertising inventory significantly¹⁰. By providing a method for earning revenue from attracting viewers, online advertising attracts the entry of content providers that supply advertising inventory. Because there are low financial barriers to the formation of these sites as a result of web technologies, this puts downward pressure on advertising rates.

Express your opinion on these issues (where "0" means "strongly disagree" and "5" means "strongly agree")

- The online advertising sector raises specific competition problems; 0
- Access to data is a barrier to entry of new competitors, or a barrier for smaller players to grow; 0
- There is a problem of excessive concentration in the hands of a few stakeholders in the sector; 0
- Major players in the market can impose abrupt changes to their contractual conditions; 0
- Vertical integration of platforms, which act as intermediaries but also provide for advertising space to content creators and service providers, implies negative trade offs in the form of negative contractual terms for advertisers, such as the bundling of services or discriminatory treatment. 0

If you wish, you can provide additional comments to your previous answers (maximum 4,000 characters)

¹⁰ David S. Evans, *The Online Advertising Industry: Economics, Evolution and Privacy*, 23 J. of Econ. Perspectives. 27 (2009), accessible at <https://www.aeaweb.org/articles?id=10.1257/jep.23.3.37>.

The consumer welfare standard is the economic model for decision-making employed by antitrust enforcers to determine whether a given business practice warrants antitrust restraint or not. A competition system guided by the consumer welfare standard has as a goal the maximization of consumers' benefits. Following the consumer welfare standard, one must conclude that the advertising sector doesn't raise any competition concerns. To the contrary, the advertising sector, thanks to the emergence of digital advertising, is highly competitive, and is bringing about numerous benefits to consumers.

Companies compete for the online digital advertising space face to face within the offline digital space. There are no frontiers between online and offline advertising outlets, and there is a clear convergence with respect to advertising space comprising online outlets with more traditional ones such as radio, television and other types of advertising campaigns. To this end, it becomes undeniable that companies that invest in R&D and data analytics can innovate and create greater value by maximizing the accuracy of targeted advertising. However, it is important to differentiate this idea from the notion that digital companies exist because of their access to data.

Based on the notion of an endless, positive feedback loop, some state that the more data is collected, the better the companies' products become, which in turn attracts more users who then generate more data. The result is a supposedly insurmountable data advantage that keeps companies immune from competition. It is true that data may well enable a company to improve its products if it knows how to derive meaningful insights from it. That, however, can hardly be a competition concern. Two leading economists, Lambrecht and Tucker, put it very clearly:

“The history of the digital economy offers many examples, like Airbnb, Uber and Tinder, where a simple insight into customer needs allowed entry into markets where incumbents already had access to big data.”

Therefore, when discussing how companies use data, it is important to bear in mind that companies exist and succeed prior to those companies accessing data. And only as these companies succeed, their access to data allows them to improve their original product and/or service or develop new products and services if they invest in R&D and innovation.

In fact, if we look back to recent history, we see examples of how innovative winners without data have achieved success. Companies like Snapchat and Slack gained hundreds of millions of users despite starting with no data. A more recent example is Handshake -- a LinkedIn competitor that focused on college students and recent grads -- that convinced 14 million users to join their platform with an innovative idea.

Furthermore, it is not necessarily true that the more volume of data that companies can process the better results they might get. In fact, recent studies show how access to data has limited diminishing returns to companies.

Stanford University conducted a study to analyze whether increased accumulation of data improves the outcome of the analysis performed on such data. The Stanford Dogs Dataset contains images of 120 breeds of dogs from around the world.¹¹ Researchers used this dataset for classifying breeds of dogs in images and calculated the mean accuracy for identification as the number of images in the dataset increased. The results showed that additional access to data provided diminishing returns to the accuracy of classification results.

As such, proposals to classify data as an essential input are unfounded and rest on a misunderstanding of the concept of data that is, among other things, non-rivalrous. In the digital economy, innovation, rather than market positioning, is more relevant in the determination of winners and losers. This is how technology has evolved from IBM's linear computers to new quantum computing, or Machine Learning. If companies want to remain competitive, they have to innovate.

These examples are also helpful to illustrate how in the data driven economy, because innovation plays such a crucial role, new ideas together with the deployment of data intensive technologies such as machine learning, will revolutionize sectors as we know them.

A good example of these new technologies is how engineers are trying to apply "zero shot learning" to improve visual recognition. "Zero shot learning" refers to the process by which a machine learns how to recognize objects in an image without any labeled training data to help in the classification. In other words, zero shot learning helps machines categorize objects that they have never seen before. By applying this technology a machine may recognize objects, e.g. distinguish a zebra from a horse, without the need to employ much data.

Similarly, with the development of synthetic data that holds no personal information and cannot be traced back to any individual, confidentiality and privacy are being protected as technology advances.

Sometimes in order to provide a more personalized and tailored online experience, digital platforms need information that is drawn from users' profiles and/or activities. This usage of information does not necessarily have a negative impact on users' privacy provided that operators empower consumers by allowing them to control the personal data that is being shared with the operator by implementing transparency measures. Following GDPR, platforms and intermediaries have undertaken efforts to address these concerns and better empower consumers by developing new privacy controls and practices.

In regards to network effects, there are indisputable consumer benefits that increase with the number of network participants. Network growth creates pro-competitive benefits; therefore, the

¹¹Aditya Khosla, Nityananda Jayadevaprakash, Bangpeng Yao & Fei-Fei Li, Novel Dataset for Fine-Grained Image Categorization: Stanford Dogs (IEEE Conference on Comp. Vision & Pattern Recognition, 2011), <http://vision.stanford.edu/aditya86/ImageNetDogs/>.

evaluation of network effects should always be accompanied by an analysis of the extent to which ‘single-homing’ and ‘multi-homing’ are present in a given market.

Importantly, network effects cannot be seen as a long-lasting moat. They are reversible. Just as they bring positive outcomes to a company and its users when such company is thriving, they can have the exact same reverse effects, as competitors benefit from the same effects when businesses start to fail. Consequently, for example, if a company stops innovating, consumers will stop using the services provided by such company leading to a downward spiral: less users means less advertising income which means less resources for further innovations.

The competitive implications of both data as well as network effects are one of the biggest misconceptions in the digital economy: while companies can surely benefit from them, they have never and will never shield a company from competition. To put in simple terms, neither data nor network effects will rescue a business if it’s unable to offer products consumers want. And because consumers can switch easily among various digital services, today’s leading innovators do not rest on their laurels. To the contrary, these companies are among the highest R&D spenders in the world.

Regarding abrupt changes to terms of agreement, it is worth discussing the economic incentives digital businesses have when dealing with players in the broader advertising ecosystem. As multi-sided business models, operators need to strike the right balance between all the constituencies engaged in their multi-sided business. There is no economic incentive to unjustifiably harm a business partner because that will upset the overall business model, given the fact that cross elasticity of demand among the multiple sides of the business is key for it to succeed. In addition, digital multi-sided businesses are increasingly subject to regulatory obligations. EU legislators have recently agreed on the so-called ‘Platform-to-Business’ Regulation (P2B) that will be fully applicable by summer 2020.¹² That Regulation will, among other things, prevent online intermediation services from introducing abrupt changes to T&Cs without prior notification and justification. CCIA firmly believes that any concern that the CNMC might have with respect to changes to terms of agreements has already been addressed by the P2B Regulation.

With respect to vertical integration, we are not sure we understand the CNMC’s proposition. It is not clear to us why vertically integrated intermediaries “renting” advertising space as content creators would apply disadvantageous conditions for advertisers. On that point we would like to maintain dialogue to better understand the concern. As a general rule, vertical integration has always benefited from a presumption of being pro-competitive due to greater consumer benefits and efficiencies. Furthermore, the interest of every ad-funded operator is to make sure the ads paid for by advertisers reach the consumer. Advertisers and intermediaries are fundamentally important business partners and the vertical nature of a business operating in the digital space

¹² See European Commission press release after the inter-institutional agreement reached on 13 February 2019: http://europa.eu/rapid/press-release_IP-19-1168_en.htm

does not have any negative impact on other non-vertical business partners that succeed equally in the online digital space.

Finally, It should be noted that there are various legislative initiatives across EU Member States, including Spain, aiming to adopt a digital services tax applicable, in particular, to some companies active in the online advertising sector. If a unilateral measure of this kind were to be adopted, it could have a significant negative impact on competition, creating asymmetries and distorting the level playing field in the European Union.

Annex I:

We suggest the following bibliography to better understand the dynamics involved in the advertising sector:

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