



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

CCIA's Submission to the UK Competition & Markets Authority

Online Platforms and Digital Advertising Market Interim Report - Consultation

17 February 2020

I. Introduction

1. The Computer and Communications Industry Association (CCIA) welcomes the opportunity to submit comments on the CMA's Interim Report and Consultation for "Online platforms and digital advertising" (herein referred to as the "Interim Report").
2. 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. 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 digital technologies can make².
3. CCIA's members are leading innovators of what some refer to as the 'digital economy'. Many operate so-called multi-sided business models, where it is often the advertising revenue generated on one side of the business that funds services provided to consumers. Many advertising services offered by CCIA's members create benefits and efficiencies for both consumers and advertisers alike through this type of business model. Nevertheless, CCIA acknowledged in its response to the CMA's statement of scope,³ that due to the complexity of the multi-sided markets, and the disruption that they cause to incumbent industries, competition authorities risk taking a dim view of conduct that is actually pro-competitive, innovative and typically pro-competitive. CCIA expressed concerns that the CMA had already determined pre-formulated remedies without seeking evidence in its market study as to whether there is, in fact, any need to propose such remedies. Having reviewed the Interim Report,⁴ CCIA would like to reiterate those concerns.
4. While we value the effort made by the CMA in putting this report together, CCIA understands that the Interim Report fails to properly account for the dynamic nature of competition and the multi-sided nature of the markets in question. This is evidenced with regards to several aspects where the CMA's theoretical, economic or legal analysis would benefit from greater nuance and understanding, and several factual points of relevance which merit further exploration and study.
5. With regards to the interventions proposed by the Interim Report, CCIA believes that absent further study on the points raised below, the CMA risks taking premature actions that could negatively impact users, including consumers and advertisers.

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

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

³ https://assets.publishing.service.gov.uk/media/5d7627c340f0b60924db6694/190730_CCIA_-_Response_to_SoS_-_non-confidential.pdf

⁴ <https://www.gov.uk/government/news/cma-lifts-the-lid-on-digital-giants>

II. **Additional Points Regarding Pro-Competitive Impact of Digital Advertising and Digital Service Providers**

6. **Increased competition generated by digital service providers.** The Interim Report spends a limited number of paragraphs (i.e. paras. 5.25-5.27) discussing the constraint imposed by traditional advertising as against digital advertising. The Interim Report fails to account for the positive pro-competition outcomes that this new form of advertising has brought about. For example, digital businesses which aggregate, organise or rank content force content providers to compete more aggressively with each other. This could explain why certain publishers are getting lower advertising revenues (because advertisers now have a whole world of more easily comparable content publishers to choose from, many of which are providing more engaging content for users). Furthermore, digital service providers also dramatically lower entry barriers for content producers to reach their audience (e.g. via blogging services, video sharing services, audio sharing services, etc.). This also increases competition on the supply side of the content market, which is another reason explaining why any particular publisher might be getting lower advertising revenue. This is the main reason why CCIA believes that the Interim Report could more clearly acknowledge the increased level of competition that these digital service providers promote.
7. **The competitive relationship with incumbent businesses.** CCIA's submission on the CMA's statement of scope spoke at length about the competitive dynamic between digital advertising and incumbent advertising models. The competitive constraint imposed by this traditional advertising should be discussed in more detail, particularly as there is evidence (referenced in fn. 231) that certain segments found television advertising to be the closest substitute to social media advertising. Evidence that digital advertising tools are improving in terms of quality (such as ad fraud, see e.g. para. 5.128) and price (lower costs of entry, see e.g. para. 5.211) also suggests that digital advertising is under competitive pressure to improve. Similarly, the Interim Report acknowledges that digital-advertising funded service providers have a "need to maintain a high-quality consumer experience" (para. 5.152), which again suggests the existence of a competitive constraint from outside the CMA's narrowly defined market. CCIA believes that understanding digital advertising in the wider economic context in which it operates will improve the final report's analysis and policy recommendations.
8. **The benefits of personalised advertising for advertisers.** It is well known that digital services have brought about enormous benefits and efficiencies to the advertising industry. However, the Interim Report only has passing references to the benefit that advertisers receive either from the targeting of personalised advertising, or from the more accurate measurability (see e.g. para. 2.42). On the positive front, the Report does acknowledge that digital advertising generally has lower transaction costs (para. 5.18), that it appears to be more accessible to smaller advertisers (paras. 5.19, 5.26), and that data-based targeting results in greater return on investment (para. 5.114). However, the Interim Report does not attempt to quantify the resulting economic benefits. In many places, the Interim Report simply ignores the benefit to advertisers, and only mentions the benefit as accruing to the service provider

(e.g. para. 4.127). Given that digital advertising is the topic of the Report, one would expect that more attention would be paid to the economic benefits and how digital advertising, and particularly targeted advertising, has increased competition in the broader advertising market. Even where the Report estimates the value of personalised advertising as being approx. twice that of non-personalised advertising (para. 4.152), it does not mention the advertiser side of the market. The Interim Report instead focuses on the costs of digital advertising to the consumer side of the market. CCIA believes that over simplifying the multi-sided nature of the service, ignoring the benefit to advertisers, and focusing on only a single dimension of competition will likely lead to unhelpful and counter-productive policy recommendations.

9. **The value of personalised advertising to consumers.** When speaking of competition on advertising quality (see e.g. para. 3.107), the Interim Report only has passing references to the increased quality/relevance of personalised advertising from the perspective of consumers of advertising (e.g., paras. 4.19, 4.42). In this respect, CCIA again submits that the use of data for personalised advertising increases the quality of advertising for consumers and there is surprisingly no serious discussion, analysis or attempt to quantify this increase in consumer welfare.

III. Additional Points Regarding the Relationship Between Consumers and Service Providers

10. **The concept of “paying with attention”** (see e.g., pg. 56 para. 2.69, pg. 109, pg. 134 para. 4.103). The Interim Report seems to confuse the role of consumers’ attention in these multi-sided business models. While it is correct that the attention and time that users spend on a website is directly related to the value of the services they receive from the digital services, it is important to clarify that users do not pay with their attention. What actually happens in these multi-sided business models is that advertisers pay in order to have access to the user’s attention. This is an important distinction. Advertising-supported content models are well-accepted by newspaper, radio, and television audiences and regulators conventionally do not characterize those as products for which consumers “pay with attention”. CCIA believes that over simplifying the multi-sided nature of the market, as if it were a single-sided market, will likely lead to unhelpful and counter-productive policy recommendations.
11. **The concept of “paying with data”** (see e.g., pg. 56 para 2.69, pg. 109, pg. 134 para. 4.103). It is a general misconception that consumers pay with data for the digital services they use. Consumers generate data through use of the digital services. While some of this data is aggregated and then used to tailor advertising to groups of users, even the useful data is not actually being sold to the advertiser, rather it is being used to improve the advertising product. Furthermore, the valueless data generally outweighs the data that is actually useful for improving the advertising product (contra. Para 4.10). There are actual data brokers that buy and sell data to third-parties, and confusing the activities of those data brokers with those of multi-sided service operators does not help clarify understanding of the markets. The use of this false and misleading narrative is troubling. The Interim Report further does not distinguish between pre-existing data and data that is generated through use of the platform. For example,

the concept of consumers “sharing data” with service providers (e.g. para. 4.46) makes sense only with respect to pre-existing data. Similar considerations apply to the concept of “exchanging” data (as in para. 4.132). The failure to properly and systematically distinguish between pre-existing data and data generated through use of the platform, is an omission that could raise significant challenges when describing the dynamics that govern digital services and making evidence based policy recommendations accordingly. This is the reason why we encourage the CMA to clarify in the final report the nuance and complexity of the issue rather than relying on over-simplified sound-bites (e.g. the “exploitation by Facebook of consumers”, paras. 5.151, 5.160, 5.162).

12. **User Control of Data Gathering Settings:** whereas the report discusses the gathering and use of data, it does not adequately explain the options that users have to limit and control data gathered by websites. In this respect, CCIA notes that users have many options, including privacy focused browsers, browser settings, or browser plug-ins and other privacy-focused software that prevents or limits data gathering.

IV. Additional Points Regarding Economic and Competitive Analysis

13. **Economic Analysis Needed to Understand evolution of the Digital Advertising Sector:** The Interim Report endeavors to understand the elasticity of demand that defines the digital advertising sector. However, it is CCIA’s view that the Interim Report fails to engage in a sufficiently deep economic analysis of this sector to fully discern what the supply and demand forces that characterize this sector are, and how they have been moving over time. Further research needs to be done regarding digital advertising prices. In this respect, the CMA should distinguish and explain why it thinks that proposed reverse payments would be “plausible” for digital advertising, but not for advertising-funded competitors such as television, radio or newspapers.
14. **Distinguishing competitive advantages and barriers to entry.** The Interim Report discusses several innovations and services as creating further barriers to entry on the advertising side of the market (e.g. para. 5.71). However, barriers to entry are typically understood as specific features of the market, which give incumbent firms advantages over potential competitors, such as preferential access to inputs, economies of scale or strong network effects. CCIA submits that the final report should better distinguish how the alleged barriers to entry are not re-statements of the network effects previously mentioned. CCIA submits that the final report should at least acknowledge that not every competitive advantage constitutes a barrier to entry.
15. **Evidence on the cost of capital vs returns of capital is used as evidence of exploitation of market power** (see paras. 59, 2.65, 5.90, 5.155). Appendix D, which details the calculations, only says that the degree of profits would normally be expected to attract entry by potential competitors. However this does not necessarily exclude the possibility that the perceived lack of entry is due to market structure. CCIA suggests that the CMA conduct further study and economic analysis to support or disprove its theory in this regard.

16. **Ad-load as evidence of market power.** The Interim Report correctly recognises that ad-load is an important element of competition (see e.g. pg.87, para. 3.107). Advertising can be analysed as negative value content (see e.g. para. 5.108 acknowledging that display advertising “is typically unwanted by consumers”). This negative value content is tied to positive value content such that the net value is positive for the consumer and hence attractive for consumption and attention. This is true for newspapers, radio, television, etc. Under this analytical framework, increased ad-load can be seen as either compensating for increased content value, or as an exertion of market power. In this respect, further study could be done on ad-load and how it could be used to measure market power across service providers (both incumbent advertising and digital advertising).
17. **Substitutability between video and non-video display advertising.** Para 5.111 focuses on the demand side of substitutability, but does not engage at all with the question of supply-side substitutability. Given the dynamic nature of the markets and improving technology including network speeds, much of ad-inventory could easily be switched from non-video to video and vice-versa. Indeed, the Interim Report notes that “there has been a significant move towards video advertising” (para. 5.111), suggesting that switching on the supply-side is easy and increasing. CCIA submits that substitutability on the supply side should be more closely studied in the final report so that the assessment of market definition can properly account for dynamic market factors and a longer-term view.

V. Additional Points Regarding Proposed Interventions

18. **The cost of limits to personalised advertising** (see e.g., para. 72, paras. 6.94-6.99): It is concerning that the Interim Report does not appear to study the impact its proposed limits on personalised advertising would have on advertisers and the associated increase in costs to advertising, and whether these costs would ultimately be passed-on to consumers in the form of higher prices. Furthermore, the Interim Report proposes a rule that “all platforms should be required to give consumers an option to use their services without requiring in return the use of consumers’ data for personalised advertising” (para. 6.94). The Interim Report acknowledges the impact that this would have on certain service providers’ business models and that it could make certain services uneconomic, could prevent the emergence of new services designed around ad-funded business models, and could therefore lead to increased prices or lower quality services for users. However, the proposed distinction between large companies and smaller companies in this regard does not appear to make economic sense. Making large companies less efficient and increasing their costs would have a larger impact on consumers overall. The same considerations that militate against taking this approach for smaller companies equally apply for larger companies.
19. **Codes of Conduct “addressing concerns that require rapid intervention to avoid lasting competitive harm”** (see e.g., para. 67, paras. 6.19-6.53): While a Code of Conduct may be helpful to address certain non-competition concerns such as lack of transparency, any such Code, which would regulate competition taking place on a marketplace, should not create

new barriers to entry and further, should preserve competition between marketplaces as much as possible. CCIA submits that competition concerns should continue to be addressed on a case-by-case basis where evidence of pro-competitive justifications can be properly weighed against anti-competitive effects.

VI. Concluding Remarks

20. As the Interim Report acknowledges, digital advertising services have dramatically lowered costs for smaller advertisers. The industry is rapidly evolving, as are the digital content industries which they fund. Innovation is pervasive. These are not characteristics of markets where competition is restricted. The CMA theorises that perhaps prices could be even lower, and then proposes interventions like the elimination of personalised advertising, that would only lead to increased prices. CCIA suggests that the CMA invests in furthering economic studies to support or disprove the theoretical assumptions underlying the Interim Report. In this regard, CCIA encourages the CMA to closely consider and explore the points raised above. As always, CCIA stands ready to support the CMA in crafting evidence-based interventions that promote open markets, open systems and full, fair and open competition.