

IAB UK response to CMA's interim report on online platforms and digital advertising market study

Background

IAB UK is the trade association for digital advertising, made up of over 1,200 of the UK's leading brands, agencies, media owners and technology providers. We have a [Board](#) comprised of 25 leading businesses in the sector. Our purpose is to build a sustainable future for digital advertising, a market that was worth £13.44bn in the UK in 2018.

The IAB is actively engaged in working towards the optimal policy and regulatory environment to support a sustainable future for digital advertising. We also develop and promote good practice to ensure a responsible medium.

General

1. The CMA's interim report sets out the different forms of digital advertising effectively, and demonstrates a sound understanding of how they operate. The same can be said for the interim report's explanation of how the intermediated open display market operates, and the CMA's understanding of the role of data.
2. The IAB would stress the importance of the digital advertising industry to the UK and its ability to compete in a global market, especially in light of the UK's departure from the European Union. Before any intervention is formally proposed, we would urge full consideration of the risks involved in placing additional burdens on UK businesses.
3. With the GDPR still in the process of being interpreted by both businesses and data protection authorities across Europe, the IAB is not convinced that a sufficient case has been made for the proposed interventions to give consumers greater control over their data in the CMA's report, many of them similar to requirements already established by the existing GDPR.
4. To ensure the CMA's continuing analysis and conclusions are clearly defined, it is worth being clear that 'real time bidding' (RTB) is only one type of 'programmatic' advertising (and not all advertising is bought and sold programmatically). Programmatic advertising can be transacted directly, when inventory is bought from a particular media owner using automated processes, but a direct relationship exists between the buyer and media owner in the form of pre-existing deal terms. Alternatively, programmatic advertising can be transacted indirectly (through real time bidding), where inventory is bought on an impression-by-impression basis in real-time through an open, unreserved auction, without there being a direct relationship between the buyer (advertiser or agency) and the seller (media owner). This is further explained in IAB UK's [Guide to Programmatic](#).

Conditionality of access

5. Conditionality of access online is a complex topic that has been the subject of prolonged consideration and debate in recent years, particularly in the context of the consent provisions in PECR – which are being reviewed as part of the proposals for a revised EU ePrivacy Regulation – and their interplay with the GDPR. It is also, therefore, a subject that is within the remit of the Information Commissioner’s Office (ICO), as noted in the CMA’s report (para. 6.100-103). It is crucial that the CMA’s consideration of this question takes into full account the wider context and existing work being undertaken by the ICO and other regulatory bodies.
6. The CMA’s interim report invites views on whether ‘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), and goes on to say the CMA will be considering whether similar obligations should apply to publishers ‘such as newspapers’ in the second half of the market study (para. 6.100). This would set a dangerous precedent for publishers and content providers, and could disproportionately disadvantage publishers and content providers. The IAB believes it is critically important that businesses are not forced to provide their services without the option of making them conditional on the well-informed consent of the user to data processing that is not strictly technically necessary for the provision of that service (including advertising-related purposes). Commercial businesses should, in accordance with appropriate legislation (including GDPR and PECR), have the right to make their products or services conditional if they choose to.
7. The proposal set out in the report (para. 6.94) is problematic and would risk an enormous impact on the digital economy as we know it. Advertising inventory that has been effectively targeted using user data is viewed by advertisers as significantly more valuable and, as the CMA’s own Appendix E (*The role of data*) notes, evidence suggests that UK publishers earn 50%-65% less revenue when advertisers cannot target their advertising on this basis (para. 134). This means any requirement for media owners to provide their content without targeted advertising would have a significant impact on their funding models and ability to effectively monetise their content. Additionally, the CMA’s interim report references research suggesting most consumers prefer advertising on websites to be relevant to them, and most prefer targeted advertising and personalised discounts to non-targeted advertising and generic discounts (para. 4.42).
8. Restricting the basis on which (non-public) service providers can choose to offer access would risk putting advertising-funded services on the internet as we know it in jeopardy, result in a steep decrease in the quantity and quality of free services, and/or result in the erection of paywalls for previously free services. The forced erection of paywalls in order to continue offering previously free services is a key concern for the digital media and advertising industry as it is a severe interference in a digital media service’s right to choose its own business model and to determine the terms under which it makes its service available to consumers. The IAB does not support an obligation on online services to provide any alternative offers if they wish to continue providing a free, data-driven advertising-funded offering.

Potential interventions to give consumers greater control over their data

9. The interim report succeeds in setting out some of the difficulties and uncertainty that the industry has been grappling with since the introduction of the GDPR, noting the, ‘variety of interpretations of the GDPR’ it has encountered and the ‘genuine uncertainty’ amongst businesses ‘on where the precise contours of the regulatory landscape lie’ (para. 4.30). It also notes that ‘the design of GDPR and its interpretation by data protection authorities makes it easier for large platforms to gain consent for data processing than smaller publishers, giving the former a strong competition advantage’ (para. 4.143). It explains clearly how larger platforms often have ‘an easier task in obtaining consent from consumers to use their data for personalised advertising compared with publishers such as newspapers involved in the supply of display advertising in the open market’ (para. 43).
10. However, having recognised that the design of the GDPR has created challenges and given further competition advantages to some companies in the industry, the interim report, in considering ways to give consumers greater control over their data (para. 6.89 onwards), goes on to propose a variety of what are presented as UK-specific additional requirements which are in fact similar to those already introduced by the GDPR. These proposed remedies risk exacerbating the problems identified earlier in the interim report, and do not seem to align with the CMA’s goal of helping competing companies compete on equal terms (interim report summary, p.6).
11. A number of proposals in Chapter 6 of the interim report, particularly those dealing with companies’ compliance with the GDPR (6.109-6.123), fall more firmly inside the remit of the relevant responsible data protection authorities (DPAs). The recommendation for better coordination between competition and data protection authorities is to be welcomed, but there is a risk that both the CMA and DPAs taking action on areas of GDPR compliance could create regulatory overlap and confusion. Whilst the harmonised, cross-EU interpretation of the GDPR is an ongoing process, industry has invested significant time and resource towards ensuring its compliance with the Regulation, and it is unclear how some aspects of the CMA interventions will improve the competitive landscape and remedy the conflicting guidance from DPAs within the existing regulatory regime.

Designing regulations that work for small as well as large companies

12. The IAB disagrees with the suggestion made to the CMA as part of its information-gathering, that consent given by an individual to share data with a large number of organisations at once, ‘cannot be considered to be freely given and informed’ (para. 6.121), and would caution the CMA against adopting or supporting positions on GDPR that are rightly for courts or competent authorities to decide. IAB UK firmly believes that digital advertising and content are valuable economic drivers with major societal benefits and that personalised digital advertising and content can be delivered in ways that not only respect the law but also give users confidence and trust in how their data is being used. The [Transparency and Consent Framework](#) (TCF) cross-industry initiative has been developed by leading ad intermediaries to this end (see point 28 below).

13. IAB UK welcomes the CMA's recognition of the need to take into account how potential interventions may impact on smaller as well as large companies. Similarly, it is important to take into account that companies that operate in the interconnected and multi-jurisdictional 'open display market' operate differently and have different challenges and capabilities than businesses that are in control of their supply chain. This places particular emphasis on greater certainty as to the precise contours of data protection law and uniform guidance from UK and EU DPAs.
14. The interim report proposes an established quality mark to demonstrate that advertising providers, 'are all members of an effective certification regime which complies with a recognised GDPR compliant code of conduct' (para.6.125). IAB Europe has begun a workstream to seek European Data Protection Board (EDPB) endorsement for a GDPR transnational Code of Conduct based on the Transparency and Consent Framework (TCF), and this therefore represents a possible candidate for such a quality mark.
15. The CMA's recognition of the risk of 'consent fatigue' from numerous, detailed and repeated consent requests is also welcome (para 6.127), along with its desire for DPAs to explore, 'an approach to prioritising [GDPR] enforcement which seeks to achieve consistence between different business models... which... will help give consumers greater choice and keep them in control' (para 6.129). However, we note that timely legal guidance is the priority rather than lengthy enforcement which takes many years to conclude.
16. The continued existence of the separate yet significantly overlapping provisions of PECR and GDPR adds to this risk of consent fatigue. At the outset of the publication of the draft ePrivacy regulation we voiced our view that, as the processing of personal data is now subject to rules established by the General Data Protection Regulation (GDPR), specific rules on storing and accessing identifiers of any kind in the ePrivacy Directive are no longer needed. The focus should instead be on providing clear, pan-European guidance on cookie consent and resolving the differences of interpretation which persist between DPAs.
17. The IAB UK does not believe that the proposals in the original draft of the proposed ePrivacy Regulation would address the issue of consent fatigue in practice. Nor do we believe that it is appropriate to denote technology (browser, device, etc) providers (as opposed to consent/service providers) the 'gatekeepers' for consent controls that affect content and services accessed via that technology.
18. If consent settings were managed via 'blanket' or 'default' settings in a browser or other application, information society services' user dialogue would be intermediated by a browser developer or other third-party, who may also be a competitor, or at the very least, not be an impartial and objective intermediary. More importantly, this would not address the underlying issue of user control.
19. It is important that, in considering how to give individuals more control, the CMA considers all of these issues carefully. It should take into account that different content/service providers will process data for different purposes, using different legal bases; that the consent requirements of PECR are distinct from and different to the requirements for using consent

as a legal basis to process personal data under GDPR; and how to also protect the right of content or service providers to have a dialogue with their own users about privacy preferences, rather than designating the developers of third party browsers/other similar technologies as the intermediary through which such a dialogue takes place.

Personal data mobility / privacy-enhancing technologies

20. Appendix L (*Potential approaches to improving personal data mobility*) sets out suggestions for a new digital advertising ecosystem based on client-side privacy-enhancing technology, including proposals for both behavioural targeting and matching between impressions and clicks or conversions occurring, ‘on-device only, with no personal data or identifiers leaving the device’. This approach would likely provide significant advantages to the technology companies that sell the devices most prevalent in the market, as it would give them more control over user data (as noted in para.139 of Appendix L). This would arguably not resolve the underlying competition concerns, and to the contrary would provide additional opportunities to tech firms that sell devices (or software, such as browsers) to leverage their technology positions, cementing them as new de facto gatekeepers and increasing the largest players’ access to data, something the CMA highlights as a key concern in its interim report (summary, p.6). Many of the companies that own browsers or devices are also competing in markets aside from simply advertising, so any potential interventions should be considered carefully given this wider context. The CMA should be particularly wary about proposing or supporting approaches which have yet to have their effectiveness or value to consumers examined.
21. This tension is recognised in the *ancillary measures* in Appendix L, which suggests that options to address it could include requiring operational separation, meaning vertically-integrated platforms would be prevented from ‘exploiting users’ information across their services for the purpose of behavioural targeting’ (para. 143). It is worth considering whether this would risk creating a fragmented approach and negatively impacting the streamlined and personalised user experience.

Separation of buy-side and sell-side operations

22. Appendix M (*Potential interventions in digital advertising*) seeks view on whether a general requirement should be introduced on all intermediaries that operate both SSPs and DSPs in the open display market to separate their buy-side and sell-side businesses (para.40). It would be a significant intervention to force the separation of companies that hold no dominance, and would be unlikely to have much benefit in increasing competition.
23. There are questions about how this kind of intervention would work or be monitored in practice, but there is also a broader risk that such an intervention could be misplaced, as it would not address the question of access to data. DSPs and SSPs both depend on access to data and inventory to operate successfully, and it is the larger tech companies’ access to data that advantages them in the market, something referred to in the CMA’s interim report (summary, page.6). Any company operating as a digital advertising intermediary will be disadvantaged if there is an unfair balance of data in the marketplace, regardless of whether they have a buy-side or sell-side operations or both.

Transparency interventions

24. The interim report (para. 2.55-2.56) and Appendix M (para. 62, 76, Question M20) reference an 'ad tech tax', a term that it states has been used by publishers to criticise the difference between what advertisers pay and what publishers earn from digital advertising, with the insinuation being that digital advertising intermediary companies are taking a slice of the pie without adding any value. The IAB would challenge this characterisation; within the supply chain there are some technologies that are essential to the buy (i.e. you cannot work programmatically without them) and others that are additional technologies that you may choose to use in order to create additional value.
25. The IAB has been working to, including and a Transparency FAQs, in order for advertisers and publishers can optimise their digital ad spend.
26. The IAB recognises the challenges that the complexity of the digital advertising supply chain presents and is committed to improving transparency in the industry. One of the IAB's priorities, which contributes to this aim, is to educate the market and simplify digital advertising for advertisers, for example by to producing a [guide to the programmatic supply chain](#). Additionally, in support of transparency and to help increase understanding of where value is being added, the IAB has developed a '[Transparency FAQs](#)' initiative with its members. This allows publishers and intermediaries to make available information to advertisers and agencies around pricing, ad placement and data in a standardised format that is publicly accessible. The objective is to help buyers to understand the value they are getting from their advertising partners and make informed choices about how best to optimise their digital advertising spend.
27. In considering potential interventions, the CMA should take into account existing industry initiatives to manage GDPR and ePrivacy compliance, specifically the cross-industry [Transparency and Consent Framework](#) (TCF) which was launched in 2018 ahead of GDPR coming into force. IAB Europe has led the development of the TCF, together with participation from 10 National IABs (including IAB UK) and 55 organisations (its members) – plus EU-level associations, publishers, media owners, technology providers, and media agencies. . The TCF is an industry tool that supports companies within the digital advertising ecosystem to manage their transparency and consent compliance obligations under the GDPR and ePrivacy Directive. Version 2.0 (TCF v2.0) was launched in August 2019 and is due to be rolled out at the end the first quarter of 2020, follows a 12-month review period which has included market feedback from all sectors of the digital advertising industry; notably with publishers and meetings with Data Protection Authorities (DPAs) throughout Europe.
28. TCF v2.0 continues to support the overall drive of the TCF to increase consumer transparency and choice, management by digital properties of consent and compliance, and industry collaboration that centres on standardisation. Under TCF v2.0, not only can consumers grant or withhold consent but they can also exercise their 'right to object' to data being processed. Consumers also gain more control over whether and how vendors may use certain features of data processing (for example, the use of precise geolocation) to provide a means of transmitting signals of consent, and objections to data processing on the basis on legitimate

interest, from a user to third party companies working with publishers and site/app owners to deliver advertising services.

Transparency interventions – Reporting of fees by all ad tech providers

29. Appendix M identifies potential requirements to increase transparency in the market (para.63), one of which is requiring all adtech firms to report the fees they charge, in a comparable format. Increased transparency on fees in digital advertising would be a positive development for the industry, if implemented sensibly. The digital advertising supply chain is complex and it is right to hold intermediary companies accountable for their pricing and operations, but the complexity of what individual companies do makes it important that any reporting of fees is accompanied by clear opportunities for them to set out how and why their fees are established, as well as the value their services provide (in a similar manner to the IAB's [Transparency FAQs](#)). For instance, many companies providing data services consider a variety of factors before pricing their services in a bespoke manner, so the ability to explain their pricing rationale when reporting fees would be important. Additionally, the cost of services may potentially differ on an impression-by-impression basis in the RTB process given that impressions are costed in an auction process, further complicating the issue.
30. Many companies in the digital advertising industry already operate with fee transparency through their existing operations, whether due to the nature of the business model, the way in which they transact, or out of choice. This should be taken into account in the CMA's considerations of proposals for obligating companies to report fees, ensuring flexibility exists that allows companies already providing transparency on fees to comply with such an obligation in ways that recognise their existing operations.
31. The IAB agrees with the desire for transparency of fees in the industry, but we would encourage the CMA to explore alternatives within the commercial contracting process to achieve the same outcome in a more meaningful way.

Transparency interventions – Requirement to comply with a common transaction ID

32. Appendix M proposes, as an alternative to fee reporting, introducing a requirement for intermediary companies in the digital ad market to use a 'common transaction ID' (para.63). While this point is not expanded on further in the report, the IAB understands a 'common transaction ID' to mean a universal user ID, such as [DigiTrust](#). DigiTrust is owned by IAB Tech Lab, a not-for-profit organisation that engages IAB member companies globally to develop and promulgate technical standards, software and services to support growth of an effective and sustainable global digital media ecosystem.
33. DigiTrust has been developed with the objective of reducing the number of third-party requests that take place on web pages, to improve the web experience for consumers while enabling greater audience recognition for advertisers, and would therefore be beneficial for adtech vendors, media owners and the industry as a whole. However, It has not been developed specifically to provide 'more transparency about the amounts paid for digital advertising' as Appendix M states as its objective (para. 64). Therefore, while there is certainly

scope for the CMA to explore in the second half of its study whether this or other universal user ID solutions could help deliver transparency around fees, it would be advisable to also explore whether transparency could be achieved by other means.

34. Additionally, all the major solutions for producing this kind of universal user ID currently rely on third party cookies to operate and, with two major browsers having already prevented third party cookies from operating by default and Google having announced its intention to do the same for its Chrome browser, this is becoming an increasingly untenable position for universal ID solutions. If the direction of travel in the industry is for browsers to prevent third party cookies operating by default, any successful universal user ID solution being established may have to avoid relying on third party cookies in its operation.
35. The consideration of any universal user ID solution would have to take into account both privacy and security implications, and the need any potential solutions to be able to be compliant with the GDPR.

Transparency interventions – Advertiser concerns

36. Appendix M invites views on suggested interventions to address advertiser concerns, and specifically proposes requiring display advertising platforms to provide access to the underlying raw data of impressions served on their advertising inventory (para. 70-72). Consistency of data and reporting is important, and referring to existing industry standards to achieve this is preferable. Therefore, any new requirements for platforms to provide 'additional information' (para. 72) should be preceded by an examination of what requirements are currently made by existing industry bodies or standards.