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Competition in Digital Advertising Markets – Summaries of contributions

30 November 2020

This document reproduces summaries of contributions submitted for Item 1 of the 70th OECD Working Party 2 meeting on 30 November 2020.

More documents related to this discussion can be found at
<http://www.oecd.org/daf/competition/competition-in-digital-advertising-markets.htm>

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Summaries of contributions

This document contains summaries of the various written contributions received for the discussion on Competition in Digital Advertising Markets (70th Meeting of Working Party 2 on 30 November 2020). When the authors did not submit their own summary, the OECD Competition Division Secretariat summarised the contribution. Summaries by the OECD Secretariat are indicated by an *.

Australia

This submission draws on the Australian Competition and Consumer Commission's (ACCC) recent experience in considering competition and consumer issues relating to digital platforms and digital advertising markets through its enforcement, mergers and market studies/inquiries work. Of particular interest, the ACCC has undertaken, or is undertaking, two market studies relevant to digital advertising: the Digital Platforms Inquiry (DPI) (2017-2019) and the ongoing Digital Advertising Services Inquiry (2020-2021).

Following the recommendations in the DPI, the digital platforms branch of the ACCC was established with the mandate to monitor and report on the state of competition and consumer protection in digital platform markets, take enforcement action as necessary, and undertake inquiries as directed by the Treasurer. The ACCC was also given a long term direction by the Treasurer to consider the competition and consumer impacts of a wide range of digital platform services including online search, social media, private messaging and electronic marketplace services (including app store marketplaces) and the digital advertising services associated with those services.

The Digital Advertising Services Inquiry seeks to answer some of the same questions outlined in the OECD discussion paper. It is focused on examining the competitiveness, efficiency, transparency and effectiveness of markets for the supply of ad tech services and ad agency services. In the DPI, the ACCC found that there was a lack of pricing transparency regarding ad tech services and potential conduct by vertically integrated suppliers that created significant issues for both advertisers and publishers. The ACCC must give the Treasurer an interim report on the inquiry by 31 December 2020, and complete the inquiry and provide a final report to the Treasurer by 31 August 2021.

The submission also offers four observations about economic concepts relevant to understanding digital advertising markets, including the substitutability of different types of digital advertising, multisided platforms, vertical integration and data as a competitive advantage.

The submission then moves beyond competition issues and discusses the interaction of competition, consumer protection and privacy issues, and the work of the ACCC and privacy regulators in considering the broad range of policy issues relevant to digital platforms and digital advertising.

In the DPI, the ACCC recommended a range of specific changes to enhance consumer control of their data as well as a broader review of existing privacy regulation. The Australian Government has announced that it is committed to ensuring privacy settings empower consumers, protect their data and best serve the Australian economy.

The submission closes with some reflections about policy options for promoting competition in digital advertising markets, and the tools now available to the ACCC following the Australian Government's support of recommendations coming out of the DPI.

Since the DPI commenced in 2017, the ACCC has begun several investigations into the conduct of digital platforms under the Competition and Consumer Act (including the Google DoubleClick court proceedings). It is unlikely that these investigations would have commenced without the proactive examination made possible by the DPI.

BIAC

Online advertising has been the subject of intense scrutiny by competition authorities in the last few years. At a time when advertisers are moving away from traditional methods of advertising such as newspapers and commercial media, the increase of advertising on the internet and the role of certain key players in this sector, has led authorities to examine competition issues in more detail. Several authorities have carried out market studies and are considering various options on how to address perceived issues in this sector, either through competition law or regulation.

In recent years, significant competition concerns have been expressed about online advertising, in particular considering the role large players play in this area. For example, a recent report of the U.S. House Judiciary Committee (which did not receive bipartisan support), concluded that “[o]ver the past decade, the digital economy has become highly concentrated and prone to monopolization. Several markets investigated by the Subcommittee – such as social networking, general online search, and online advertising – are dominated by just one or two firms,” and “[t]hey not only wield tremendous power, but they also abuse it by . . . extracting valuable data from the people and businesses that rely on them,” and “[t]he accumulation of data can serve as another powerful barrier to entry for firms in the digital economy.”

However, as one scholar has noted: “In general, the debate about market power in online advertising tends to have a remarkable lack of precision. Commentators talk[] about network effects without specifying for whom they are envisaging that the network effects apply or why. [They also] talk about how “sticky” online platforms are without being clear about whether they mean they are sticky for advertisers or users. And commentators generally take as given the principle that data is the lifeblood of online advertising, without distinguishing what kind of data they mean, how broadly available it is, or whether such data guarantees the ads success. However, such precision is necessary in order to have a meaningful discussion about sustainable sources of competitive advantage in online advertising markets.

Business at OECD encourages agencies to undertake any analysis of online advertising markets with precision to ensure that conclusions are robust and directed at identifiable competition violations, and that remedies are appropriate to address the competition violation at hand. Moreover, to the extent that regulation (rather than enforcement) is considered on the basis of competition concerns, precision in identifying the underlying competition problems is both a necessary precursor and an essential element of an effective framework.

France

The *Autorité de la concurrence* ("the *Autorité*") has fully embraced the challenges posed by the digital economy. In particular, it has informed the debate by conducting several sector inquiries and topical studies, adopting landmark decisions on anticompetitive practices and merger control, submitting tangible proposals to adjust its means of intervention to the specificities of the digital environment and setting up a digital economy unit tasked with developing strong expertise on these subjects.

Digital advertising markets are one of the emblematic sectors in the new digital economy and have therefore been the focus of increased attention on the part of the *Autorité*.

As early as 2010, as part of its advisory role, the *Autorité* began to decipher the complex mechanisms of this sector, issuing a first opinion on the search advertising market (2010), followed by a second opinion on the display advertising market (2018). In these opinions, the *Autorité* provided a detailed analysis of the various online advertising ecosystems and an analytical framework to guide digital players when implementing their development strategies, in respect of the limits established by competition law.

Thanks to its in-depth understanding of the sector, the *Autorité* has been able to effectively assess the compatibility with competition law of certain practices adopted by Google that have been brought to its attention via several complaints.

Within this context, the *Autorité* has, on three occasions, made use of the interim measures tool, which is particularly relevant in rapidly evolving digital markets, with the aim of immediately putting a stop to certain behaviours adopted by Google that could jeopardise the competitive balance in these markets. The *Autorité* has also issued important decisions on the merits, in which it imposed remedies, handed out fines and ordered injunctions against this platform.

The *Autorité* is pursuing its action through the investigation of several cases and continued monitoring of the competitive situation in these markets. The *Autorité* has shown, through its abundant decision-making practice, that competition law is capable of adapting to the digital sector and its specificities. At the same time, however, the *Autorité* is also considering possible changes to competition law with a view to establishing an even tighter framework for the practices of digital "structuring" platforms.

Japan

As business activities using digital platforms have rapidly expanded, benefits and competition concerns they have brought about have been pointed out in various jurisdictions. The Japan Fair Trade Commission (hereinafter the “JFTC”) has been vigorously working on competition issues in digital markets, including those in the digital advertising market, where the JFTC has recently conducted a fact-finding survey in order to grasp the actual market environment. This contribution paper introduces the content of the interim report of the fact-finding survey, such as business practices centered on digital platform operators, competition concerns and perspectives for the final report.

*Korea**

Digital advertising is growing in importance in Korea, when compared to other forms of advertising. It is also a key revenue source for range of online content and services. There have been competition concerns about abuse of market dominance by online platform operators that generate revenue from digital advertising in Korea. Such dominance may come about due to network effects, economies of scale and a tendency towards market tipping in these markets. A lack of data portability and interoperability, self-preferencing behaviour, and measures taken by dominant platforms to prevent multi-homing may exacerbate such concerns. There are also concerns that some players are using their dominance to collect excessive amounts of consumer data, and using this to expand into other markets.

Korea's number one platform is Naver. It provides a range of services including as a shopping information platform, real estate information platform, and by providing content services through its web portal. These services are primarily funded through digital advertising. The Korea Fair Trade Commission (KFTC) has undertaken a number of abuse of dominance cases against Naver. One case, in September 2020 involved Naver preventing multi-homing on real estate platform. Another, in October 2020, involved self-preferencing on Naver's shopping platform (i.e. favouring its own products). Further, in March 2019, KFTC examined the service clauses of major online platform operators including Google, Facebook and Naver and identified and corrected the "unfair adhesion contract clauses" regarding the collection and use of personal data.

The Korean government is currently drafting new competition legislation and guidance to ensure that online platform operators disclose their internal policies regarding multi-homing, self-preferencing, and data use, and to prohibit a number of unfair practices. It is also drafting new guidelines to specify the criteria for determining illegality of anti-competitive practices by online platform operators under current competition laws, including incorporating two-sided markets theories, addressing zero-priced markets, and impacts on adjacent markets.

Consumer protection is also relevant in digital advertising markets, and has been a particular concern in respect of influencer marketing. The Korean government is currently revising the Act on Consumer Protection in Electronic Commerce to improve transparency around search results in online platforms.

Mexico (IFT)

This contribution describes the practice of the Federal Telecommunications Institute (IFT) regarding competition assessment in digital advertising markets. It provides a general overview of how digital advertising markets work, particularly in Over the Top Services, including the role played by data; the value of digital advertising in Mexico; and a summary of relevant IFT's experience on this issue.

The digital economy has led to the appearance of new services such as Over The Top (OTT) services, including digital platforms, and digital advertisement. These digital services are systems that operate over Internet telecommunications networks, through the use of applications (interfaces—mobile applications and websites—), data centers, dedicated lines, that allow connectivity to telecommunications networks and the Internet, cloud computing, including artificial intelligence, machine learning and algorithms, and an important know how and skills to employ those resources.

Digital platforms exhibit important economies of scale and scope, direct and indirect network effects and face low marginal cost, switching cost, and lock-in effects. Digital platforms monetize their services through advertising, data, and commissions per transaction or a combination of these.

Digital advertisement follows similar principles than advertising in traditional platforms, such as newspapers, broadcasted TV and radio, and Pay TV, however targeted advertisement has evolved. OTT services, including digital platforms, that use advertising as a business model fall into the category of two-sided markets, similar to “traditional” telecommunications and broadcasting platforms like pay and free-to-air TV. Broadly, we could distinguish different digital advertising markets depending on the type of digital service or platform that operates through the Internet. Providers of digital advertising services are considered digital platforms, which are prone to tipping because of their winner-takes-all or winner-takes-most dynamics, the existence of economies of scale and scope; direct and indirect network effects, collection of big data sets, among others. The number of users and consumer's profiling are the two main factors influencing the value of digital advertising.

In Mexico, digital advertising represented approximately 40% of total advertising spent in Mexico, in 2019, and it is expected to continue growing. In this regard, data has become a key competitive asset in digital markets. Some of its characteristics give the incumbents an advantage over new entrants, nevertheless, other characteristics of data can be used to foster competition. Data can represent a competitive advantage in digital markets due to the creation of feedback loops. In addition, data can create, maintain or rise dominant position in digital advertising markets, but the collection of large datasets and analysis of data could lead to benefits for consumers, such as accessing to better and personalized services. Therefore, competition authorities should act on a case-by-case basis.

Within its legal framework, the IFT analyzed a case involving digital advertising markets: the merger by which The Walt Disney Company acquired some Fox Corporation assets, authorized by the IFT in March 2019.

Spain

The emergence of digital technologies in the last two decades has completely transformed the advertising industry. It has altered the value chain, with digital platforms competing for the audience with their own inventory and assuming intermediation services. It has also exacerbated the multi-sidedness of advertising, especially by introducing the relevance of data as a variable of competition and competitiveness.

This leads to potential competition issues. Excessive concentration (in terms of inventory or intermediation services) is not necessarily a problem as such, but it can raise concerns when it interacts with other aspects: integration of services, data dependency, self-preferencing in vertically integrated platforms and lack of transparency.

The complexities of digital advertising do not end there. There are also important takeaways from the perspective of consumer, data and privacy protection. This leads to consider a wide array of policy options: competition policy, horizontal and sectoral regulation and possible changes in the institutional framework. Given the complex nature of these challenges, horizontal and flexible tools (such as competition policy) remain the most suitable instruments to tackle these instruments.

United Kingdom

The CMA's submission summarises key findings of the [final report](#) on its online platforms and digital advertising market study that relate to the issues identified by the OECD Secretariat.

Digital advertising is the largest and fastest growing segment in the UK advertising sector accounting for 62% of total advertising spend, up from 25% in 2010. In 2019, £14 bn were spent on digital advertising in the UK, with Google generating 93% of the £7.3 bn search advertising market, and Facebook making up over 50% of the £5.5 bn display advertising market.

Almost all search and display advertising is sold programmatically (ie ad selection, and the pricing and delivery of ads, are automated by computers using complex algorithms). Large platforms such as Google and Facebook generally run sales processes on their own interfaces while in open display advertising a wide range of publishers sell their inventory to advertisers through a complex chain of intermediaries. There is an increasing trend towards vertical integration in open display with Google enjoying a share of between 50 – 100% at each level of the value chain.

Since the value of the platform to advertisers depends on consumer attention and consumer data, the ability of a platform to exploit market power on the advertiser side is strongly related to the existence of market power on the user side. Google and Facebook have market power in search and display advertising, respectively, and the main sources of their market power are in the consumer-facing markets of search and social media, where a range of barriers to entry and expansion insulate them from effective competition and make it very difficult for rival platforms to compete. The main barriers include: network effects and 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.

Lack of competition to Google and Facebook can result in substantial detriment to consumers, through increasing prices of goods and services across the economy, reduced innovation, erosion of privacy and data protection and broader social harms.

The market study recommended that the UK government bring forward legislation to introduce a pro-competition ex ante regulatory regime for platforms with entrenched market power, such as Google and Facebook. The regulatory regime that we recommended comprises two broad categories of intervention: an enforceable code of conduct, which is designed to protect competition by governing the behaviour of platforms that have market power over an important online gateway; and a range of pro-competitive interventions, which are designed to tackle the sources of market power and promote competition and innovation.

The CMA is currently building on these recommendations in its work leading the UK Government-commissioned Digital Markets Taskforce, to provide further advice on the regulation of platforms with market power. The CMA is also taking forward work on other issues identified in the study such as, for example, the interaction between data protection considerations and competition.

The challenges identified in the market study are global in nature, and there is a strong case for international consensus-building and coordination in tackling them. We are therefore

happy to contribute to this vital global debate, through the OECD and other international fora.