**CNMC public consultation on online advertising**

**(from April 25th to May 24th, 2019)**

The Act 3/2013, of June 4, creating the National Commission on Markets and Competition (CNMC) of Spain, includes among the functions of the institution the drafting of studies and research on competition matters, as well as general reports on different economic sectors (Article 5.1.h)). The Board of CNMC has taken advantage of this prerogative to commence a study on the conditions of competition in the online advertising sector.

This study is part of Strategic Action 6.2 of the CNMC’s 2019 Action Plan (analysis of new sectors arising from digitisation or those sectors where new digital technologies have disrupted traditional business models).

**Why is the CNMC preparing a study on the online advertising sector?**

Advertising is a very relevant element for consumers in all markets, given its informative and persuasive dimensions. Online advertising means a disruption through its greater capacity for targetability, together with a better measurement and monitoring of its effects. This raises important implications in terms of competition, sparking the interest of Competition Authorities and international organizations.

The study aims to characterize the online advertising sector, with a specific focus on Spain, including a legal and economic context. Based on this description, the study will include an analysis of the conditions of competition and of market conduct by undertakings. Finally, some conclusions will be drawn.

**How will the CNMC carry out its study on online advertising?**

The study starts with this phase of public consultation, which intends to collect the views of the main stakeholders engaged in this sector. These include digital platforms (such as search engines, social networks or content aggregators whose primary source of revenue is online advertising), advertisers, agencies, regulators, consumers and other experts and concerned agents.

The next stage will consist in the analysis of the received contributions, as well as contacts (through both meetings and eventual information requirements) with some of these agents related to the sector. These tasks will be simultaneous with the internal elaboration of the study, which the CNMC expects to complete in a period of 6-9 months.

**Rules of participation in the public consultation**

This public consultation is transparent and the contributions received will be taken into consideration for drafting the study. Contact information (e-mail) remains confidential and will not be published in any circumstance. Confidential treatment may be given to the name of the individual or the institution responsible for the contribution if required. Nonetheless, the answers may be published in full, unless otherwise specified and duly justified for confidentiality issues of some information.

It is only mandatory to answer the fields marked with an asterisk (\*). The rest of the questions are optional to answer, so agents willing to contribute to the consultation are invited to focus their response on those sections where they have relevant information. Questions where appropriate information or judgment is lacked can be left unanswered or with the DK/NO option (“don’t know/no opinion”)

In open questions, a maximum allowed extended length is required in order to ensure a concise response. References or links to publicly available documentation can be included. If additional information is to be submitted (such as data, contract terms, etc.), an electronic file (pdf, excel, word, etc.) can be sent to the e-mail address [dp.estudios@cnmc.es](mailto:dp.estudios@cnmc.es) using the subject "Study on online advertising" (stating clearly whether the provided documentation can be disclosed with the answer to the public consultation).

1. **Your information**

In what capacity or on behalf of whom are you participating in this public consultation?\*



Full name (of the individual or the represented institution)\*

*[Confidential]*

Do you wish to publish this name together with your response or do you prefer to keep it confidential (so that the answer will appear as anonymous)?\*



Contact e-mail\* (remains confidential)

*[Confidential]*

Brief explanation of the reasons for the specific interest of the individual’s or the institution’s interest in online advertising (max. 1.000 characters)\*



*[Confidential]* is a US-based multinational provider of products and services that address all aspects of corporate information technology (IT) environments. *[Confidential]*'s offering includes software and hardware, as well as related support and services. *[Confidential]* provides its products and solutions to over 400,000 customers worldwide.

*[Confidential]*'s main service relating to the online advertising industry is *[Confidential]*.

With which firms do you deal in this sector? (max. 1.000 characters)\*



*[Confidential]*.

Do you want to publish this information (the one on the firms with which you deal) within your response or do you prefer to keep it confidential so that the response is made public without disclosing this information?\*



Which undertakings would you consider to be the most important in the different segments: advertisers, digital platforms, intermediary agents, etc.? (max. 1.000 characters)\*



The most important digital platforms are Google and Facebook.

Intermediaries provide many different ad tech products that link advertisers and publishers. The different layers of the ad tech stack are (i) advertiser ad servers and publisher ad servers; (ii) demand-side platforms and supply-side platforms; (iii) ad exchanges; (iv) ad networks; (v) data management platforms, and (vi) analytics services.

Google's ad tech products are ubiquitous throughout each of these layers and are the dominant entity across stack.

* Google's advertiser-side ad server is called Campaign Manager. Google's publisher-side ad server is **Google Ad Manager**. Google represents 64% of this market. Other market players include Xandr's ad server, Criteo's ad server, and Oath's Ad Server.
* **Google** provides three DSPs: Google Ads, Search Ads 360 and Display & Video 360. Google is the dominant player in this market.
* Google provides two ad networks: **AdSense** and **AdMob**. These two services represent more than 80% of the market.
* Google's ad exchange product is Ad Manager ad exchange ("**GAMX**"). Other ad exchange services include those from Xandr, Rubicon Project, and OpenX.
* Google's DMP is the Google Ads Data Hub ("**ADH**"). Other market players include MediaMath, AdForm and Adobe's Audience Manager.
* Google's analytics product is Google Analytics 360. It is on nearly 90% of the largest web sites.

1. **General assessment**

Online advertising disruption is due to its targetability and the greater capacity to measure and monitor its effects. This has implied the entry of new agents, more familiar with digital environments, which can be positive for the competition. However, it can also lead to greater network externalities and learning economies that tend to concentrate activity in a few actors, which entails potential risks for competition.

**Express your opinion on these questions (where “0” means “strongly disagree” and “5” means “strongly agree”)**

Developments in online advertising imply a net positive impact on competition and efficiency



Advertisers can reach final consumers at lower costs



Advertisers can reach its target consumer more effectively (targetability)



There is a wider variety of options to launch an advertising campaign



There is a wider variety of agents with which hiring advertising services



*[Confidential]* considers that the options above do not allow for a sufficient degree of nuance in the response. *[Confidential]*'s views in relation to this question are set out below.

Should you wish to do so, further and additional comments can be provided (max. 4,000 characters)



Technological developments have made it possible to target ads with great precision and to monitor and measure the effectiveness of ads. However, these technological developments mean nothing without access to large volumes of data, which only a small number of large companies have.

More precisely, two companies active in the provision of targeted advertising – Google and Facebook - have access to such vast amounts of quality data that their ability to offer targeted advertising cannot be replicated by other competitors, even those who have developed a more efficient technology. This is illustrated by a quote from Google's chief scientist Peter Norvig that "*We [Google] don't have better algorithms than anyone else, we just have more data"*. As a result, the fact that firms may be trying to enter the markets for the provision of intermediation services does not mean that the market has become increasingly competitive, since these operators are not able to compete effectively against Google and Facebook. In fact, due to Google's and Facebook's data hegemony, the market has in reality become increasingly non-competitive.

Data gives insights into consumers' habits and conduct, including information on their location, browsing history, search engine queries, purchases, precise geolocation and a myriad other parameters. Firms that can assemble this data are able to reach consumers likely to be interested in a given product or service. These digital technologies should provide advertisers and publishers with feedback on the effectiveness of advertising, allowing advertisers to improve their targeted advertising capabilities. Unfortunately, the market is rife with fraud and an overreliance on the companies who placed the advertisement to rate the effectiveness of the ad itself. This does not provide the transparency or analytics advertisers and publishers expect.

*[Confidential]*'s concerns relating to the online advertising industry mainly lie with the collection of vast amounts of non-replicable consumer data by a small number of digital platforms increasingly dominating the advertising industry. Companies such as Facebook or Google (Google Search, Android, Chrome), enjoy very strong positions in certain areas, which allows them to collect data which is impossible to replicate by any other players in terms of scale, quality and immediacy.

Facebook mainly uses the data it collects to offer targeted advertising on its own platforms (Facebook, Instagram, WhatsApp). While Google also offers targeted advertising on its own inventory (*e.g.*, YouTube, Search or Gmail), its access to consumers' most intimate data has also enabled it to take up significant positions in each of the different layers of the ad tech stack, as described above. Google's position in the ad tech industry is bound to keep growing as it has access to ever more data collected from 2 billion Android devices, trillions of search queries and the majority of consumers browsing the Internet with its Chrome browser or any of the millions of websites that make use of Google's ad tech products like DoubleClick Cookies, Google Analytics, and the Google Ad ID.

These massive volumes of data that Google obtains lead to the creation and continuous fortification of a data moat that constitutes an enormous and insurmountable barrier to entry and expansion for Google's ad tech competitors.

Google's unrivalled data position creates a feedback loop of network effects. The more robust an ad tech provider's consumer data pool is the more advertisers are driven to that provider's ad tech products, the more advertisers and publishers that use those ad tech resources the greater the pool of available consumer data, driving ever more reliance on the part of publishers and advertisers.

Thus, while certain advertisers may value the ability to reach consumers in a targeted way, these limited benefits do not outweigh the negative effects resulting from Google's expanding positions in the different layers of the ad tech suite. In the long term, this trend towards monopolization will lead to higher prices for advertisers and publishers making use of Google's ad tech products, less innovation in the marketplace, more ad fraud, all of these costs will eventually be passed on to consumers in higher costs and reduced privacy.

1. **Impact on consumers**

The greater targetability of online advertising generates positive effects for consumers, who will presumably receive more tailored information and promotions. In addition, online advertising is often associated with the free provision of consumer services, such as search, audiovisual content or social networks. However, there are experts who warn about the costs of a privacy loss (due to the access to personal data and browsing history) and of excess attention (given the time the consumer devotes to viewing advertising in media, social networks and digital content aggregators).

**Express your opinion on these questions (where “0” means “strongly disagree” and “5” means “strongly agree”)**

Online advertising yields more advantages than disadvantages for final consumers



Online advertising is a more efficient way of providing advertising services



Greater efficiency in online advertising sector translates into lower prices and/or better quality of the final goods and services



Consumers are empowered with more and better information to make more appropriate decisions



Each consumer receives more tailored advertisements, more suited to his/her preferences or needs



Consumers receive more targeted promotions that translate into rebates and other benefits



The advantages of online advertising for consumers offset the possible costs driven by a loss of privacy or by the excess attention required



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Should you wish to do so, further and additional comments can be provided (max. 4,000 characters)



The premise of this section is that consumers benefit from targeted online advertising as they will receive more tailored information and promotions. Any such hypothetical benefits do not outweigh the negative effects of consumers' loss of control over their data. But the very premise of this section is also wrong. Empirical economic research has shown that consumers do not value targeted ads and are not willing to give up control over their personal data to receive better targeted ads in return, especially if the information used to target ads is intimate and obtained by covert tracking online – which is exactly the way the largest online platforms collect information. (John, Leslie K., Kim, Tami and Barasz, Kate (2018): “Ads that don’t overstep”. Harvard Business Review, Jan-Feb 2018.)

In particular, the intrusiveness of Google's data collection practices is unprecedented. The Terms of Service that Google imposes on all users of its Services unconditionally obliges consumers to agree to purposefully broad terms that give Google maximum discretion to collect their data and to combine this data across all, unrelated Google Services. Consumers have no choice but to agree to these terms, which apply to all Google services (including its opaque ad surveillance products), in order to access any of Google's consumer-facing services. Prospective users who wish not to be bound by these terms, or existing users who wish no longer to be bound by them, have no choice but to abandon use of all Google Services covered by these terms, including well-established monopolies such as Search, Android and Chrome, and millions of third-party websites incorporating any of Google's ad tech services. Thus, consumers are *forced* to give up control over their data, such that providers of ad tech services get access to every intimate detail of their lives which they can monetize by offering targeted ads.

Google's Android OS is a particularly effective tool to harvest data on billions of consumers. Consumers interact with their phones constantly throughout the day and, as explained in detail below, and with every interaction feed information to Google. Even when consumers are not interacting with their Android phones, the devices surreptitiously send data to Google about a user's identity, location and activities. For example, tests conducted by *[Confidential]* have shown that Google collects and records extremely detailed location data from Android users regardless of whether the phone is in use, an app requests the data, or whether the phone is connected to the Internet. An Android device's latitude and longitude readings may enable Google to determine a user's location to a few centimetres. Google also uses barometric pressure readings to determine the vertical position of an Android device user, for example to determine on what floor of a building the user may be located. Google also extracts information from sensors such as the device's accelerometer to deduce each user's physical activity, such as running, driving in a car, sitting in their office, or even riding a horse.

Moreover, Google's Privacy Policy allows it to combine all the data it collects into super-profiles- compiling search data, purchase data, geolocation data, app usage history, and many other streams into a digital dossier. Google uses this file for targeted advertising purposes. Such data combination practices were at the core of the German Bundeskartellamt's investigation into Facebook.

Account settings grant Google the maximum discretion to collect and combine data by default. Google only provides a small number of limited opt-outs, and, in reality, only a small fraction of Google's users are likely to use *any* of these opt-outs, and even fewer users will make use of *all* these opt-outs. Consumers tend not to make any changes to the default settings, which is why Google consistently implements opt-out solutions while resisting any legislation requiring opt-ins. The relevant settings are also buried behind numerous screens and are far from straightforward to find or use. As Acquisti and Wagman note: “*While overall, these technologies* [providing individualised controls for privacy-conscious users*] seemingly leave privacy choices in the hands of users, many (if not most) users, in practice, lack the awareness and technical sophistication required to protect and regulate the multiple dimensions of their personal information.*" (Acquisti, Alessandro, Taylor, Curtis and Wagman, Liad (2016): “The Economics of Privacy.” Journal of Economic Literature, Vol. 54 n°2, pp. 442-492.)

In sum, while consumers may receive more tailored advertising, which they don't value, any potential limited beneficial effects of such advertising do not outweigh consumers' loss of control over their data. Moreover, as explained above, consumers will also face indirect harm as advertisers and publishers pass on higher prices for ad tech products to consumers buying their products.

1. **Specific problems of competition**

Some experts and authorities that have studied the online advertising sector warn of potential threats to competition. Network effects can pave the way for big players attaining a relevant position in terms of audience outreach, becoming virtually indispensable and with the ability to impose anti-competitive conditions.

**Express your opinion on these questions (where “0” means “strongly disagree” and “5” means “strongly agree”)**

The online advertising sector presents specific competition issues



Access to data represents a barrier to entry of undertakings or to the growth of smaller ones



In this sector, there is a problem of excessive concentration on a few undertakings



Abrupt changes of terms of agreement by the main undertakings may occur in this sector



The vertical integration of platforms, which act as intermediaries while at the same time rent advertising space as content creators and service providers, implies disadvantageous conditions for advertisers, such as tying and bundling of services or discriminatory treatment



Should you wish to do so, further and additional comments can be provided (max. 4,000 characters)



As explained above, the ad tech industry presents specific competition issues, which are mainly caused by Google's access to large amounts of extremely detailed user data. The massive volumes of data that Google obtains lead to the creation and continuous fortification of a data moat that constitutes an enormous and insurmountable barrier to entry and expansion for Google's ad tech competitors.

Over the last years, Google has continuously changed the terms of its Privacy Policy to allow for ever more intrusive collection and combination of data. For example, in 2012, Google consolidated more than 60 privacy notices into its main Privacy Policy, which as of then covered the majority of its products. In doing so, Google significantly expanded the extent to which it could combine data from different Google services. For example, Google could now combine Search data and YouTube data with information from its other services, which previously it could not do. In June 2016, Google unilaterally decided to renege on its promise not to combine DoubleClick cookie data with its users' personally identifiable information. Thus, Google enabled itself to combine personally identifiable data generated by users of its consumer-facing products with data from entirely unrelated sites and apps across the Internet. Just recently, Google announced that it will limit the ability of rival ad tech companies to collect consumer information on Google’s Chrome browser, the most widely used browser in the world. Taken together, these changes deepen the data collection advantages Google already enjoys.

We also agree with the proposition that network effects enable big players to become virtually indispensable, thereby providing them with the ability to impose anti-competitive conditions. Indeed, the sheer volume of Google's data gathering has resulted in network effects where (1) most advertisers are obligated to use ad tech with the greatest possible access to the widest variety of publishing options; and (2) most publishers and app developers are obligated to sell their ad inventory through ad tech programs with the most substantial customer base (*i.e.*, advertisers). Advertisers seek the deepest data set providing the widest variety of targeting parameters to ensure the most effective ad campaigns. Publishers in turn are drawn to Google's supply-side ad tech products because Google's data barrier draws in the critical mass of advertisers sought by publishers. Google's publisher customers grow the data barrier by attracting users to their websites, apps, and videos, with Google's ad tech collecting consumer data from these visitors.

Thus, Google's connected and pervasive system for collecting data through its ubiquitous consumer-facing platforms prevents any potential market entrant from realistically competing in the online advertising markets. As more advertising dollars are diverted to Google, other ad tech providers continue to lose revenue that would have been used to invest in better products and services and more choices for advertisers and publishers. Google's data collection and combination practices thus suppress innovation and the emergence of new targeting products from competitors and potential competitors.

While the above observations are valid in many jurisdictions around the world, the situation in Spain is no different as Google operates in the same way everywhere. Even though ad tech markets are likely to be defined EEA-wide in scope, Spanish consumers most certainly experience the direct and indirect negative effects of Google's conduct first-hand.

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