

A new pro-competition regime for digital markets

NUJ response to the government's proposals for a new pro-competition regime for digital markets.

Question 1: What are the benefits and risks of providing the Digital Markets Unit with a supplementary duty to have regard to innovation?

The tech giants (the so-called Big Five: Facebook, Google, Apple, Amazon and Netflix) have become so large that we are in winner takes all situation. They have the commercial power to buy out and merge with competitors and can crush newcomers to the digital (news) market. The US Federal Trade Commission has refiled its antitrust complaint against Facebook's monopoly power which it says uses a "buy or bury" strategy to neutralise competitors. Google has dominated the search engine market, maintaining a 92.47 percent market share as of June 2021. This lack of a level playing field puts pressure on existing media and stifles growth and innovation.

The Digital Markets Unit should make structural interventions to increase competition in the market, where necessary working with international partners. This should include forcing Google to share click-and-query data with rivals and preventing the company from paying to be the default search engine on mobile phones.

Question 2: What are the benefits and risks of giving the Digital Markets Unit powers to engage, in specific circumstances, with wider policy issues that interact with competition in digital markets? What approaches should we consider?

The tech giants dominate the way many people receive news, information and views and this has implications for how citizens make their decisions as part of the democratic process during elections. Over dominance in the "market" for news and information becomes not just about customer choice, instead it could endanger the democratic process and it would be a benefit to citizens/consumers if the DMU has powers to check this imbalance.

Given the impact of competition on freedom of expression and privacy standards, the Digital Markets Unit should include human rights in its assessments of consumer welfare alongside economic harm.

Question 3: Should we explore the possibility of reducing the cost of the Digital Markets Unit to the public sector through partial or full levy funding?

Yes, the government should explore a partial levy for the funding of the DMU's costs. If the DMU, as part of the CMA, is to become an effective regulator it will need to have the staff and expertise to carry out its new duties and powers and the big earners in the digital industry could be made to pay part of the cost.

Question 4: Is there a need to go beyond informal arrangements to ensure regulatory coordination in digital markets? What mechanisms would be useful to promote

coordination and the best use of sectoral expertise, and why? Do we have the correct regulators in scope?

The consultation cites the Information Commissioner's Office (ICO) in relation to data rights for individuals, the Office of Communications (Ofcom) in relation to online and media content, media plurality and communications and the Financial Conduct Authority (FCA) in relation to payment services. The NUJ supports a statutory "duty to consult".

Consultation question 8: What are the potential benefits and risks of our proposed SMS test? Does it provide sufficient clarity and flexibility? Do you agree that designation should include an assessment of strategic position?

The SMS test does provide clarity and flexibility and should include an assessment of strategic position. The NUJ agrees that the "Digital Markets Unit should consider whether an activity has significant impacts on markets that may have broader social or cultural importance".

Consultation question 9: How can we ensure the designation assessment provides sufficient flexibility, predictability, clarity and specificity? Do you agree that the strategic position criteria should be exhaustive and set out in legislation?

It is right the DMU should assess the evidence "in the round" to come to a reasoned judgement on whether a firm has a strategic position be required to set out guidance on how it will assess each of the criteria. There is probably a case for the strategic position criteria to be set out in legislation

Consultation question 15: How far will the proposed regime address the unbalanced relationship between key platforms and news publishers as identified in the Cairncross Review and by the CMA? Are any further remedies needed in addition to it?

The central recommendation from the Cairncross review was for government regulation of digital markets, specifically designed to rebalance the relationship between key platforms and the news publishers that rely on them. The CMA study into digital advertising found that greater competition and transparency in these markets could address the bargaining power of platforms and so make an important contribution to the sustainability of the press. The non-statutory DMU is now working with Ofcom to look at how a code would govern the relationships between platforms and content providers.

Dame Frances' report explained how the tech giants became the wrecking ball of a business model where adverts paid for the news and editorial. Classified adverts moved to online sites and advertisers flocked to Facebook and Google while newspaper revenues plummeted. Her 156-page 2019 report on the UK news highlighted how the number of "fulltime frontline" journalists had fallen from 23,000 in 2007 to 17,000 in 2019, that newspaper annual advertising spend dropped by 69 per cent (£3.2 billion) and annual circulation revenue declined by 23 per cent (£500 million). According to the 2020 CMA report, Facebook had more than half of the £5.5 billion display advertising market. [Online platforms and digital advertising market study, July 2020 <https://www.gov.uk/cma-cases/online-platforms-and-digital-advertising-market-study>].

The situation is now worse. A July 2021 report in the FT quoted figures from the Interpublic Group research arm, Magna, which said that after a 2.5 per cent decline last year, total global advertising is likely to rebound 14 per cent this year (2021). Almost all of that growth is flowing into digital — and the giants are getting a disproportionate share, with Wall Street expecting Google and Facebook to grow 30 and 35 per cent respectively. [Big Tech’s test after powering past the pandemic <https://www.ft.com/content/693266a9-3696-4f88-819d-3be73fab2cc3>]

Media plurality in the UK is at an all-time low. The Media Reform Coalition’s 2021 report *Who Owns the UK’s Media* found that just three companies (News UK, Daily Mail Group and Reach) dominate 90 per cent of the national newspaper market (up from 71 per cent in 2015). When online readers are included, these three companies (News UK, Daily Mail Group, Reach) dominate 80 per cent of the market. In the area of local news, just six companies (Gannett, JPI Media, Reach, Tindle, Archant and Iliffe) account for nearly 84 per cent of all titles. Two companies, Bauer and Global, now control nearly 70 per cent of all local commercial analogue radio stations and 60 per cent of national commercial digital stations.

Facebook controls three of the top five social