



Daniel Gordon  
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21 July 2020

Dear Mr Gordon,

We are grateful to you and your team for giving evidence to the Communications and Digital Committee on the CMA's market study on online platforms and digital advertising. We also held an evidence session with two academic experts in this field: Professor Damien Geradin and Dr Liza Lovdahl-Gormsen. Please could you address the following questions arising from their evidence?

### **1. How long would a market investigation into the open display advertising market take?**

When asked how long a market investigation into the open display advertising market would take, you told the Committee: "There is a statutory timeframe, which is 18 months. There is the possibility of extending that for six months for special reasons. Then there is a further six-month implementation window for any further remedies. That is two years to two and a half years. That is not factoring in the risk of an appeal. If we are appealed, we would be appealed to the Competition Appeal Tribunal and that could take one or even two years before further measures are taken. It is not in any way a clearer, much faster route."

However, Dr Lovdahl-Gormsen told us: "Surely it should not take 18 months with all the evidence they have already gathered; it should be much, much quicker." Professor Geradin agreed. Please could you explain why the CMA takes a different view?

### **2. Would the CMA consider enforcement action in the open display advertising market and, if so, why is it not considering a market investigation?**

The report states: "In relation to enforcement action, the CMA is currently actively considering possible cases in the digital sector, drawing on the work of the market study. More broadly, the CMA will also continue to consider any examples of digital platforms exploiting their market power or otherwise engaging in anticompetitive conduct, and will stand ready to take enforcement action where it identifies evidence of anti-competitive conduct."

Please could you confirm that the CMA has not ruled out enforcement action in the open display advertising market, despite declining to conduct a market investigation?

You told the Committee: “If we run a market investigation alongside development of policy and legislation, there is always a risk that is played off against and delays the policy development process further. Parties will, perhaps not totally unreasonably, take the opportunity to ask, ‘Why are we doing this now? Why are we not waiting until the CMA concludes its market investigation?’” Would the CMA take the same view of launching enforcement action against Google or Facebook before the Digital Markets Unit has been set up?

We would also be interested to hear your response to the suggestion by Professor Geradin and Dr Lovdahl-Gormsen that the CMA is reluctant to take enforcement action because it is overly concerned about losing in court.

### **3. Please explain why the CMA did not quantify the impact on publishers of not launching a market investigation.**

When asked whether the CMA had quantified the impact on news publishers of not launching a market investigation, you told the Committee: “you will see in our report we have quite an extensive discussion on the impact on consumers. That is the lens through we come at things. Our statutory duty is towards consumers. We have quantified what we can there. Some bigger issues such as impact on innovation are harder to quantify, but those are the forms of impact: on innovation, data and prices to consumers, if higher advertising prices feed through into prices in the shops. We have not quantified the impact on any particular sector, but the work in the report could be used by somebody who wants to advocate that.”

Please could you explain why, despite nine news organisations – including the News Media Association, News UK, DMG Media, and the Guardian Media Group – asking the CMA to launch a market investigation, the CMA did not feel it necessary to consider the effect of the delay on publishers when making its decision? Dr Lovdahl-Gormsen warned us that news publishers would suffer “immensely” while waiting for the Digital Markets Unit to be set up.

In addition, does the CMA accept that any negative effects of behaviours of major platforms on news publishers are ultimately detrimental to consumers? If so, why did you stress in your answer that the CMA’s duty is to consumers in contradistinction to publishers?

We look forward to hearing from you.

Yours sincerely,

Lord Gilbert of Panteg  
Chair of the House of Lords Communications and Digital Committee