

The Rt Hon. the Baroness Stowell of Beeston MBE
Chair, Communications and Digital Committee
House of Lords
London
SW1A 0PW

From: Dr Andrea Coscelli
Chief Executive

25 March 2022

Dear Baroness Stowell,

Thank you once again for your letter of 23 February and for the opportunity to give evidence to the Communications and Digital Committee on 8 February. This letter responds to your request for an update on the CMA Board's subsequent discussion on future plans for digital work. It also follows up on a point raised in the evidence session regarding the CMA's role in trade agreements.

The CMA's work in digital markets

Our overall strategy in digital markets has consistently involved two elements: to prepare to put the government's proposed new digital markets framework into action through the Digital Markets Unit (DMU) as soon as the legislation is passed; but in the meantime to use the CMA's current powers – imperfectly suited though they are – to tackle problems more immediately wherever possible. We have been keeping the precise steps we take under review, including through our recent Board discussion, to ensure that we can be as effective as possible as we monitor progress towards the legislation.

When we met with your Committee, we touched on online advertising as one of the key areas in which the CMA has gathered convincing evidence of competition problems. To begin addressing these problems, on 11 March we announced the launch of a new competition enforcement case focused on Google and Meta's 'Jedi Blue' agreement and Google's conduct in relation to intermediation services for online advertising. We are investigating concerns that this agreement, and Google's broader conduct, made it harder for other firms to compete. The investigation will run in parallel with a European Commission investigation on the same subject and an

ongoing lawsuit by the Attorney Generals of many US States¹. We will seek to work closely with the Commission and the US agencies as the investigations move forward.

This new case builds on the analysis conducted as part of the CMA's market study into online platforms and digital advertising. It provides an opportunity to take targeted action to deliver benefits for consumers ahead of the DMU powers taking effect. The case adds to the CMA's busy existing caseload in digital markets, some of which we discussed when we met, including: Google's Privacy Sandbox, where we secured commitments from Google to ensure its proposed changes to third party cookies do not reduce competition, and are now working with the Information Commissioner's Office to oversee the implementation of the proposals; our competition investigation into Meta's collection and use of advertisers' data in relation to its online classified advertising and online dating services; our decision to block Meta's merger with Giphy (currently subject to appeal); and our consumer law investigations into social media endorsements and fake online reviews, among others.

We have also continued to make progress on our mobile ecosystems market study, which is examining in detail a market which touches the lives of virtually all UK households. This study – due to conclude in June of this year – will provide a detailed evidence base for DMU action once the new tools are in place. The study may also give rise to opportunities to take further targeted action under our existing powers: we will consider the case for doing so as the study approaches its conclusion. We are also already, in parallel with the study, using our competition law powers to investigate Apple's conduct in relation to the terms and conditions of app developers' access to the App Store.

I can confirm that the Board's latest discussion identified options for taking further action in digital markets under our market investigation and competition enforcement tools, ahead of the DMU receiving its powers, based on our analysis of where these tools would be most effective. We will now further scope these potential projects with a view to launching new investigations in the coming months.

I hope this reassures you that the CMA is using its existing tools and powers to their fullest extent while we wait for the DMU to be put on a statutory footing. Where we can deliver for consumers more quickly, we are doing so.

Nevertheless, as we discussed when we met, the powers that the government has proposed for the DMU remain essential. There are competition problems in digital markets that are extremely difficult to solve with our existing tools. Only an ex-ante regulator – that can make rules to prevent anti-competitive behaviour before it

¹ <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-applauds-european-investigation-big-tech-texas-leads-way>

happens; that can test, implement and flexibly refine remedies to boost competition in the long-term; and that can monitor acquisitions by the largest digital firms closely – can address the biggest problems in digital markets. The provisional agreement in the EU on the Digital Markets Act shows that other leading economies share this view and are moving ahead with the necessary legislation. We are continuing to provide all necessary support to the government as it develops the regime and look forward to the legislation coming forward as soon as possible.

The CMA's role in trade agreements

The Department for International Trade (DIT) has lead responsibility for negotiating free trade agreements, including chapters dealing with competition. Alongside BEIS, the CMA has been active in providing policy support to DIT, including providing intelligence and discussing policy issues.

In addition, there may be separate cooperation agreements between competition authorities, which provide more detail on the nature of the relationship between the agencies and through which collaboration opportunities may arise. The CMA has been working alongside BEIS to negotiate a series of competition cooperation agreements, either in the form of agency-to-agency memoranda of understanding or in state-to-state treaties. While much of what we do with our international counterparts can be done informally, without the need for a cooperation agreement, the existence of a cooperation agreement is itself an outward sign of the collaborative relationship that we are seeking to develop with a country.

I hope this letter is helpful and look forward to speaking to your Committee again soon.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Coscelli', written in a cursive style.

Dr Andrea Coscelli

Chief Executive

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