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**Response to the Consultation on the Government’s  
Online Advertising Programme**

**Submitted by**

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**Consultation questions**

*1. Do you agree with the categories of online advertising we have included in scope for the purposes of this consultation?*

*a) Yes  
b) No  
c) Don’t know*

*Do you think the scope should be expanded or reduced? Please explain.*

*2. Do you agree with the market categories of online advertising that we have identified in this consultation?*

*a) Yes  
b) No  
c) Don’t know*

*Do you think the scope should be expanded or reduced? Please explain.*

*3. Do you agree with the range of actors that we have included in the scope of this consultation?*

*a) Yes****b) No****c) Don’t know*

*Do you think the range should be expanded or reduced? Please explain.*

**While the consultation document has identified the major actors in the online advertising ecosystem, we believe that the definition of ‘intermediaries’ or ‘ad tech’ should explicitly include other categories of actors that do not fall within the definitions of ad servers, DSPs and SSPs. Such actors include customer data platform providers (CDPs, which provide insights into first-party data, such as Salesforce Marketing Cloud), data management platform providers (DMPs, which gather and analyse data from first-, second- and third-party sources, such as Oracle BlueKai), consent management platform providers (CMPs, which categorise user preferences for targeted advertising purposes, such as OneTrust), as well as data brokers and suppliers (which provide data to other actors on the supply chain, such as Experian). It also seems reasonable to clarify specifically that any organisations controlling (solely or jointly) purposes and means of processing or directly processing user data for online advertising purposes should be in scope (while acknowledging that data protection issues remain subject to data protection law and thus outside the scope of the OAP).**

***4. Do you agree that we have captured the main market dynamics and described the main supply chains to consider?***

*a) Yes****b) No****c) Don’t know*

*Please explain your answer.*

**Although the consultation document has identified both the owned and operated supply chain and the programmatic open display supply chain, we found the market dynamics described in the document overly simplified and linear. This might have to do with the fact that some market players that are connected to different links in the supply chain (such as those described in our response to Q3 above) are not covered in detail in the consultation document. Some of these players, while not forming an essential part of the supply chain, may cause potentially significant consumer and industry harms (or exacerbate existing ones). Our research, for example, has shown that, by linking data from and providing data to various categories of actors in the online advertising network, some actors may gain strategic advantages against not only other businesses but also individual users (for more details see our responses to Q8 and Q9 below). This might be overlooked if the analysis focuses on a particular link of the supply chain in a linear manner. A more insightful way to capture the market dynamics would be to describe how the flows of data within the ecosystem have empowered certain categories of actors in relation to other actors and users.**

*5. Do you agree that we have described the main recent technological developments in online advertising in section 2.2.2?*

*a) Yes  
b) No  
c) Don’t know*

*Please explain your answer.*

*6. Do you agree that our taxonomy of harms covers the main types of harm found in online advertising, both in terms of the categories of harm as well as the main actors impacted by those harms?*

*a) Yes  
b) No  
c) Don’t know*

*Please explain your answer, indicating any types of harm, or actors impacted by the harm that we have not captured, as well as any evidence to support your answer.*

*7. Do you agree that our above description of the harms faced by consumers or society cover the main harms that can be caused or exacerbated by the content of online advertising?*

*a) Yes  
b) No  
c) Don’t know*

*Please explain your answer, including any harms that are not covered in our description. This may include any evidence you can provide on the frequency and severity of the harms, trend data, and/or impacts on protected groups.*

*8. Do you agree that the above description of the harms faced by consumers or society cover the main harms that can be caused or exacerbated by the placement or targeting of online advertising?*

*a) Yes****b) No****c) Don’t know*

*Please explain your answer, including any harms that are not covered in our description. This may include any evidence you can provide on the frequency and severity of the harms, trend data, and/or impacts on protected groups.*

**We welcome the government’s pledge to address the consumer harms associated with mis-targeting, discriminatory targeting and targeting vulnerable people, but at the same time feel that the harms framed in the consultation could benefit from a more collective, structural perspective. For example, data-driven personalisation of online advertising is continuing to evolve and deepen the complexity of the micro-targeting practices, something fundamentally different from traditional, offline advertising practices, even when referring to apparently traditional forms of advertising, such as contextual advertising. Our work has shown that this prevailing business model could cause secondary negative effects, including: (a) making the targeting more effective to certain susceptible groups (not necessarily considered ‘vulnerable’ in classical terms but, for example, identified through the application of artificial intelligence); (b) making it harder for individual users to push back on targeting and the associated uses of their data in ways that challenge the effectiveness of data protection-based regulation (e.g., ‘dark patterns’); and (c) making certain biases and stereotypes more entrenched in our society (‘filter bubbles’ or ‘echo chambers’, but not necessarily in political contexts). Some players in the online marketing ecosystem are contributing immensely to the micro-targeting ecosystem, but are not explicitly covered by the consultation (see responses to Q3 and Q4 above).**

*9. Do you agree with our description of the range of industry harms that can be caused by online advertising?*

*a) Yes****b) No****c) Don’t know*

*Please explain your answer, including any harms that are not covered in our description. This may include any evidence you can provide on the frequency and severity of the harms, or trend data.*

**While we acknowledge competition issues are outside the scope of the consultation, there are competition-related industry harms that could be addressed by the OAP. In relation to, and yet different from, the harms arising from inaccurate audience measurement as highlighted in the consultation document, certain actors have secured a strategic position in the advertising network (see responses to Q3 and Q4 above), giving them a disproportionate power to influence market behaviour, business models and infrastructural developments in the sector. While this may have competition implications, it is not directly addressed by competition law either because those actors are not considered to be operating in the same relevant market or because traditional indicators (such as market share) do not reflect their data-driven market power. There is scope for the OAP to address such business-to-business harms.**

*10. Do you agree that we have accurately captured the main industry initiatives, consumer tools and campaigns designed to improve transparency and accountability in online advertising?*

*a) Yes  
b) No  
c) Don’t know*

*Please explain your answer, including reference to any further industry initiatives, consumer tools or campaigns that we should be aware of.*

*11. Should advertising for VoD closer align to broadcasting standards or follow the same standards as those that apply to online?*

*a) Broadcasting  
b) Online*

*Please explain your answer.*

*12. To what extent do you agree with our rationale for intervention, in particular that a lack of transparency and accountability in online advertising are the main drivers of harm found in online advertising content, placement, targeting, and industry harm?*

*a) Strongly agree  
b) Somewhat agree  
c) Neither agree nor disagree****d) Somewhat disagree****e) Strongly disagree*

*Please explain your answer.*

**The lack of transparency and accountability is undoubtedly a major cause of the harms arising from online advertising practices, but a further fundamental reason underlying the current regulatory failure is the lack of a clear consensus among stakeholders regarding the appropriate balance between a more protective regime and a more empowering one as well as the right architectural approach to striking such a balance. The recent finding by the Belgian data protection authority on the illegality of IAB Europe’s Transparency and Consent Framework, for example, shows a wide gap in expectations between the industry and regulators regarding what counts as meaningful consent in the online advertising context and how consumer consent choices should be communicated through the advertising ecosystem. This creates grave legal uncertainties for the industry and consumers alike and has profound regulatory implications (see response to Q13 below). Our research has found that there are regulatory tools available to policymakers and regulators, who can take a more proactive role in bridging such a gap and promote (or even mandate where necessary and appropriate) the creation of a sector-wide choice architectural approach that is also suitably protective against higher risk practices.**

*13. To what extent do you agree that the current industry-led self-regulatory regime for online advertising, administered by the ASA, to be effective at addressing the range of harms we have identified in section 3.3?*

*a) Strongly agree  
b) Somewhat agree  
c) Neither agree nor disagree  
d) Somewhat disagree****e) Strongly disagree***

*Please explain your answer.*

**As highlighted in our response to Q12 above, there is a lack of consensus on the extent to which the regulatory framework should bend towards paternalistic or libertarian solutions. The approach taken by the ASA has been closer to the ‘protective’ end on the spectrum, which may indeed be a sensible approach reflective of the ASA’s role as an independent advertising regulator, but could be incompatible with parallel regulatory efforts by other authorities, such as data protection, competition and digital market regulators. The gap between data protection’s core of rights-based regulation and the ASA’s standards-based methods is especially concerning. The ASA’s protective approach could therefore create counterproductive effects in relation to parallel regulation and requires the government to take a more holistic approach to regulating online advertising practices. While the consultation document has specified these issues are outside the scope of the OAP, it should address how the proposed regulatory options should interact with the ongoing legal reforms in those areas.**

*14. Do you consider that the range of industry initiatives described in section 4.3 are effective in helping to address the range of harms set out in section 3.3?*

*a) Yes  
b) No  
c) Don’t know*

*Please explain your answer.*

*15A. Which of the following levels of regulatory oversight do you think is appropriate for advertisers?*

*a) Continued industry self-regulation with some backstopped areas (status quo)  
b) Backstopped regulation for all or some higher risk areas of harm****c) Statutory regulation****d) Other (please specify)*

*15B. Which of the following levels of regulatory oversight do you think is appropriate for platforms?*

*a) Industry self-regulation  
b) Backstopped regulation for all or some higher risk areas of harm****c) Statutory regulation****d) Other (please specify)*

*15C. Which of the following levels of regulatory oversight do you think is appropriate for intermediaries?*

*a) Industry self-regulation  
b) Backstopped regulation for all or some higher risk areas of harm****c) Statutory regulation****d) Other (please specify)*

*15C. Which of the following levels of regulatory oversight do you think is appropriate for publishers?*

*a) Industry self-regulation  
b) Backstopped regulation for all or some higher risk areas of harm****c) Statutory regulation****d) Other (please specify)*

*16. Following on from your answer to question 14, do you think a mix of different levels of regulatory oversight may be warranted for different actors and/or different types of harm?*

*a) Yes  
b) No  
c) Don’t know*

*Please explain your answer, including outlining your proposed approach.*

*17. What is your preferred option out of the three permutations described under option 2?*

*a) Permutation 1  
b) Permutation 2  
c) Permutation 3*

*Please explain your answer.*

*18. For each of the actors, which measures (set out in the tables in section 6.1.3 and section 6.1.4 do you support and why?*

*Please explain your answer.*

*19. Are there any measures that would help achieve the aims we set out, that we have not outlined in the consultation?*