

# Decision to accept commitments offered by Google in relation to its Privacy Sandbox Proposals

Case number 50972

11 February 2022

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# 1. Introduction and Executive Summary

- 1.1 In this decision (the '**Decision**') made under section 31A of the Competition Act 1998 (the '**Act**'), the Competition and Markets Authority (the '**CMA**') accepts the commitments offered by Alphabet Inc.,<sup>1</sup> Google UK Limited<sup>2</sup> and Google LLC<sup>3</sup> on 4 February 2022 as set out in Appendix 1A to this Decision (the '**Final Commitments**').
- 1.2 Alphabet Inc., Google UK Limited and Google LLC<sup>4</sup> offered the commitments to the CMA in the context of its investigation concerning the proposals by Google<sup>5</sup> to replace third-party cookies ('**TPCs**') and other functionalities with a range of changes known as the 'Privacy Sandbox' (the '**Privacy Sandbox Proposals**').<sup>6</sup> The Final Commitments are expressed as binding these three companies and 'any other member of their corporate Group'.
- 1.3 Cookies are small pieces of information, normally consisting of just letters and numbers, which websites provide when users visit them. A web browser can store cookies and send them back to the website next time they visit. Cookies are used to, among other things, track users' browsing behaviour.
- 1.4 First-party cookies are set by the website the user is visiting. TPCs are set by a domain other than the one the user is visiting. This typically occurs when the website incorporates elements from other sites, such as images, social media plugins or advertising. When the browser or other software fetches these elements from the other sites, they can set cookies as well.<sup>7</sup>
- 1.5 The extensive collection of data by means of cookies has given rise to concerns about users' privacy and compliance with data protection laws. The stated aim of Google's Privacy Sandbox Proposals is to remove cross-site tracking of Chrome users through TPCs and alternative tracking methods

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<sup>2</sup> Registered office: 7 Belgrave House, 76 Buckingham Palace Road, London, SW1W 9TQ; UK company number 03977902.

<sup>3</sup> Registered office: 1600 Amphitheatre Parkway, Mountain View, CA 94043, United States of America.

<sup>4</sup> Each of Alphabet Inc., Google UK Limited and Google LLC are part of the same corporate group.

<sup>5</sup> The CMA notes that, in Google's Final Commitments, 'Google' is defined to include the corporate entities listed in footnote 4 above and 'any other member of their corporate Group'. The definition of 'Group' in the Final Commitments 'includes those companies with which any of Alphabet Inc., Google UK Limited or Google LLC has the links described in section 129(2)(b) of the Enterprise Act 2002 and thus constitutes a "*group of interconnected bodies corporate*", within the meaning of the Enterprise Act 2002'.

<sup>6</sup> The Privacy Sandbox Proposals are a set of proposed changes on Google's web browser ('**Chrome**') that aim to address privacy concerns by removing the cross-site tracking of Chrome users through TPCs and other methods of tracking; and create a set of alternative tools to provide the functionalities that are currently dependent on cross-site tracking.

<sup>7</sup> The Information Commissioner's Office ('**ICO**'), [What are cookies and similar technologies?](#) (accessed on 8 February 2022).



such as fingerprinting, and replace it with tools to provide selected functionalities currently dependent on cross-site tracking.

- 1.6 The CMA's investigation follows complaints of anticompetitive behaviour and requests for the CMA to ensure that Google develops the Privacy Sandbox Proposals in a way that does not distort competition.
- 1.7 In summary, the CMA's competition concerns relate to the impact that the Privacy Sandbox Proposals are likely to have if implemented without sufficient regulatory scrutiny and oversight, in terms of third parties' unequal access to the functionality associated with user tracking, Google self-preferencing its own ad tech providers and owned and operated ad inventory, and the imposition of unfair terms on Chrome's web users.<sup>8</sup> The CMA is also concerned that the announcements of the Privacy Sandbox Proposals have caused uncertainty in the market as to the specific alternative solutions which will be available to publishers and ad tech providers once TPCs are deprecated.
- 1.8 Further detail on the background to the investigation and the CMA's competition concerns are set out at Chapters 2 and 3 of this Decision.
- 1.9 This Decision follows two rounds of public consultation in June 2021 and November 2021 on Google's previous commitments offers. As set out in Chapter 4 of this Decision, the CMA's assessment of responses to these consultations identified certain areas in which Google's commitments should be improved to address the CMA's competition concerns. The Final Commitments accepted by the CMA contain minor modifications to those offered by Google in November 2021, and these modifications add clarity to and aid consistency within the commitments.
- 1.10 The CMA has reached the view that the regulatory scrutiny, oversight and obligations put in place by the Final Commitments address its competition concerns. The CMA's assessment of how Google's commitments meet the CMA's competition concerns is set out in Chapter 5 of this Decision.
- 1.11 Overall, the CMA's view is that, in combination, the Final Commitments address the competition concerns that the CMA has identified in relation to the Privacy Sandbox Proposals, and provide a robust basis for the CMA, the ICO and third parties to influence the future development of the Privacy Sandbox Proposals to ensure that the purpose of the commitments (as set out in Section C of the Final Commitments) is achieved. The CMA considers that

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<sup>8</sup> See Chapter 3 of this Decision on the CMA's competition concerns.

the regulatory scrutiny, oversight and obligations put in place by the Final Commitments address its competition concerns as they:

- (a) **Establish a clear purpose** that will ensure that the Privacy Sandbox Proposals are developed in a way that addresses the competition concerns identified by the CMA during its investigation, by avoiding distortions to competition, whether through restrictions on functionality or self-preferencing, and avoiding the imposition of unfair terms on Chrome's web users;
- (b) Establish the **criteria that must be taken into account** in designing, implementing and evaluating the Privacy Sandbox Proposals. These include the impact of the Privacy Sandbox Proposals on:
  - (i) privacy outcomes and compliance with data protection principles, as set out in applicable data protection legislation;<sup>9</sup>
  - (ii) competition in digital advertising and in particular the risk of distortion to competition between Google and other market participants;
  - (iii) the ability of publishers to generate revenue from ad inventory; and
  - (iv) user experience and control over the use of their data;
- (c) **Provide for greater transparency and consultation with third parties over the development of the Privacy Sandbox Proposals**, including through operating a formal process for engaging with Google's third-party stakeholders on a dedicated microsite, reporting regularly to the CMA on how Google has taken into consideration third-party views, providing that Google's key public disclosures will refer to the CMA's role (and the ongoing CMA process) and disclosing publicly the results of tests of the Privacy Sandbox Proposals. This would help to overcome the asymmetry of information between Google and third parties regarding the development of the Privacy Sandbox Proposals;
- (d) **Provide for the close involvement of the CMA in the development of**

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<sup>9</sup> The ICO published a Commissioner's Opinion which provides further regulatory clarity on the data protection expectations that online advertising proposals should meet: see [Information Commissioner's Opinion: Data protection and privacy expectations for online advertising proposals](#), 25 November 2021 (the 'ICO Opinion'). While the ICO Opinion does refer to the Privacy Sandbox Proposals, their compliance with the requirements of data protection law and the Privacy and Electronic Communications (EC Directive) Regulations 2003 has not yet been fully articulated, either individually or in concert. This is in part due to the different stages of development and issues raised during those processes. As such, the ICO Opinion does not address either the specific proposals or their critiques at this time. This may change in future, if appropriate and where particular proposals reach a more advanced stage.

**the Privacy Sandbox Proposals** to ensure that the purpose of the commitments is met, including through: regular meetings and reports; working with the CMA without delay to identify and resolve any competition concerns before the removal of TPCs; and involving the CMA in the evaluation and design of tests of all Privacy Sandbox Proposals amenable to quantitative testing. This ensures that the competition concerns identified by the CMA about the potential impacts of the Privacy Sandbox Proposals are addressed and helps to address the lack of confidence on the part of third parties regarding Google's intentions in developing and implementing the Privacy Sandbox Proposals;

- (e) **Provide for a standstill period** of at least 60 days before Google proceeds with the removal of TPCs, giving the CMA the option, if any outstanding concerns cannot be resolved with Google, to continue this investigation and, if necessary, impose any interim measures necessary to avoid harm to competition. Additional provisions address concerns about Google removing certain other functionality or information before removal of TPCs, and the CMA monitoring Google's adherence to any resolutions reached under the commitments. These provisions strengthen the ability of the CMA to ensure its competition concerns are in fact resolved;
- (f) Include **specific commitments by Google not to combine user data** from certain specified sources for targeting or measuring digital advertising on either Google owned and operated ad inventory or ad inventory on websites not owned and operated by Google. A related provision confirms Google's intent to use Privacy Sandbox tools in future as third parties will be able to use them. These provisions address the competition concerns arising from Google's greater ability to track users after the introduction of the Privacy Sandbox Proposals;
- (g) Include **specific commitments by Google not to design any of the Privacy Sandbox Proposals in a way which could self-preference Google**, not to engage in any form of self-preferencing practices when using the Privacy Sandbox technologies and not to share information between Chrome and other parts of Google which could give Google a competitive advantage over third parties. Related provisions confirm that deprecating Chrome functionality will remove such functionality for Google and other market participants alike, and give greater certainty for third parties who are developing alternative technologies to the Privacy Sandbox tools. These provisions address the above concerns relating to the potential for discrimination against Google's rivals;

- (h) Include **robust provisions on reporting and compliance**, which provide for a CMA-approved Monitoring Trustee to be appointed; and
  - (i) **Provide for a sufficiently long duration**, ie 6 years from the date of this Decision.
- 1.12 The CMA has been working closely with the ICO<sup>10</sup> in its engagement with Google and other market participants, in order to build a common understanding of the Privacy Sandbox Proposals. The CMA will continue to consult the ICO on aspects of the Privacy Sandbox Proposals that relate to matters of privacy and data protection, to ensure that both privacy and competition concerns are addressed as the proposals are developed in more detail.
- 1.13 An important aspect of this Decision and the Final Commitments is that Google is still designing and testing the different Privacy Sandbox Proposals. This means that any ultimate impact on competition and privacy will depend on the final design of the Privacy Sandbox Proposals and the steps taken by Google to mitigate any remaining concerns. As set out above, the Final Commitments put in place a system of regulatory scrutiny and oversight in relation to the Privacy Sandbox Proposals, contain direct obligations on Google regarding its conduct in relation to these proposals, and are accompanied by a package of practical implementation steps. The CMA will be closely involved in overseeing the design, development and implementation of the Privacy Sandbox Proposals, and will have the opportunity to decide to continue its investigation or take other action if any remaining concerns are not resolved.
- 1.14 As a result of accepting Google's Final Commitments, the CMA must discontinue its investigation into whether or not Google has infringed section 18(1) of the Act (the '**Chapter II prohibition**').<sup>11</sup> The CMA has made no final decision as to whether or not the conduct amounted to an infringement of the Chapter II prohibition.
- 1.15 The CMA has received requests that it use its interim measure powers under section 35 of the Act to give directions to Google pending the outcome of the investigation. The CMA has not reached a view on whether the conditions of section 35 of the Act are met. However, the CMA recognises that a consequence of accepting commitments under section 31A is that, by virtue of section 31B(2)(c), it will be precluded from giving a direction under section 35. Section 31B of the Act provides that if the CMA has accepted commitments

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<sup>10</sup> See the ICO Opinion, as referred to at footnote 9 of this Decision.

<sup>11</sup> Section 18(1) of the Act.

under section 31A and has not released them, it will not give a direction under section 35. The CMA has carefully considered representations on the interaction of these statutory provisions, as part of its consideration of responses to its consultations during this investigation.

- 1.16 Under section 31B(4) of the Act, acceptance of the commitments does not prevent the CMA from continuing its investigation, making an infringement decision, or giving a direction in circumstances where the CMA has reasonable grounds for:
- (a) believing that there had been a material change of circumstances since the commitments were accepted;
  - (b) suspecting that a person had failed to adhere to one or more of the terms of the commitments; or
  - (c) suspecting that information which led the CMA to accept the commitments was incomplete, false or misleading in a material particular.
- 1.17 Where a person from whom the CMA has accepted commitments fails without reasonable excuse to adhere to the commitments, the CMA may apply to the court for an order requiring the default to be made good.<sup>12</sup>
- 1.18 The remainder of this Decision is structured as follows:
- (a) Chapter 2 sets out details of the CMA's investigation and the undertaking under investigation; and the background to the investigation including the key characteristics of the market and Google's position in that market;
  - (b) Chapter 3 sets out the CMA's competition concerns arising from the conduct subject to the CMA's investigation;
  - (c) Chapter 4 summarises:
    - (i) the commitments offered by Google;
    - (ii) the CMA's assessment of the key representations submitted in response to the CMA's notice of intention to accept commitments published on 11 June 2021 and the CMA's notice of intention to accept modified commitments published on 26 November 2021; and
    - (iii) the CMA's assessment of the commitments in light of those key representations.

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<sup>12</sup> Pursuant to section 31E of the Act.

- (d) Chapter 5 sets out the CMA's assessment of how the commitments meet its competition concerns; and
- (e) Chapter 6 sets out the CMA's decision to accept the commitments.

1.19 This Decision is also accompanied by a number of appendices:

- (a) Appendix 1A sets out the Final Commitments offered by Google and accepted by the CMA;
- (b) Appendix 1B comprises a comparison of the Final Commitments (offered by Google on 4 February 2022) as against the commitments offered by Google on 19 November 2021;
- (c) Appendix 2 sets out a summary of representations to the consultation in response to the CMA's notice of intention to accept commitments published on 11 June 2021, which (for the most part) the CMA considered required no, or very limited, changes to the commitments, and the CMA's assessment of these responses;
- (d) Appendix 3 sets out the CMA's current understanding of the Privacy Sandbox Proposals relevant to this Decision; and
- (e) Appendix 4 sets out the further detail of how certain aspects of the commitments will be implemented.

## 2. Background

### The CMA's investigation

- 2.1 In its market study into online platforms and digital advertising (the '**Market Study**'),<sup>13</sup> the CMA highlighted a number of concerns about the potential impact of the Privacy Sandbox Proposals, including that they could undermine the ability of publishers to generate revenue and undermine competition in digital advertising, entrenching Google's market power. Before launching the investigation, the CMA had been discussing the Privacy Sandbox Proposals with the ICO through the Digital Regulation Cooperation Forum ('**DRCF**').<sup>14</sup> As part of this work, the CMA had also been engaging with Google to better understand its Privacy Sandbox Proposals.
- 2.2 In autumn 2020, the CMA received complaints, including from the Movement for an Open Web Limited<sup>15</sup> ('**MOW**'), alleging that, through its Privacy Sandbox Proposals, Google was abusing its dominant position. The CMA considered the subject-matter of these complaints, which helped inform the CMA's competition concerns.
- 2.3 The CMA also received applications, including from MOW in autumn 2020, requesting that the CMA give interim measures directions to Google under section 35 of the Act for the purpose of preventing significant damage to 'parties in the Open Web' and to protect the public interest.<sup>16</sup>
- 2.4 On 7 January 2021, the CMA launched the investigation, having established that it had reasonable grounds for suspecting that Google had infringed the Chapter II prohibition in relation to its Privacy Sandbox Proposals and having determined that a formal investigation would be consistent with the CMA's Prioritisation Principles.<sup>17</sup>
- 2.5 During the course of its investigation, the CMA has undertaken a number of investigative steps to gather evidence from Google and

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<sup>13</sup> [Online platforms and digital advertising market study](#) (the '**Market Study**'), final report, July 2020.

<sup>14</sup> For more information see [DRCF](#). Indeed, the investigation informs the joint work in relation to data protection and competition regulation between the CMA and the ICO, as set out in 'Section B: Joined up regulatory approaches' of the [DRCF: Plan of work for 2021 to 2022](#), March 2021 (accessed on 8 February 2022).

<sup>15</sup> Previously known as Marketers for an Open Web Limited.

<sup>16</sup> The application from MOW was submitted on 23 November 2020. Under section 35 of the Act, the CMA can require a business to comply with temporary directions (interim measures) where: (i) the investigation has been started but not yet concluded; and (ii) the CMA considers it necessary to act urgently either to prevent significant damage to a person or category of persons, or to protect the public interest. In giving interim measures directions, the CMA can act on its own initiative or in response to a request to do so.

<sup>17</sup> [Prioritisation principles for the CMA \(CMA16\)](#), April 2014.

third parties,<sup>18</sup> including sending formal notices under section 26 of the Act requiring the provision of documents and/or information. Some third parties submitted information voluntarily to the CMA. The CMA also continued its engagement with the ICO and both authorities have jointly held meetings with Google and third parties.

- 2.6 Following discussions with the CMA, Google indicated an intention in principle to offer commitments. On 12 February 2021, the CMA sent a summary of its competition concerns to Google. In line with its Procedural Guidance,<sup>19</sup> the CMA proceeded to discuss with Google the scope of commitments which the CMA considered would be necessary to address the concerns it had identified.
- 2.7 Section 31A of the Act provides that, for the purposes of addressing the competition concerns it has identified, the CMA may accept, from such person (or persons) concerned as it considers appropriate commitments to take such action (or refrain from such action) as it considers appropriate. The Procedural Guidance describes the circumstances in which it may be appropriate to accept commitments and the process by which parties to an investigation may offer commitments to the CMA. In accordance with paragraph 10.21 of the Procedural Guidance, a business under investigation can offer commitments at any time during the course of an investigation until a decision on infringement is made.
- 2.8 On 31 March 2021, Google submitted a draft commitments proposal to the CMA. It did so without prejudice to Google's position in this investigation or any other. Following discussions with the CMA, Google revised its proposal and formally offered the commitments to the CMA on 28 May 2021 (the '**Initial Commitments**').
- 2.9 On 11 June 2021, the CMA gave notice it proposed to accept Google's Initial Commitments in relation to the CMA's investigation and invited representations from third parties on the Initial Commitments pursuant to Schedule 6A to the Act (the '**June Notice**').<sup>20</sup> The June Notice outlined the

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<sup>18</sup> The CMA gathered evidence from a variety of market participants including publishers, industry bodies and businesses active in the digital advertising supply chain.

<sup>19</sup> [Guidance on the CMA's investigation procedures in Competition Act 1998 cases \(CMA8\)](#), December 2021 ('**Procedural Guidance**'), paragraph 10.22.

<sup>20</sup> [Notice of intention to accept commitments offered by Google in relation to its Privacy Sandbox Proposals](#), 11 June 2021.



CMA's provisional view that the Initial Commitments addressed the CMA's competition concerns.

- 2.10 The consultation on the Initial Commitments ran for 20 working days, during which period the CMA received responses from a wide range of respondents (the '**First Consultation**').<sup>21</sup> The CMA considered the responses and engaged in further discussions with certain consultation respondents to clarify concerns, where the CMA considered it appropriate to do so. The CMA discussed with Google key concerns raised by respondents.
- 2.11 On 19 November 2021, Google offered the CMA modified commitments (the '**Modified Commitments**') and on 26 November 2021, the CMA gave notice of its intention to accept the Modified Commitments in accordance with section 31A(2) of the Act (the '**November Notice**').<sup>22</sup> Pursuant to Schedule 6A to the Act, the CMA invited representations from third parties on this proposed course of action.
- 2.12 The consultation on the Modified Commitments ran for 16 working days, during which period the CMA received responses from a wide range of respondents (the '**Second Consultation**').<sup>23</sup>
- 2.13 Having considered the consultation responses relating to the Modified Commitments, Google offered a limited number of improvements. Those minor modifications add clarity to and aid consistency within the commitments and include updates to reflect the most recent status of the Privacy Sandbox Proposals.
- 2.14 For the reasons set out in this Decision, the CMA considers that the Final Commitments are appropriate for addressing the competition concerns it has identified in relation to the Privacy Sandbox Proposals, and provide a robust basis for the CMA, ICO and third parties to influence the future development of the Privacy Sandbox Proposals. As a result of accepting the commitments and in accordance with section 31B(2) of the Act the CMA is discontinuing the investigation. In this case, no decision as to whether the Chapter II prohibition has been infringed has been made. The offering of commitments does not constitute an admission of an infringement of the Chapter II prohibition by Google.

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<sup>21</sup> The CMA received 45 written responses as part of the consultation on the June Notice.

<sup>22</sup> [Notice of intention to accept modified commitments offered by Google in relation to its Privacy Sandbox Proposals](#), 26 November 2021.

<sup>23</sup> For example, the CMA received 29 written responses as part of the consultation on the November Notice.

- 2.15 The CMA has not reached a view on whether the conditions of section 35 of the Act are met. The acceptance of the commitments, addressing the competition concerns which the CMA has identified, now renders superfluous the need for the CMA to make a decision in relation to the interim measures' application.
- 2.16 The CMA notes that acceptance of the Final Commitments does not prevent the CMA from taking any action in relation to competition concerns which are outside the scope of this investigation and are therefore not addressed by the Final Commitments. Moreover, acceptance of the Final Commitments does not prevent the CMA from continuing the investigation, making an infringement decision or giving a direction in circumstances where the CMA has reasonable grounds for:
- (a) believing that there has been a material change of circumstances since the commitments were accepted;
  - (b) suspecting that a person has failed to adhere to one or more of the terms of the commitments; or
  - (c) suspecting that information which led the CMA to accept the commitments was incomplete, false or misleading in a material particular.<sup>24</sup>

### ***The party and conduct under investigation***

- 2.17 Google LLC is a limited liability company incorporated in the USA. It is the immediate parent and controlling shareholder of Google UK Limited, a limited liability company incorporated in the UK. Google LLC is a wholly owned subsidiary of Alphabet Inc., a USA incorporated multinational technology company listed on the NASDAQ stock exchange and Frankfurt stock exchange. Alphabet Inc.'s turnover for the financial year ending 31 December 2020 was USD 182,527 million.<sup>25</sup>

### ***Google's activities***

- 2.18 Google is active in a wide range of internet-related services and products. These include a search engine (Google Search), a video-sharing platform (YouTube), an email service (Gmail), a web browser ('**Chrome**') as well as a browser engine (Chromium), a mobile and tablet operating system (Android), and hardware devices (such as Google Home). Google is also involved in the

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<sup>24</sup> Section 31B of the Act.

<sup>25</sup> Alphabet Inc., [Form 10-K](#), Annual Report pursuant to section 13 or 15 (d) of the Securities and Exchange Act 1943 for the fiscal year ended December 31, 2020.

supply of search and display advertising and offers online advertising technologies (such as AdSense and AdWords).

- 2.19 Chromium is an open-source project created by Google which includes Blink, the browser engine. Chromium, including Blink, is the basis of Google's browser Chrome. Browser engines are a core software component which produces web pages. Several other browsers rely on Chromium, including Microsoft Edge.

### *Browsers*

- 2.20 Browsers are used both on desktop computers and mobile devices. Browsers provide services to web users, publishers, and advertisers (and, by extension, the ad tech intermediaries operating on behalf of publishers and advertisers). In particular:
- (a) Web users use browsers to access and interact with online content.
  - (b) Publishers build and optimise web pages that load in browsers to make content available to web users. Where publishers use an ad-funded business model (ie monetise their content using ads), publishers and their ad tech providers may also collect and use data about users' browsing behaviour, in order to display targeted ads to them.
  - (c) Advertisers pay for ads to be displayed on publishers' web pages. These ads may direct users to the advertisers' own web pages selling goods and services. Like publishers, advertisers and their ad tech providers may collect and use data about users to devise, execute, and evaluate advertising strategies. This includes determining whether and how much to bid for an opportunity to show an ad to a given user, where display advertising is sold programmatically. It also includes determining the extent to which users that have been exposed to an advertisement go on to convert (eg make a purchase), and hence the return on advertising spend.
- 2.21 Each browser sits on top of a browser engine, which transforms web page source code into web pages that people can see and engage with.
- 2.22 Many of the methods that publishers, advertisers and ad tech providers employ to collect and use data which are specific to web users depend on features of browsers, including TPCs and other functionalities affected by changes proposed in the Privacy Sandbox as set out in Appendix 3.

## ***The digital advertising supply chain***

- 2.23 In digital advertising, publishers sell ad inventory to advertisers. This is space on a publisher's property (eg on a web page or mobile app), which can be filled with an advertiser's ads. Ads that are shown in response to search queries are referred to as search advertising. In the Market Study, the CMA estimated that Google's share of the search market is more than 90%.<sup>26</sup> Display advertising refers to ads displayed alongside the content displayed on a web page or mobile app.
- 2.24 Display advertising comprises two channels: (i) the 'owned and operated' channel, which is primarily made up of large vertically integrated platforms which sell their own ad inventory directly to advertisers or media agencies through self-service interfaces; and (ii) the 'open display' channel, which comprises a wide range of publishers who sell their ad inventory through a complex chain of ad tech intermediaries that run auctions on behalf of the publishers (including online newspapers) and advertisers.
- 2.25 On the advertiser (demand) side, ad tech intermediaries include demand side platforms ('**DSPs**'). DSPs allow advertisers to buy ad inventory from many sources. In the Market Study the CMA estimated that Google's two DSPs, Display & Video 360 (also referred to as '**DV360**') and Google Ads, account for [50-60]% of the value of ads purchased through DSPs.<sup>27</sup>
- 2.26 On the publisher (supply) side, supply side platforms ('**SSPs**') provide the technology to automate the sale of digital ad inventory. They allow real-time auctions by connecting to multiple DSPs, collecting bids from them, and performing the function of exchanges. They can also facilitate more direct deals between publishers and advertisers. In the Market Study the CMA estimated that Google accounts for [50-60]% of the value of ads sold in the UK across SSPs.<sup>28</sup>
- 2.27 Publisher ad servers manage publishers' ad inventory and are responsible for the decision logic underlying the final choice of which ad to serve. They base this decision on the bids received from different SSPs and the direct deals agreed between the publisher and advertisers. Google also provides publisher

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<sup>26</sup> Market Study, [Appendix C](#), paragraph 97.

<sup>27</sup> Market Study, [Appendix C](#), paragraph 254.

<sup>28</sup> Market Study, [Appendix C](#), paragraph 248.

ad server services accounting for [90-100]% of the display ads served in the UK, according to the CMA's Market Study findings.<sup>29</sup>

### ***Conduct under investigation***

2.28 Currently, open display advertising relies on the ability to identify individual web users and 'track' them across web pages by means of TPCs and other forms of cross-site tracking. In 2019, Google announced its plans to remove support for TPCs in its Chrome browser and replace the functionality of TPCs and other forms of cross-site tracking with a number of changes through its Privacy Sandbox Proposals. Google made the following key announcements in relation to its planned changes to Chrome:

- (a) 7 May 2019: Google announced its intention to update Chrome to provide users with more transparency about how sites use cookies, as well as simpler controls for cross-site cookies.<sup>30</sup>
- (b) 22 August 2019: Google announced the Privacy Sandbox initiative, comprising 'a set of open standards to [...] enhance privacy on the web'.<sup>31</sup>
- (c) 14 January 2020: Google first announced its intent to remove TPCs from Chrome.<sup>32</sup>
- (d) 25 January 2021: Google provided a progress update and set out early results and new proposals ready for testing.<sup>33</sup>
- (e) 3 March 2021: Google provided further detail on its use of user-level identifiers to track users across the web once TPCs are phased out.<sup>34</sup>
- (f) 9 April 2021: Google provided an update on its proposal to replace use cases for conversion measurement at aggregate and event level once

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<sup>29</sup> Note that this finding relates to Google's position amongst specialist publisher ad servers. When considering all of the intermediaries who served ads to UK users from whom the CMA received data in the course of the Market Study, Google had a share of [70-80]% of impressions served. Market Study, [Appendix C](#), paragraph 244.

<sup>30</sup> Chromium Blog, [Improving privacy and security on the web](#), May 2019 (accessed on 3 February 2022).

<sup>31</sup> Google, [Chrome: Building a more private web](#), August 2019 (accessed on 3 February 2022); and Chromium Blog, [Potential uses for the Privacy Sandbox](#), August 2019 (accessed on 3 February 2022).

<sup>32</sup> Chromium Blog, [Building a more private web: A path towards making third-party cookies obsolete](#), January 2020 (accessed on 3 February 2022).

<sup>33</sup> Chromium Blog, [Privacy Sandbox in 2021: Testing a more private web](#), January 2021 (accessed on 3 February 2022); and Google Ads, [Building a privacy-first future for web advertising](#), January 2021 (accessed on 3 February 2022).

<sup>34</sup> Google Ads & Commerce Blog, [Charting a course towards a more privacy-first web](#), March 2021 (accessed on 3 February 2022).

TPCs are phased out.<sup>35</sup>

- (g) 19 May 2021: Google provided an update on its proposal to reduce the granularity of information available from user-agent strings, indicating that their proposed replacement, eg the User-Agent Client Hints application programming interface ('**API**'), was available by default in Chrome (since M89).<sup>36</sup>
- (h) 28 September 2021: Google provided an updated timeline for the Privacy Sandbox, moving the testing timeline for the relevant content and Ads APIs from Q4 2021 to Q1 2022.<sup>37</sup>
- (i) 25 January 2022: Google published the new Topics API, replacing FLoC, the proposal within Privacy Sandbox that aims to enable interest-based targeting.<sup>38</sup>
- (j) 27 January 2022: Google published updates for FLEDGE API<sup>39</sup> and Attribution Reporting API.<sup>40</sup>

2.29 The stated aim of the Privacy Sandbox Proposals is to remove cross-site tracking of Chrome users through TPCs and alternative tracking methods such as fingerprinting, and replace it with tools to provide selected functionalities currently dependent on cross-site tracking. These proposals are described in more detail in Appendix 3.<sup>41</sup>

2.30 The investigation focused on the following areas of potential harm that could arise from Google's conduct:

- (a) potential harm to rival publishers and ad tech providers through Google restricting the functionality associated with user tracking for third parties,

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<sup>35</sup> Google Ads & Commerce Blog, [Privacy-first web advertising: a measurement update](#), April 2021 (accessed on 3 February 2022).

<sup>36</sup> Chromium Blog, [Update on User-Agent String Reduction in Chrome](#), May 2021 (accessed on 3 February 2022).

<sup>37</sup> Google, [The Privacy Sandbox Timeline](#) (accessed on 3 February 2022; 'Last update: January 2022').

<sup>38</sup> Google, [Topics API](#), January 2022 (accessed on 3 February 2022). The explainer can be found [here](#) (accessed on 3 February 2022).

<sup>39</sup> Google, [FLEDGE API](#), January 2022 (accessed on 3 February 2022).

<sup>40</sup> Google, [Attribution Reporting proposal: what's changing in January 2022?](#), January 2022 (accessed on 3 February 2022). The technical explainers for event-level reports and summary reports can be found respectively [here](#) (accessed on 3 February 2022) and [here](#) (accessed on 3 February 2022).

<sup>41</sup> The Privacy Sandbox Proposals remain largely as set out in Appendix 2 to the June Notice, with two main changes. The first and most significant is the discontinuation of FLoC and new replacement proposal for interest-based advertising, the Topics API. Additionally, there are various partitioning developments, including CHIPS, Storage Partitioning, Network State Partitioning and HTTP Cache Partitioning and the addition of the Shared Storage API proposal, which is a way for some restricted and Google-intermediated forms of cross-site data sharing to continue.

while retaining this functionality for Google;

- (b) potential harm through Google preferencing its own ad tech services and owned and operated ad inventory; and
- (c) potential harm to Chrome web users through the imposition of unfair terms.

2.31 The CMA's competition concerns in relation to these areas are set out below.

## **Background on Google's position in the relevant markets**

2.32 This section sets out the CMA's view of:

- (a) the most plausible definitions of the relevant markets;<sup>42</sup> and
- (b) Google's position in the relevant markets.

2.33 The purpose of this section is to provide context to Chapter 3 of this Decision which describes the CMA's competition concerns.

### ***Relevant markets***

2.34 The CMA has considered the most likely definitions of the relevant markets that Google is engaged in which relate to the conduct under investigation. The CMA's preliminary view is that the main relevant product markets for the purposes of this investigation are: (i) the supply of web browsers to web users and publishers; (ii) the supply of display ad inventory to advertisers; (iii) the supply of search ad inventory to advertisers; and (iv) markets relating to the supply of ad tech services to publishers and advertisers.

### ***The supply of web browsers***

2.35 Web users use web browsers to access and interact with online content and make purchases. In the context of its concerns about the potential imposition of unfair terms on Chrome web users, the CMA has considered whether users could use alternatives. Although users can access some online content through different channels (eg apps), for which there might be a degree of substitutability with web browsers (particularly on mobile devices), users

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<sup>42</sup> For the avoidance of doubt, while the CMA has not undertaken a full market definition exercise for the purposes of agreeing commitments with Google, any references to economic markets in this document are consistent with the market definition in the [final report](#) of the Market Study.

cannot access the vast majority of online content through these other channels.

- 2.36 The CMA has also considered whether page views generated on web browsers are an important 'input' into the production of ad inventory by publishers and ad tech providers operating in the open display segment. Some publishers have no alternative to web pages to make their content available to web users and generate ad inventory. Other publishers can make their content available through different channels (eg apps), but they have little control over which channel is used by web users, and it is unlikely that they could operate without making their content available on web pages altogether. As a result, publishers would not be able to respond to a deterioration in the functionalities of browsers by steering their audience on to apps or other channels.
- 2.37 Therefore, in the context of the investigation, the CMA's preliminary view is that the relevant product market is no wider than that for the supply of web browsers.
- 2.38 The CMA has not concluded on whether it is necessary to segment this market further, for example by distinguishing between browsers and page views generated on different types of devices.
- 2.39 The CMA's preliminary view is that the relevant geographic market for the supply of web browsers, when viewed from the perspective of the page views they generate, is likely to be the UK. This is because, from the perspective of advertisers seeking to reach a UK audience, and from the perspective of publishers and ad tech providers seeking to meet this requirement, page views generated abroad are not a substitute for page views generated in the UK. However, the CMA has not concluded on whether the relevant geographic market should be widened, insofar as some advertisers might have a preference for running some campaigns on a global scale. Further, the CMA has considered that web users might access web browsers on a global scale but has not concluded on the exact geographic scope of the relevant market.

### ***The supply of display ad inventory and search ad inventory to advertisers***

- 2.40 Advertisers can reach web users through either search or display advertising. As set out in paragraph 2.24 above, the display advertising market comprises two main channels: the owned and operated channel and the open display channel. In the Market Study, the CMA found that advertisers largely saw the owned and operated and open display channels as substitutes, but that there



was currently more limited substitutability between search and display advertising.<sup>43</sup>

- 2.41 The CMA considers that, for the purposes of this investigation, the relevant product market is likely to be that for the supply of display ad inventory to advertisers. However, the CMA considers that Google's position in the separate market for search advertising is also relevant for the purpose of assessing Google's incentives and the competitive effects of its proposals.
- 2.42 If the Privacy Sandbox Proposals have the effect of reducing the attractiveness of display advertising to advertisers (eg by making display advertising less effective or more expensive), then some advertisers are likely to move some of their activity towards search advertising. In its Market Study the CMA found that, while there is currently limited substitutability between search and display advertising, there is some evidence of convergence between the characteristics of these two channels at least for some types of advertisers. In a scenario where the Privacy Sandbox Proposals reduce the attractiveness of display advertising, some advertisers might switch a share of their purchases to search advertising. For these reasons, while the CMA continues to consider that the search and display advertising markets are distinct, it also considers that Google's position in the search advertising market is relevant for the purpose of assessing its incentives with respect to any changes in the functionalities on Chrome.
- 2.43 The CMA's preliminary view is that the relevant geographic market for the supply of ad inventory to advertisers is the UK. This is because many advertisers are likely to seek to reach an audience on a UK basis.

### ***The supply of ad tech services to publishers and advertisers***

- 2.44 Advertisers and publishers rely on a range of ad tech intermediaries to select an ad to be served to a web user in real time and determine the price of doing so (as well as delivering related functionalities such as frequency capping, verification, and attribution). As set out in paragraphs 2.25 to 2.27 above, SSPs and publisher ad servers are the main types of ad tech intermediaries on the supply side, and DSPs are one of the main types of intermediaries on the demand side. Generally, services provided by different types of ad tech intermediaries vary but are complementary. For the purpose of assessing the competitive effects of the Privacy Sandbox Proposals on the market for display advertising, the CMA has not needed to reach a view on the precise segmentation between different vertically-related markets in the ad tech

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<sup>43</sup> [Market Study](#), paragraph 5.23.

supply chain, and instead has considered impacts across the markets for ad tech services to publishers and advertisers collectively.<sup>44</sup>

- 2.45 Many ad tech providers operate internationally. However, the conditions of competition may vary across countries depending on regulations and market conditions.
- 2.46 The CMA considers that the relevant geographic market for the supply of ad tech services to publishers and advertisers is likely to be the UK but has not concluded on the precise scope of the relevant geographic market.

### ***Google's position in the relevant markets***

- 2.47 The CMA is of the preliminary view that Google has held a dominant position in the market for the supply of web browsers in the period covered by the investigation (from January 2019 to date).
- 2.48 The CMA considers that the following factors are indicators that Google holds a dominant position in the market for the supply of web browsers: (i) the market share of Chrome; (ii) the market share of other web browsers based on Chromium; (iii) the lack of other options for publishers, ad tech providers and web users; and (iv) the tendency of developers to optimise their pages for Chrome.
- 2.49 In the context of the investigation a substantive question is whether the page views and user data generated by browsing on Chrome are an important 'input' into the generation of ad inventory by publishers and ad tech providers operating in the open display segment. Another relevant question is the extent to which different web browsers are able to capture web users' attention. Chrome's share of page views can be used as the starting point for considering these two substantive questions.
- 2.50 As discussed in paragraphs 2.38 and 2.39 above, for the purposes of this investigation, the CMA has not needed to conclude on whether the relevant product market for the supply of web browsers should be segmented by type of device, or on whether the relevant geographic market should be wider than the UK.

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<sup>44</sup> For the purposes of this Decision, the CMA uses the term 'market for ad tech services' to cover the different vertical activities within the ad tech stack, including the ad exchange and ad server. As set out in [Appendix M](#) in the Market Study, the CMA considers that the ad tech stack in practice consists of several vertically-related markets; it was not necessary to separate these out for the purposes of stating the CMA's competition concerns, but this should not be taken as implying that the CMA considers that there is a single market for the supply of ad tech services.

2.51 Table 2.1 and Table 2.2 below set out shares of page views for different browsers on different types of devices in the UK and worldwide, respectively. This shows that, in the period covered by the investigation, Chrome's share of page views across all devices has been consistently high (around 49% in the UK over the period) and significantly higher than that of its nearest competitor, Safari.

**Table 2.1: Browser shares based on page views in the UK**

Browser	Browser engine	2019			2020			2021		
		All devices (%)	Desktop (%)	Mobile (%)	All devices (%)	Desktop (%)	Mobile (%)	All devices (%)	Desktop (%)	Mobile (%)
Chrome	Chromium	48.9	63.2	40.4	49.0	60.0	41.5	49.0	59.3	40.8
Safari	WebKit	31.6	10.4	47.0	33.6	16.8	47.4	33.7	17.0	48.8
Samsung	Chromium	4.3	0.0	10.3	4.3	0.0	9.3	4.0	0.0	8.6
Firefox	Gecko	4.2	8.2	0.5	3.5	6.9	0.6	3.1	5.9	0.7
Edge	Chromium	4.7	9.4	0.1	5.4	11.0	0.2	7.0	14.3	0.2
Internet Explorer	Trident	3.4	6.9	0.2	1.5	3.1	0.0	0.6	1.3	0.0
Android	Chromium	1.3	0.0	0.4	1.1	0.0	0.2	1.0	0.0	0.1
Opera	Chromium	0.8	1.4	0.4	0.8	1.4	0.4	1.0	1.7	0.4
Others		0.8	0.7	0.6	0.8	0.8	0.5	0.6	0.5	0.5

**Note:** the column 'browser engine' reports the browser engine for the PC or Android versions of the browsers. The CMA understands that the iOS versions of some of these browsers rely on WebKit and as such may offer different functionalities in terms of user tracking and support for TPCs. Source: Statcounter.

**Table 2.2: Browser shares based on page views worldwide**

Browser	Browser engine	2019			2020			2021		
		All devices (%)	Desktop (%)	Mobile (%)	All devices (%)	Desktop (%)	Mobile (%)	All devices (%)	Desktop (%)	Mobile (%)
Chrome	Chromium	63.3	70.0	60.1	64.6	68.7	62.5	64.5	67.3	63.3
Safari	WebKit	15.9	6.8	20.8	17.8	9.0	24.1	18.9	9.9	24.8
Samsung	Chromium	3.5	0.0	6.9	3.4	0.0	6.5	3.1	0.0	5.7
Firefox	Gecko	4.6	9.5	0.4	4.2	8.7	0.5	3.6	7.9	0.5
Edge	Chromium	2.1	4.5	0.1	2.8	6.0	0.1	3.8	8.8	0.1

Internet Explorer	Trident	2.3	4.9	0.2	1.4	3.0	0.0	0.6	1.5	0.0
Android	Chromium	0.9	0.0	1.0	0.5	0.0	0.4	0.6	0.0	0.5
Opera	Chromium	2.6	2.4	2.9	2.0	2.4	1.7	2.2	2.7	2.0
Others		4.9	1.9	7.8	3.3	2.2	4.3	2.6	2.0	3.1

**Note:** the column 'browser engine' reports the browser engine for the PC or Android versions of the browsers. The CMA understands that the iOS versions of some of these browsers rely on WebKit and as such may offer different functionalities in terms of user tracking and support for TPCs. Source: Statcounter.

2.52 Google's browser shares are even higher (around 63% across all devices for the UK in 2021)<sup>45</sup> if all Chromium-supported browsers are taken into account. The CMA has received submissions that Chromium is controlled by Google. For instance, changes to the Chromium source code made by an external contributor (ie someone who has not already been granted write access) are subject to a review process that ultimately involves only reviewers who work for Google, and all contributors must enter into a contributor licence agreement with Google. Google has informed the CMA that the Chromium source code is provided under a permissive open source licence, implying that other browsers are in principle free to choose whether to implement changes introduced by Google.<sup>46</sup> In practice, other browsers may do this by forking (creating their own copy of) Chromium that they are free to make changes to (without Google reviewers) and use in their browser. However, the forked version of Chromium would not enjoy the ongoing updates and improvements that the original Chromium gets from that point forwards, and the browser that forked would have to maintain their new copy of Chromium themselves. In view of this, market participants have told the CMA that not adopting changes is likely to be costly to the developers of these browsers, and as such the CMA's preliminary view is that changes to Chromium influence the functionalities provided by these browsers as well.

2.53 The CMA also considers that the market share estimates presented in the tables above may significantly underestimate the importance of the page views generated on Chrome for publishers and ad tech providers. In particular, Apple and Mozilla have already taken steps to limit the functionalities of TPCs in their browsers (Safari and Firefox, respectively). As such, page views generated on these browsers do not appear to be an effective substitute for page views generated on Chrome for the purpose of generating targeted ad inventory where web users can be identified and

<sup>45</sup> Note that these calculations do not account for browsers having to use WebKit on iOS.

<sup>46</sup> Google has also informed the CMA that changes to Chromium source code are reviewed initially by the 'owner' of that code, who may or may not be a Google employee.

associated with data. In the Market Study, the CMA found that the value of ad inventory on Safari and Firefox had dropped significantly below the value of equivalent ad inventory on Chrome, following Apple's and Mozilla's implemented changes to the functionalities of TPCs.<sup>47</sup> If browsing on Safari and Firefox were to be excluded from the relevant market, then Chrome's share of page views in the UK across all devices would increase further.

- 2.54 The CMA considers that entry and expansion in the market for the supply of web browsers is made difficult because of pre-installation arrangements, and default choice architectures. Consistent with these market features, new browsers introduced recently such as Brave or Edge are based on existing browser engines and have achieved only small market shares. Therefore, barriers to entry and expansion in the market for the supply of web browsers are likely to be high.
- 2.55 Publishers and advertisers have little control over which browser is used to access their content or purchase their products. That choice is made by web users (either directly or indirectly by sticking with a pre-set default) based on a combination of hardware and software considerations. Thus, publishers and ad tech providers have no countervailing buyer power.
- 2.56 Moreover, some market participants have told the CMA that developers often optimise their web pages (including many of Google's own web pages) for Chrome specifically, with the result that many web pages 'worked best' with Chrome and would break or not render correctly in other browsers. Chrome frequently implements new web features that become de facto web standards, before the relevant standard setting body has adopted the standard.<sup>48</sup> This further indicates that Chrome has a significant degree of market power.
- 2.57 For these reasons, the CMA considers that Google is likely to be dominant in the market for the supply of web browsers in the UK (and would also be likely to be dominant if the market were wider than the UK).
- 2.58 While Google's position in the supply of web browsers is central to the investigation, Google also has a strong position in many of the advertising markets that will be affected by the Privacy Sandbox changes. In particular, as set out at paragraphs 2.23 to 2.27 above, and in the Market Study, Google also has a strong market position in:

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<sup>47</sup> Appendix F of the Market Study presents evidence from three publishers indicating that they generate substantially lower revenue per page across Safari and Firefox compared to other browsers where TPCs are still enabled. Market Study, [Appendix F](#), paragraphs 120–121.

<sup>48</sup> Google has told the CMA that this is done by other browsers as well.

- (a) search and search advertising, with a share of supply in the UK in excess of 90%;<sup>49</sup>
- (b) display advertising, including through YouTube which has a share of video display advertising in the UK of [15-20]%;<sup>50</sup> and
- (c) markets for ad tech intermediation, including a share of supply of more than 90% in publisher ad serving in the UK.<sup>51</sup>

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<sup>49</sup> Market Study, [Appendix C](#), paragraphs 27 and 97.

<sup>50</sup> Market Study, [Appendix C](#), paragraph 187.

<sup>51</sup> Market Study, [Appendix C](#), paragraph 244.

### 3. The CMA's competition concerns

- 3.1 This Chapter 3 sets out a summary of the CMA's concerns regarding the impact of the Privacy Sandbox Proposals on competition and consumers.
- 3.2 The factual situation under consideration includes announcements of future conduct. In light of case law under the Act concerning such announcements,<sup>52</sup> the CMA has taken a two-part approach to summarising its competition concerns. First, the CMA has set out its preliminary view that the announced conduct, if implemented without sufficient regulatory scrutiny and oversight, would be likely to amount to an abuse of a dominant position. Second, the CMA has set out its preliminary view that the announcements themselves and implementing steps taken prior to issue of the June Notice are likely to constitute an abuse in the specific circumstances of the case.
- 3.3 The CMA is concerned that the Privacy Sandbox Proposals, if implemented without sufficient regulatory scrutiny and oversight, would be likely to amount to an abuse of a dominant position in the market for the supply of web browsers in the UK. More specifically, the CMA is concerned that, without the Final Commitments, the Privacy Sandbox Proposals would allow Google to:
- (a) distort competition in the market for the supply of ad inventory in the UK and in the market for the supply of ad tech services in the UK, by restricting the functionality associated with user tracking for third parties, while retaining this functionality for Google;
  - (b) self-preference its own ad inventory and ad tech services by transferring key functionalities to Chrome, providing Google with the ability to affect digital advertising market outcomes through Chrome in a way that cannot be scrutinised by third parties, and leading to conflicts of interest; and
  - (c) exploit its apparent dominant position by denying Chrome web users substantial choice in terms of whether and how their personal data is used for the purpose of targeting and delivering advertising to them.
- 3.4 The precise impact of the Privacy Sandbox Proposals will depend on the ways in which they will be designed and implemented, neither of which has yet been decided.
- 3.5 The CMA is also concerned that certain announcements made by Google with respect to the Privacy Sandbox Proposals are themselves likely to amount to an abuse of a dominant position in the market for the supply of web browsers

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<sup>52</sup> [Royal Mail plc v Office of Communications](#) [2019] CAT 27.

in the UK in the specific circumstances of the case. In addition, the CMA's preliminary view is that Google has already started to implement its changes, and that where such implementation pre-empts the outcome of consultations, it risks not being competition on the merits.

- 3.6 More specifically, the CMA is concerned that Google's announcements prior to issue of the June Notice, as it develops these proposals, have caused uncertainty in the market as to the specific alternative solutions which will be available to publishers and ad tech providers once TPCs are deprecated. The announcements and actions prior to the issue of the June Notice showed (and created the expectation) that Google was determined to proceed with changes in the relevant areas, including by deprecating TPCs within two years of the announcements, in ways which advantage its own businesses and limit competition from its rivals.
- 3.7 In this respect, the CMA considers that the concerns that market participants have expressed to it regarding the impact that the Privacy Sandbox Proposals are likely to have on competition reflect in part:
- (a) the asymmetry of information between Google and third parties regarding the development of the Privacy Sandbox Proposals, including the criteria that Google will use to assess different design options and evidence relating to their effectiveness against these criteria; and
  - (b) a lack of confidence on the part of third parties regarding Google's statements concerning its intentions in developing and implementing the Privacy Sandbox Proposals. The CMA understands that this lack of confidence in part reflects the commercial incentives that Google faces in developing the Privacy Sandbox Proposals and the lack of independent scrutiny of the Privacy Sandbox Proposals and the process for their development.
- 3.8 The remainder of this Chapter 3 sets out:
- (a) first, a summary of the Privacy Sandbox Proposals;
  - (b) second, the effects that the Privacy Sandbox Proposals would likely have on competition and consumers if they were introduced without the regulatory scrutiny and oversight provided for by the Final Commitments; and
  - (c) third, the impact that Google's announcements prior to issue of the June Notice are likely to have on competition.



## Summary of the Privacy Sandbox Proposals

3.9 The Privacy Sandbox Proposals are a set of proposed changes on Chrome that aim to:

- (a) remove the cross-site tracking of Chrome users through TPCs and other methods of tracking such as fingerprinting; and
- (b) create a set of alternative tools to provide the functionalities that are currently dependent on cross-site tracking

### ***Functionalities currently dependent on or associated with cross-site tracking***

3.10 Currently TPCs and other forms of cross-site tracking serve a range of purposes within digital advertising markets and the broader operation of the open web. These include:

- (a) Ad targeting, in particular interest-based targeting and retargeting: TPCs and other forms of cross site tracking allow for interest-based user profiles to be established and users to be targeted with ads corresponding to their profile (interest-based targeting). Cross-site tracking is also used to allow advertisers to retarget customers that have previously visited their website for remarketing purposes.
- (b) Measurement, attribution, frequency capping, and reporting: Cross-site tracking may also be used to determine whether and how many ads have been served successfully to users (measurement), to help assess ad effectiveness by determining whether views and clicks on ads led to conversions (attribution), and to limit how often a specific user is shown an ad (frequency capping). It also supports the reporting of the outcomes of ad auctions to advertisers and publishers to facilitate payment and show performance of contracts.
- (c) Spam and fraud detection: Tracking a user's browsing activity across the web is a way to establish whether that user can be trusted or should be considered as conducting fraudulent or spam activities.
- (d) Federated log-in: Allows the user to use a single method of authentication (eg username and password) to access different websites rather than creating a new username and password for each website, or to use one login to be signed in on many sites thereafter.

3.11 In addition, other important forms of web functionality, while not dependent on cross-site tracking, currently require the provision of information that is

sometimes used to facilitate cross-site tracking. An example is the information provided through the user-agent string which provides information about the user's browser and device to the website that the user is visiting, and which is useful for optimising the user's viewing experience (for instance, to select the most suitable version of a website for the user's browser and device). A further example is the Internet Protocol ('IP') address, which is useful for detecting fraud and the geographical tailoring of content.

### ***Alternative tools to replace TPCs and other forms of cross-site tracking***

- 3.12 Google has proposed a range of alternative tools to provide the functionalities set out above as a substitute for the use of TPCs and certain information associated with other forms of cross-site tracking. These tools are at different stages of development, and none has been finalised. The key proposals are summarised here and described in more detail in Appendix 3 to this Decision.

#### ***First-Party Sets***

- 3.13 Under the Privacy Sandbox Proposals, First-Party Sets are a mechanism by which a set of domains can be declared as belonging to the same party and thus be considered first-party to each other rather than third-party. Consequently, cookies on these domains will not be categorised as TPCs and tracking across the domains within a First-Party Set will be possible. Google has indicated that corporate ownership is a factor which could determine the boundaries of First-Party Sets.<sup>53</sup>

#### ***Topics***

- 3.14 The Topics API is intended to enable interest-based targeting.<sup>54</sup> The initial taxonomy includes 350 topics,<sup>55</sup> which are publicly listed.<sup>56</sup> Google is developing a classifier model to map websites to topics. Topics are assigned to users based on their browsing history of websites that are using the Topics API.<sup>57</sup> Every week, Chrome will calculate the top five topics from the user's browsing history that week. When ad tech providers on a website call the Topics API, one of the top five topics for each of the last three weeks (up to three topics in total) for the user will be returned to the callers on that site.

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<sup>53</sup> Chrome Developers, [First-Party Sets](#) (accessed on 3 February 2022).

<sup>54</sup> An overview of the Topics proposal can be found [here](#) (accessed on 3 February 2022). Topics replaces Google's previous proposal, Federated Learning of Cohorts (FLoC), and is intended to meet the same objective of enabling interest-based targeting.

<sup>55</sup> Google estimates a sample from 350 topics represents ~8 bits, in contrast to ~16 bits from FLoC.

<sup>56</sup> The first version of the taxonomy is listed [here](#) (accessed on 3 February 2022).

<sup>57</sup> As with FLoC, this topic assignment will be calculated locally on the user's browser.

Google has indicated willingness for the topics taxonomy and the classifier to be externally maintained and open source. For more information, see Appendix 3 or Google's explainer for the Topics API.<sup>58</sup>

*Two Uncorrelated Requests, Then Locally-Executed Decision On Victory (TURTLEDOVE), First 'Locally-Executed Decision over Groups' Experiment (FLEDGE) and related proposals*

- 3.15 Retargeting is the practice of serving targeted ads to specific individuals who have visited an advertiser's website. There have been a number of different proposals put forward by Google and other market participants aimed at allowing advertisers to retarget users while preventing cross-site tracking.
- 3.16 Under the TURTLEDOVE/FLEDGE proposal, the advertiser can calculate and store custom interest groups in the browser based on the user's activity on that advertiser's website. The browser stores relevant information which allows it to run an on-device auction when it encounters an opportunity to display an ad on a different website.<sup>59</sup> The auction logic is determined by the seller (publisher) and buyers with eligible interest groups (the advertiser or its DSP) can bid, uploading information to a 'trusted' key-value server in advance. The browser executes each interest group's bidding logic. The governance and technical guarantees of the 'trusted' key-value server have yet to be fully developed, and for the first iteration, buyers will use their own trusted server.
- 3.17 Under the proposal, the winning interest group ad is shown in a 'Fenced Frame'. The aim of Fenced Frames is to prevent the webpage on which the ad is shown from learning about the contents of the frame, to ensure that no information about the browser's ad interest is leaked to the website.<sup>60</sup> Google is exploring the development of a mechanism to allow sellers and bidders to learn the outcome of the auction in a way that does not reveal the interest group to visited websites (see paragraph 3.19 below).

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<sup>58</sup> GitHub, [Topics API](#) (accessed on 3 February 2022).

<sup>59</sup> For each interest group, the browser stores information about who owns the group, JavaScript code for bidding logic, and how to periodically update that interest group's attributes.

<sup>60</sup> Fenced Frames are still under development.

### *Event-level reports in the Attribution Reporting API*

- 3.18 This proposal is currently aimed at allowing click-through and view-through attribution.<sup>61</sup> The API allows the advertisers to attach a set of metadata (including intended conversion destination) to their ads. This data is stored by the user's browser when the ad is clicked or viewed. If the user visits the intended destination and converts, the browser records the conversion event and, with a delay, sends a report to the publisher and advertiser that a conversion occurred, without the inclusion of any information about the user. In addition to limiting the information available about the conversion event so that the conversion cannot be used to collect data about the user, the browser will add a small amount of noise to the conversion. In the current proposals this means the browser would report random instead of actual conversion data a certain proportion of the time, which can be calibrated using differential privacy.

### *Multi-browser aggregation service, Aggregate Conversion Measurement API, and Aggregated Reporting API*

- 3.19 Google is also exploring development of a 'multi-browser aggregation service', a mechanism that could aggregate information from multiple sources without the entity performing the aggregation learning the underlying data from each source.<sup>62</sup> This service is intended to overcome the limitations of the event-level reporting in Attribution Reporting API in that it could share more granular, timelier data if this data was aggregated over multiple users' browsers. Such information could facilitate view-through and multi-touch attribution, measuring reach (the number of distinct users that viewed an ad), and allowing for a limited form of frequency capping.

### *Trust Token API*

- 3.20 Websites currently rely on identifiers and cross-site tracking to establish whether a user is trustworthy or engaged in spam or fraud. The Privacy Sandbox Proposals include a proposal for a Trust Token API.<sup>63</sup> This API is intended to allow for trust signals to be transmitted between websites without creating a stable, global identifier unique to each user, by segmenting users into 'trusted' and 'untrusted' categories.

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<sup>61</sup> Google, [Attribution Reporting proposal: what's changing in January 2022?](#) (accessed on 3 February 2022). The technical explainers for event-level reports and summary reports can be found respectively [here](#) and [here](#) (both accessed on 3 February 2022).

<sup>62</sup> See [Attribution Reporting API with Aggregatable Reports Explainer](#) (accessed on 3 February 2022).

<sup>63</sup> Google, [Trust Token API Explainer](#) (accessed on 3 February 2022).

## *Removal of fingerprinting surfaces*

- 3.21 Privacy Sandbox contains other proposals aimed at mitigating workarounds: methods that market participants can use to continue cross-site tracking without the use of TPCs. These proposals are aimed at combating fingerprinting by removing so-called fingerprinting surfaces.<sup>64</sup>

## *User-Agent Client Hints API and Privacy Budget*

- 3.22 A user-agent string provides information about the user's browser and device to the website the user is visiting. This information can be useful for websites (for instance, to select the most suitable version of a website for the user's browser and device, or to monitor for fraud and abuse), but the transmission of this information can also facilitate fingerprinting, by which the user can be identified and tracked. The information that is made available to websites via the user-agent string will be minimised under the '**User-Agent Reduction**' proposal. Additional information that the website may require can be requested by a website from the browser via the User-Agent Client Hints API. In the future, whether the browser will provide correct information depends on how much information is requested and the website's available Privacy Budget. However, the Privacy Budget proposal is very early in its incubation and will not be implemented until 2023 at the very earliest.
- 3.23 Under the Privacy Budget proposal, the browser will assign an information budget to each website and monitor the information provided to each website. When a website has used up its budget, the browser will stop sending correct information, substituting it with imprecise or noisy results or a generic result. Budget increases for specific information can be requested.

## *Global Network Address Translation Combined with Audited and Trusted CDN or HTTP-Proxy Eliminating Reidentification ('Gnatcatcher')*

- 3.24 This proposal aims at reducing the amount of information that websites see during network address translation by looking at the IP address.<sup>65</sup>
- 3.25 This would be done by allowing a browser to forward its hypertext transfer protocol ('HTTP') traffic through an IP privatising server utilising end-to-end encryption, thereby masking a user's IP address from the visited website. In

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<sup>64</sup> Fingerprinting is the practice of collecting, linking, and using a wide variety of information about the browser, other software, or the hardware of the user, in conjunction, for the purpose of identification and tracking. For an overview of fingerprinting see Market Study, [Appendix G](#), pages 14–19.

<sup>65</sup> The [Gnatcatcher GitHub Explainer](#) is set out here (accessed on 3 February 2022). The proposal is based on two previous proposals [Near-Path NAT](#) and [Wilful IP Blindness](#) (both accessed on 3 February 2022).

addition, organisations could be required to self-certify that their servers are masking IP addresses from the application layer when transferring information, eg by use of an HTTP header. Under this latter mechanism, the aim is to preserve certain fraud and abuse cases.

#### *Shared Storage API and storage partitioning*

- 3.26 In order to prevent various storages being used for cross-site tracking, Chrome is partitioning them by domain/party as part of the Privacy Sandbox changes. This includes storage partitioning, network state/HTTP cache partitioning, and Cookies Having Independent State ('**CHIPS**'). Recognising that shared storage across sites can have legitimate use cases, Google is proposing a new Shared Storage API.
- 3.27 The Shared Storage API will allow origins to write from any page to an unpartitioned storage, but read access can only be done in a secure environment with specified output gates. Supported use cases might include A/B experiments, or cross-site reach measurement for ads.

#### *Federated Credential Management*

- 3.28 The Federated Credential Management ('**FedCM**') proposal aims to prevent federated log-in being used for cross-site tracking, while preserving its intended functionality. At this stage, Google has explored three variations of potential solutions, and it is not yet clear which form the proposal will ultimately take (eg whether the variations complement each other or are mutually exclusive). It could mean that the browser adds more friction (eg in the form of permission prompts) or takes control of choice architecture around the use of federated log-in. It could also mean that website federated log-in systems could delegate a log-in to the browser, effectively making the browser a delegated representative of the identity provider.

### **Assessment of the likely impact of the Privacy Sandbox Proposals if implemented without sufficient regulatory scrutiny and oversight**

- 3.29 The CMA's preliminary views on Google's announced conduct are set out below.
- 3.30 The CMA is concerned that through the Privacy Sandbox Proposals, if implemented without sufficient regulatory scrutiny and oversight, Google would be likely to abuse its apparent dominant position by leveraging its position in the supply of web browsers to foreclose competition in the markets

for digital advertising and exploit web users. The following sections explore these concerns.

- 3.31 Although, as described in more detail below, the CMA is concerned about the impact of the Privacy Sandbox Proposals on Google's rivals, the CMA's remit is to protect the process of competition and the interests of consumers rather than protecting individual competitors.

***Concern 1: Unequal access to the functionality associated with user tracking and Google's data advantages***

- 3.32 The CMA's first concern relates to the risk that the Privacy Sandbox Proposals will limit the functionality available to its rivals in the open display market,<sup>66</sup> while leaving Google's ability to offer these functionalities relatively unaffected, thereby having a harmful impact on the ability of:
- (a) publishers to sell ad inventory to advertisers in competition with Google's ad inventory; and
  - (b) ad tech providers to sell services to publishers and advertisers in the open display market in competition with Google's ad tech services.
- 3.33 The CMA's preliminary view is that, without sufficient regulatory scrutiny and oversight, this conduct would likely have anti-competitive effects and that using control over Chrome to distort competition in related markets would not amount to competition on the merits.
- 3.34 The Privacy Sandbox Proposals aim to replace TPCs with alternative solutions, while leaving first-party cookies unaffected.<sup>67</sup> TPCs are currently the principal means of achieving common identification of web users on web pages and are therefore a fundamental building block of the open display advertising used by publishers and ad tech providers. While publishers and ad tech providers depend on TPCs to collect information about web users and provide it to advertisers to target advertising and carry out related functionalities such as measuring conversions, the CMA is concerned that

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<sup>66</sup> For example, in terms of the amount of information about a web user that can be associated with an ad request, which facilitates targeting, frequency capping, verification, and attribution, or the other forms of functionality discussed above.

<sup>67</sup> What will be regarded as a first-party cookie depends on the definition given to first-party under the First-Party Set proposal, see paragraph 3.13 above.

Google could use first-party cookies to perform these functionalities in competition with publishers and ad tech providers.<sup>68</sup>

- 3.35 Although rivals can also use first-party data to provide digital advertising services (as the CMA found in the Market Study), their reach and the quality of their data is in many cases much more limited compared to that of Google. The extensive reach of Google's user-facing services and its ability to connect data with greater precision (because of its large base of users logged into their Google account) provides Google with a significant data advantage over others.<sup>69</sup>
- 3.36 Without sufficient regulatory scrutiny and oversight, the Privacy Sandbox Proposals would therefore be likely to significantly tilt the playing field in display advertising in favour of Google. Google's marketing material shows the potential costs for advertisers of deprecating TPCs, including through the actions of various parties including browsers, and highlights potential solutions including greater use of Google products. For example, it states that there are 'more limitations on the sources of data that can be used to select audiences and personalise ads', that 'restrictions on cookies have made it harder to manage how many times people see ads', and that this risks 'irritating users and damaging your [marketer's] brand' and 'cookies and other identifiers are used to attribute conversions to digital media. So when these measurement tools are constrained, it becomes harder to accurately report on and evaluate how your [marketer's] ads are performing'.<sup>70</sup>
- 3.37 In the context of discussing potential solutions, the marketing material suggests: 'Invest in a comprehensive first-party measurement solution, where cookies are set only when someone has contact with your [marketer] site. Google's global site tag and Google Tag Manager offer this capability, and support all of Google's advertising and measurement products, including Google Ads, Google Analytics, Campaign Manager, Display & Video 360, and Search Ads 360'.<sup>71</sup> Further, on a web page entitled 'Why conversion modelling will be crucial in a world without cookies', Google states: 'What's more, richness and reach of data remain must-haves for reliable modelling. This means leveraging high quality data with a comprehensive view across platforms, devices, browsers, and operating systems. Scale should be your

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<sup>68</sup> Google has told the CMA that Google's current use of its data in measuring conversions or targeting on third-party inventory necessarily involves the use of TPCs, and would become unavailable after TPC removal. Google has also told the CMA that other publishers can use their own first-party cookies in competition with Google.

<sup>69</sup> Market Study, [Appendix F](#), paragraphs 52–63 and [Appendix M](#), paragraphs 307–314.

<sup>70</sup> Google, [Think with Google: The marketer's playbook for navigating today's privacy environment](#), July 2020, page 5. The document is available on the Internet Archive [here](#) (accessed on 3 February 2022).

<sup>71</sup> Google, [Think with Google: The marketer's playbook for navigating today's privacy environment](#), July 2020, page 7. The document is available on the Internet Archive [here](#) (accessed on 3 February 2022).



top priority when evaluating the right measurement provider for modelling accuracy'.<sup>72</sup>

- 3.38 Google's statements therefore suggest that removing TPCs, taken by itself, would likely reduce the effectiveness of open display advertising compared to that of advertising provided by Google. This is further supported by the CMA's analysis of UK data from a Randomised Control Trial conducted by Google, which found that, in the short run, unequal access to TPCs and the detailed user information associated with them has a significant negative impact on the revenue of those publishers which cannot sell personalised advertising when competing with those who can.<sup>73</sup>
- 3.39 Overall, the CMA's concern is that, without sufficient regulatory scrutiny and oversight, the removal of TPCs, and the Privacy Sandbox Proposals more generally, are likely to worsen various aspects of the quality of advertising (including targeting, frequency capping, verification and attribution) that rival publishers and ad tech providers can offer to advertisers and publishers, compared to that offered by Google. The following sections break down this overarching concern into two components:
- (a) that the Privacy Sandbox tools will not be effective substitutes for the different forms of functionality provided by TPCs and other information deprecated by the Privacy Sandbox Proposals; and
  - (b) that Google will not be as affected by this as third parties because of its advantageous access to first-party user data.

#### *Concerns relating to the effectiveness of the Privacy Sandbox tools*

- 3.40 The CMA is concerned that the new tools being developed through the Privacy Sandbox Proposals will not be effective substitutes for the functionalities provided by TPCs and other information deprecated by the Privacy Sandbox Proposals. The following sections summarise the concerns made known to the CMA in relation to some of the key new tools currently being developed as part of the Privacy Sandbox Proposals.

#### *Topics*

- 3.41 Google's interest-based targeting proposal (Topics) will replace individual-level targeting with the ability to target users who have interest in particular

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<sup>72</sup> [Why conversion measurement will be crucial - Think with Google](#) (accessed on 3 February 2022).

<sup>73</sup> The results showed that the removal of TPCs led to a 70% reduction in publisher revenue per page view in the short term. For further reference, see Market Study, [Appendix F](#), paragraphs 115–119.

topics, as learnt by having the Topics API called on pages they visit.<sup>74</sup> The topics returned for a user will depend on that user's browsing history but will not allow websites to track the user across the web.

- 3.42 Therefore, although the Privacy Sandbox Proposals would allow publishers to offer advertisers the ability to provide some degree of personalised advertising on their ad inventory, this will be less granular and less personalised. Moreover, while publishers and ad tech providers can at present compete to offer different definitions and delineations of relevant audiences, and this is likely to be a factor underpinning the attractiveness of the open display market, such competition might no longer be feasible under the Privacy Sandbox Proposals as the audience would be determined by Google.<sup>75</sup> Several market participants raised this concern in discussions with the CMA, saying that this is likely to lead to a homogenisation of ad inventory and ad tech services and would reduce the ability of rivals to provide a value proposition. This concern was raised about Google's initial interest-based advertising API proposal, FLoC, and remains relevant for Topics.
- 3.43 In the absence of sufficient regulatory scrutiny and oversight, Google could advantage itself in several ways.<sup>76</sup> If Google were to use Chrome browsing history data in its ads products, for example, then it would have a further advantage against competitors because browsing history is a key input to the Topics API, so Google would be able to make better use of the topics for a user it receives from the Topics API, as it has the training data of the Topics API to cross-reference its targeting model against, and thus may more easily segment users into richer interest groups (giving an ability similar to cross-site tracking with identifiers). The CMA understands that the number of topics a site may be able to learn about users is proportional to its reach.<sup>77</sup> For Google, with a large 'reach' (eg in the form of Google Analytics but also other products), it may gain an undue advantage. Sections G and H in the Final

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<sup>74</sup> In January 2022, Google announced the replacement of its FLoC proposal with Topics. See Appendix 3 for further detail.

<sup>75</sup> Although Google has suggested that the topics taxonomy and the classifier itself may be open sourced or maintained externally, the browsing history itself that the topic assignment depends on will require Google Chrome.

<sup>76</sup> The concerns set out in this paragraph are specific to Topics and supersede those raised about FLoC. Specifically, with FLoC Google's DSPs would have been better able to interpret and form relevant inferences from users' FLoC cohort IDs than rival DSPs by associating users' FLoC cohort IDs on its owned and operated properties with other extensive (first-party) data that it has about those web users. Chrome could also give Google's DSPs insights about the FLoC cohorts of web users identified by the browser to advantage itself when bidding on open display ad inventory. See the [June Notice](#), paragraph 5.41.

Commitments are intended to help the CMA ensure that Google is unable to engage in such behaviour.

### *TURTLEDOVE, FLEDGE and Fenced Frames*

- 3.44 Google's retargeting proposal would give Chrome full and unique visibility on-device of the retargeting groups to which users belong and the responsibility for joining these groups. Retargeting of individual users is based on groups of users created by advertisers. Google would determine the minimum size of these groups and, in so doing, rival publishers and ad tech providers would not be able to compete with a different minimum group size. This could restrict their ability to compete with Google in retargeting, which would be further exacerbated, according to concerns the CMA has heard from market participants, by their limited ability to optimise advertisers' campaigns in real time. The concern is that Google could have access to more granular user interest data and therefore have a competitive advantage over rivals in the provision of retargeting services to advertisers. This is further explained in the section below.
- 3.45 The CMA has also heard a number of concerns about the Fenced Frame proposal, which Google is proposing to introduce in order to prevent the webpage on which an ad is shown from learning about the contents of the frame, to ensure this information cannot be used to track users. First, it has been suggested that this proposal could lead to brand safety concerns, by preventing the publisher from knowing what types of ad content is being rendered on its website, and preventing the advertiser from knowing on which publisher inventory its ad content is being placed. Second, it has been suggested Fenced Frames may limit the ability of publishers to control, measure, and optimise content on their websites.

### *Reporting and Measurement APIs*

- 3.46 The measurement and reporting data available to third parties under this proposal is more limited than under the current framework using TPCs. Following the implementation of the Privacy Sandbox Proposals, advertisers and the ad tech providers which act on their behalf would receive noised, circumscribed event-level data in real-time, or aggregated data at various intervals with delay, rather than individual-level data in real time as is currently possible through TPCs. This would limit rival ad tech providers' ability to demonstrate the effectiveness of their services to advertisers and optimise their campaign spend. The CMA has also heard that none of the Privacy Sandbox Proposals currently developed allows for measurement and

attribution across publishers such that advertisers, after the removal of TPCs, would not be able to understand which publishers provide better value.

#### *User-Agent Client Hints, Privacy Budget and Gnatcatcher*

- 3.47 Google has put forward a number of proposals aimed at combating fingerprinting by reducing the amount of identifying information which is passed on to websites, in addition to the limit that will be applied when the Privacy Budget is enforced. However, much of the information that could be used in fingerprinting is also currently used by publishers to optimise the presentation of their website and ads and ensure a high quality user experience as well as fraud detection and prevention.
- 3.48 Specifically, the CMA has heard concerns that the User-Agent Client Hints and Gnatcatcher proposals could lead to Google's rival publishers offering a worse service to both users and advertisers when competing with Google to attract advertiser spend to their ad inventory. The CMA has heard that both these proposals would hamper Google's rivals' abilities to detect fraud and limit their ability to optimize their online content to, for example, a user's device (as a result of the User-Agent Client Hints proposal) or a user's geographic location (as a result of the Gnatcatcher proposal). The CMA has also heard concerns that switching costs may be high, especially for smaller companies.

#### *Federated Credential Management ('FedCM')*

- 3.49 Google is exploring several variations of the FedCM proposal, which aims to prevent federated log-in being used for cross-site tracking. Under one variant, the browser would provide warnings and consent notices to the user when a tracking risk appears.<sup>78</sup> A concern expressed to the CMA is that this could add friction to the user experience and lead to user frustration, reducing user visits. The CMA has also heard that some variations might lead to the disintermediation of publishers with harmful consequences for their ability to track users on their properties.

#### *Concerns relating to Google's data advantages*

- 3.50 The CMA has heard concerns from several third parties that, should the Privacy Sandbox tools not prove to be effective substitutes for the functionality of TPCs and other information deprecated by the Privacy Sandbox Proposals,

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<sup>78</sup> Further information on this 'permission-oriented' variation can be found on the WebID GitHub pages [here](#) and [here](#) (accessed on 3 February 2022).

this will distort competition in digital advertising markets since Google will retain the ability to carry out the functionality affected through the use of first-party data.

- 3.51 An important aspect of these concerns is the precise definition that will be used to distinguish between third-party domains (tracking of users across which will be restricted under the Privacy Sandbox Proposals) and first-party domains (tracking across which will be unaffected by the Privacy Sandbox Proposals). As discussed above, First-Party Sets are a mechanism under the Privacy Sandbox Proposals by which a set of domains can be declared as being first-party to each other rather than third-party. Consequently, cookies on these domains will not be categorised as TPCs and tracking across the domains within a First-Party Set will be possible.
- 3.52 Google has indicated that corporate ownership is a factor which could determine the boundaries of First-Party Sets. Such a definition would in principle give Google, which owns a very wide range of domains and user-facing services, the ability to track users extensively for the purposes of digital advertising.<sup>79</sup>
- 3.53 These concerns also stem from the extensive reach of Google's user- and business-facing products and services, some of which, such as Chrome, are extensively used by web users to reach rival publishers' websites. Google's ability, following the implementation of the Privacy Sandbox Proposals, to share data collected from these services and use it for advertising purposes, could distort competition in digital advertising markets.
- 3.54 The CMA understands the following are the main data sources which Google could continue to be able to use (whether or not it currently does so), for digital advertising purposes (including targeting and measurement), on its owned and operated ad inventory, and on third-party non-Google ad inventory through its ad tech services:
- (a) Google's user-facing services (eg data collected from Google Search), including Android;
  - (b) Data uploaded via Customer Match;
  - (c) Third-party web pages via Chrome browsing history synced with Google Account Web & App Activity; and

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<sup>79</sup> [Competition and data protection in digital markets: a joint statement between the CMA and the ICO](#), May 2021, paragraphs 76–82.

(d) Third-party web pages via Google Analytics tools for businesses.

3.55 Each of these data sources and uses is considered below.

*Use of Google first-party data for advertising*

- 3.56 Without sufficient regulatory scrutiny and oversight, Google could use first-party data collected from web users to provide digital advertising services on its owned and operated properties and, through its ad tech providers, on third-party ad inventory.
- 3.57 In relation to first-party ad inventory, Google has confirmed that currently, subject to web user consent, the activity of web user A on Search can inform ads and related functionalities shown to web user A on YouTube.<sup>80</sup> When web users are logged into their Google accounts, Google would continue to use the activities of, say, user A on device X on Search to target and carry out attribution in relation to the same user but on a different device and on another service, say, YouTube. When users are not logged into their Google accounts, Google could combine data collected from one service to target the same user on another service but only on the same device.
- 3.58 In relation to third-party ad inventory, Google has told the CMA that, because of Google's own internal policy restrictions, Google Ads and DV360's use of Google first-party data to target ads when bidding on exchanges for non-Google display ad inventory is currently extremely limited. However, Google's privacy policy acknowledges that such targeting is possible, depending on a user's settings, and includes some examples of Google using first-party data to influence choice of ads on third-party ad inventory.<sup>81</sup>
- 3.59 The CMA further notes that, during the Market Study, in relation to Google's TPCs experiment on display ads served by Google's ad tech services on non-Google sites, Google stated that the data from the experiment does not cover traffic where the user was logged into a Google Account and Google's systems made full use of the user profile information via the Google log-in ID to supplement and enhance the information associated with the cookie.<sup>82</sup>

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<sup>80</sup> Google has said that, in adherence to its own policy, it does not use web user data from Gmail, Translate, Drive, Photos or Google Fit for advertising purposes.

<sup>81</sup> Google, [Privacy Policy](#), September 2020 (accessed on 4 February 2022). For example: 'For example, if you watch videos about baking on YouTube, you may see more ads that related to baking as you browse the web' or 'Depending on your settings, we may also show you personalized ads based on your interests. For example, if you search for "mountain bikes", you may see an ad for sports equipment when you're browsing a site that shows ads served by Google'.

<sup>82</sup> Market Study, [Appendix F](#), paragraph 148 and footnote 47.

Google noted further: '[t]he use of user signed-in data for display advertising is not fully launched, and Google is at the stage of applying this functionality to 75% of traffic as of September [2019]'.<sup>83</sup>

- 3.60 From the above, the CMA infers that, for a material portion of traffic handled by Google's ad tech services, Google could use its first-party data to provide digital advertising services such as targeting and attribution on both first- and third-party display ad inventory.<sup>84</sup> Further, CMA discussions with market participants suggest that there is a widely held view that Google does or could combine data in this way. While Google has told the CMA that Google currently makes 'extremely limited' use of first-party data when bidding on exchanges for third-party ad inventory, Google retains the ability to do so through its privacy policies.

*Use of third-party data uploaded via Customer Match for advertising*

- 3.61 Without sufficient regulatory scrutiny and oversight, Google could continue to allow advertisers to upload their own first-party customer data and match this with other data third-party to Google for the purposes of providing ad targeting and related functionalities on both its owned and operated ad inventory as well as third-party non-Google ad inventory.<sup>85</sup>

*Use of Chrome browsing history data for advertising*

- 3.62 The CMA is concerned that, without sufficient regulatory scrutiny and oversight, while third parties would be unable to effectively track individual web users on Chrome following the implementation of the Privacy Sandbox Proposals, Google itself would retain that ability. In particular, Google could use synced Chrome browsing history data to target ads and provide related functionalities linked to web users who have signed into their Google Account on Chrome and allowed their browsing history to be included in their 'Web & App Activity' associated with their Google Account. When users allow this functionality, Google could combine any declared age and gender information from a web user's account with his/her Chrome data to offer personalised advertising to advertisers and publishers when acting as an ad tech provider or selling ad inventory.
- 3.63 On its Safety Centre web page, Google states that 'partner websites and apps use your online activity to create ads that are more useful to you [...] When

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<sup>83</sup> Market Study, Google's response to the CMA's follow-up questions from Google's response to Question 18 of the CMA's Request for Information dated 10 October 2019.

<sup>84</sup> Google has told the CMA that it could only do this after some engineering investment.

<sup>85</sup> Google Ads Help, [About Customer Match](#) (accessed on 4 February 2022).



we show ads on these partners' sites and apps, they are based on... data that we collect about your online activities... We might also show you ads based on sites that you've visited or your Chrome browsing activity when logged into your Google Account'.<sup>86</sup> This and Google's current approach to signed-in users indicates that Google has the capacity to track at least some individual Chrome web users in a way that is not contingent on TPCs, and that it could continue to do so in a way that is likely to give Google a significant advantage over rival ad tech providers and publishers. Several market participants have raised this as a concern in discussions with the CMA.

- 3.64 Although Google has told the CMA that Google intends to make use of the Alternative Technologies developed in the context of the Privacy Sandbox to power key ads functions that currently rely on TPCs, it is unclear whether this would be to the exclusion of additional data that Google could gather through Chrome. Moreover, the CMA understands that this intention is a matter of company policy rather than the reflection of hard technical or legal barriers, and, Google could unilaterally reverse this policy as it did in the past when it changed its privacy policy to permit, with user consent, the combination of activity from websites that use Google's advertising services with account data from logged-in Google users.<sup>87</sup>

*Use of third-party data uploaded via Google Analytics tools for businesses for advertising*

- 3.65 Google provides a number of analytics tools to websites to understand their traffic. For instance, Google Analytics is used to track site activity, such as session duration, pages per session and bounce rates of individuals visiting the site, and information on the source of traffic.
- 3.66 Google has stated that it only uses data from Google Analytics for its own purposes if the customer has enabled data sharing with Google.<sup>88</sup> Some market participants have told the CMA that, in the absence of regulatory scrutiny and oversight, Google could use its analytics tools to collect first-party data and use it for advertising purposes, both on its owned and operated ad inventory and for third-party non-Google ad inventory, through its own ad tech providers.

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<sup>86</sup> Google Safety Centre, [Your Privacy: Ads and Data](#) (accessed on 4 February 2021).

<sup>87</sup> Market Study, [Appendix F](#), paragraph 133.

<sup>88</sup> Market Study, [Appendix F](#), footnote 17.



### *Summary of Google's data advantages*

- 3.67 Several market participants have told the CMA that Google's ability to combine data from a range of sources would give Google a significant advantage over its rivals. In particular, while the removal of TPCs and the implementation of the Privacy Sandbox Proposals would impede rivals from combining individual-level data across the web, it is claimed that this would be largely unchanged for Google within its ecosystem.
- 3.68 Overall, the CMA's preliminary view is that the removal of TPCs and information deprecated by the Privacy Sandbox Proposals and the implementation of the Privacy Sandbox Proposals, without sufficient regulatory scrutiny and oversight, would likely foreclose rival publishers and ad tech providers by worsening the quality of the ad inventory that they can offer to advertisers in the open display market, while having no or limited impact on the quality of Google's ad inventory and Google's ad tech services to advertisers and publishers. This would give Google a significant competitive advantage over rival publishers and ad tech providers operating in the open display market. As discussed in paragraph 2.42 above, this might also lead to some advertisers moving a share of their budgets from display to search advertising, to the benefit of Google which has more than a 90% share of this market in the UK.
- 3.69 While Google has stated that, as a matter of internal policy, it does not share data collected from certain of its web user- and/or business-facing services for the purposes of providing advertising on its owned and operated or third-party ad inventory, the CMA understands that, without sufficient regulatory scrutiny and oversight, and subject to Google ensuring that its policies comply with applicable data protection legislation, these could be changed by Google in the future in a way that would be harmful to competition.

### ***Concern 2: Self-preferencing Google's own ad tech providers and owned and operated ad inventory***

- 3.70 The CMA's second concern relates to the role of Chrome under the Privacy Sandbox Proposals in deciding which ads to show to a given web user. Google owns Chrome, while at the same time operating as a publisher and as an ad tech provider. Without sufficient regulatory scrutiny and , this is likely to lead to conflicts of interest, whereby Google may have an incentive not to act in its customers' best interests, for example by self-preferencing its own ad inventory and ad tech services via Chrome's decisions on which ads to display to a given web user. The existence of these conflicts of interest is also likely to affect Google's incentives on how to engage with the industry and

take on board any suggested alternative solutions to the Privacy Sandbox Proposals which could minimise or eliminate Google's ability to self-preference. The CMA's preliminary view is that Google using its control over Chrome to affect competition in related markets in this way would not represent competition on the merits.

- 3.71 The Privacy Sandbox Proposals would move some of the functions currently performed by ad tech providers (DSPs, SSPs and/or the publisher ad server) to Chrome. In the absence of regulatory scrutiny and oversight, this would give Google the opportunity to leverage its likely dominant position in the market for the supply of web browsers to reinforce its position in open display advertising. For example, Google's ad tech services could benefit from increased interoperability when interacting with the Privacy Sandbox solutions compared to rivals (eg reduced latency), or Google could use its control over the device on which the auction will take place (eg Android devices) to grant its own services a technical advantage in the form, for example, of additional processing power.
- 3.72 The CMA is also concerned that the new tools being developed through the Privacy Sandbox Proposals could be used by Google to self-preference its own advertising services. The following sections summarise some of the concerns that the CMA has heard in relation to how some of these tools could be used in such a way.

### *Topics API*

- 3.73 Currently, market participants analyse and draw their own inferences from users' browsing histories using TPCs and other identifiers which they use to target digital advertising and provide related functionalities. Under the most recent Privacy Sandbox Proposals, this would change as advertisers, publishers and ad tech providers would face restrictions on using certain identifiers that are often used for cross-site tracking. They would instead have access to topics which Google Chrome would reveal by analysing users' browsing history on sites that use the Topics API. By being the only entity responsible for determining the topics that users are associated with and providing them to users of the Topics API (who may be competitors of Google in advertising), Chrome could be in a gatekeeper position for the ad tech ecosystem.
- 3.74 Google has expressed a desire to have the topics taxonomy be externally maintained. It has also said that the classifier that maps sites to topics would be open source as part of Chromium, and could eventually be externally

maintained too. This would limit the amount of self-preferencing Google would be able to do.

### *TURTLEDOVE and FLEDGE*

- 3.75 In the current ecosystem, DSPs apply their own bidding logic to determine what bid to return (if any) to a bid request. Under an early version of the Privacy Sandbox Proposals, this would have changed in the case of retargeting. For this use case, DSPs would have shared part of their bidding logic with the browser, which would then have executed it when a retargeting opportunity arises. This would have introduced new opportunities for conflicts of interest, as Google (which operates the browser) would have known how its rival DSPs would bid on retargeting opportunities. In the current FLEDGE proposal, in contrast, the seller initiates the auction call, and the buyer can run its own code/technology/logic on a server of its choice (including its own server), so long as it makes attestations to not log or otherwise misuse the data it gets as part of the bid.<sup>89</sup> Nonetheless, the CMA still has concerns in light of the earlier designs, especially given that designs are subject to change. As with all Privacy Sandbox Proposals, the CMA will monitor this aspect of FLEDGE as it evolves.
- 3.76 The CMA notes that Google has refined its proposal for retargeting, where a ‘Trusted Server’ will be responsible for storing some of the information about a campaign’s bid and budget.<sup>90</sup> Under this refined proposal, the trusted server will be under the buyer’s control. However, some market participants have told the CMA that although the ‘Trusted Server’ could give ad tech providers more control than under the previous version of this proposal, if this was placed under Google’s control there would still be room for conflicts of interest to arise and for Google to favour its own operations over those of its competitors.

### *Reporting and Measurement APIs*

- 3.77 The important activity of reporting to advertisers and media agencies on ad campaign performance, including measurement and attribution is currently carried out by, in the majority of cases, the advertiser’s ad server. Under the Privacy Sandbox Proposals, Chrome would replace the advertiser ad server and be responsible for tracking the impression events (when a web user views, but does not necessarily click on an ad), and matching such events

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<sup>89</sup> Deciding what counts as misuse would still be at Google’s discretion.

<sup>90</sup> The current explainer [First ‘Locally-Executed Decisions over Groups’ \(‘FLEDGE’\)](#) sets out refinements of Google’s previous [TURTLEDOVE proposal](#) for retargeting capability (both accessed on 4 February 2022).

with conversions, based on event registration calls the advertiser's ad server is making, and then sending back reports which would be delayed and include less granular data. The browser would essentially become the 'source of truth' for marketers, and when advertisers also use Google DSPs, Google could be in a position of 'marking its own homework' as it could provide advertiser advisory services and the services meant to check the successful delivery of ads. This is analogous to the current situation where Google operates the most popular advertiser ad server and DSPs. However, moving this functionality to the web browser would give rise to greater conflicts of interest because while advertisers currently have the possibility to choose an independent advertiser ad server, they would have very limited influence (if any) over the web browser chosen by web users.

### *Gnatcatcher, Federated Credential Management ('FedCM') and X-Client Data*

- 3.78 The CMA has also heard a range of concerns from third parties that Google will have the ability to use a range of information that will be available to Chrome after the introduction of the Privacy Sandbox Proposals to self-preference its own advertising inventory and ad tech services.
- 3.79 For example, since Chrome will still have access to IP addresses, while rivals will have access to more limited data under the Gnatcatcher proposals, Google could in principle choose to share this information with Google's ad tech services for the purposes of tracking users after the introduction of the Privacy Sandbox proposals. Similarly, under some variants of the FedCM proposal, Chrome would have access to all the user's log in data,<sup>91</sup> which it could theoretically choose to share with Google's advertising services after the introduction of the proposals. However, Google told the CMA that it does not use this data in its advertising services. Further, the CMA has heard concerns that, after the deprecation of the user-agent string, Chrome will still receive similar but more granular information in the form of X-Client Data, which Google could use to optimise the performance of its services – and, in principle, track users across the web.<sup>92</sup>
- 3.80 Overall, the CMA is concerned that, in the absence of sufficient regulatory scrutiny and oversight, the shift of functionalities currently performed by ad tech providers to Chrome would give Google discretion over decision making in ways that cannot be scrutinised or challenged by third parties. This could lead to the emergence of conflicts of interest and a lack of confidence on the

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<sup>91</sup> The delegation-oriented variant of WebID can be found on the WebID GitHub pages [here](#) and [here](#) (both accessed on 4 February 2022).

<sup>92</sup> Google told the CMA that X-Client Data header is used to help Chrome test new features before rolling them out, not to identify or track individual users.

part of third parties regarding Google's intentions and criteria which will be used to develop and implement the Privacy Sandbox Proposals.

### ***Concern 3: Imposition of unfair terms on Chrome web users***

- 3.81 The CMA is also concerned that, in the absence of sufficient regulatory scrutiny and oversight, Google would be able to exploit its likely dominant position by denying Chrome web users any substantial choice in terms of whether and how their personal data is used for the purpose of targeting and delivering advertising to them. The CMA considers that web users are likely to have different attitudes and preferences with respect to the collection and processing of their personal data. While some users may prefer not to have their personal data collected and processed by their browser and/or third parties, others might be willing to agree to such data usage in return for seeing more relevant ads, avoiding repeated ads, or other rewards. As such, the degree of control and optionality enabled by browsers with respect to the collection and processing of Personal Data is likely to be a parameter of competition between browsers.
- 3.82 The CMA considers that a browser developer operating under normal and sufficiently effective competition would face an incentive to give its users significant control over whether and how their personal data is used, subject to suitable defaults and an adequate choice architecture. The CMA notes that Chrome's two largest competitors, Firefox and Safari, provide a degree of control to their users in this respect: while TPCs are blocked by default in these two browsers, users have the option of disabling TPC blocking, either in general or for specific sites.
- 3.83 In contrast, under the Privacy Sandbox Proposals, the CMA has been informed by Google that Google has not decided whether Chrome web users will have the option of enabling TPCs in Chrome after Google's removal of TPCs. In addition, Chrome web users could have little or no control with respect to whether and how their personal data is used by the browser to provide the functionalities envisaged in the Privacy Sandbox Proposals.<sup>93</sup> The CMA understands that under the current proposals, web users may have limited options to disable ad targeting in Chrome, or select which aspects and what proportion of their browsing history and online behaviour would be used to form cohorts and support retargeting. The CMA is concerned that, without sufficient regulatory scrutiny and oversight may amount to an abuse in the form of the imposition of unfair terms on consumers, and that such unfair

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<sup>93</sup> Google has added user controls regarding the Privacy Sandbox trials in Chrome settings.

terms would likely harm consumers by preventing them from adjusting the level of privacy and targeting in line with their preferences.

## **Assessment of the impact of the Privacy Sandbox announcements**

- 3.84 This part sets out the CMA's preliminary view that the announcements themselves are likely to constitute an abuse in the specific circumstances of the case.
- 3.85 The CMA is concerned that Google's announcements relating to the Privacy Sandbox Proposals and/or taking implementing steps prior to the issue of the June Notice, are likely to, individually and/or collectively, amount to an abuse of its likely dominant position in the market for the supply of web browsers in the UK. This is set out in the following sections.

### ***The announcements and implementing steps***

- 3.86 As mentioned in paragraph 2.28 above, Google has made a number of announcements in 2019-2021 in relation to its planned changes to Chrome.
- 3.87 On 14 January 2020 Google announced that 'we plan to phase out support for third-party cookies in Chrome. Our intention is to do this within two years'.<sup>94</sup> This was followed by other announcements made on 7 May 2019, 22 August 2019, and 25 January 2021, as set out in paragraph 2.28 above.
- 3.88 In addition, Google has taken a number of steps since then towards implementing the Privacy Sandbox Proposals. For example:
- (a) In February 2020, Google introduced its SameSite update, requiring web developers to explicitly label cookies to make them available for third-party access. All unlabelled cookies would be by default limited to first-party access only.<sup>95</sup>
  - (b) In July 2020, Chrome updated its default HTTP Referrer policy to strict-origin-when-cross-origin. Developers remain free to set their preferred

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<sup>94</sup> See [Chromium Blog: Building a more private web: A path towards making third party cookies obsolete](#) (accessed on 8 February 2022). The relevant paragraph from this announcement reads: 'After initial dialogue with the web community, we are confident that with continued iteration and feedback, privacy-preserving and open-standard mechanisms like the Privacy Sandbox can sustain a healthy, ad-supported web in a way that will render third-party cookies obsolete. Once these approaches have addressed the needs of users, publishers, and advertisers, and we have developed the tools to mitigate workarounds, we plan to phase out support for third-party cookies in Chrome. Our intention is to do this within two years [...]'.  
<sup>95</sup> [Chromium Blog: SameSite Cookie Changes in February 2020: What You Need to Know](#) (accessed on 4 February 2022).

referrer policy, but the default has changed.<sup>96</sup>

- (c) In September 2020, Google rolled out User-Agent Client Hints API functionality allowing web developers to request the exact information they need from the browser, in addition to accessing existing user-agent strings.<sup>97</sup>

3.89 The CMA understands that the original announcement of TPC deprecation was escalated to the Google executive level and that subsequent announcements were made by senior employees, such as the Director of Chrome Engineering.<sup>98</sup>

3.90 Overall, the CMA's preliminary view is that the content of the announcements, as well as the seniority of Google staff making these announcements, was such as to have a likely anti-competitive effect in the specific circumstances of this case, with the intention communicated to market participants being that Google would proceed with changes in the relevant areas, and remove TPCs 'within two years' of its first announcement.

### ***Asymmetry of information and lack of confidence on the part of market participants***

3.91 Google has encouraged market participants to engage and provide feedback, including through the World Wide Web Consortium ('W3C'), on the Privacy Sandbox Proposals.<sup>99</sup> The CMA notes that in this and other fora, some market participants have suggested amendments to the Privacy Sandbox Proposals, some of which were fully or partly implemented by Google in further developments. For example, there have been a number of proposals from market participants aimed at allowing advertisers to retarget users, which the CMA understands have been taken into account in Google's FLEDGE proposal. Similarly, feedback from market participants has led Google to alter its proposal for interest-based targeting from FLoC to Topics.

3.92 However, several market participants have expressed concerns in discussions with the CMA about Google's engagement and transparency with the industry in relation to the Privacy Sandbox Proposals. These concerns are summarised below:

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<sup>96</sup> [A new default Referrer-Policy for Chrome: strict-origin-when-cross-origin \(google.com\)](#) (accessed on 4 February 2022).

<sup>97</sup> [User Agent Client Hints - The Chromium Projects](#) (accessed on 4 February 2022).

<sup>98</sup> This relates to the announcements of 7 May 2019, 22 August 2020 and 25 January 2021. See paragraph 2.28 above.

<sup>99</sup> For example, in Google's announcements dated 14 January 2020 and 25 January 2021.

- (a) Some market participants have claimed that Google's engagement with stakeholders, through the W3C, has been limited and of a very technical nature, which limits the potential for participation and examination of the Privacy Sandbox Proposals by third parties. They say that Google has engaged in ad hoc discussions to gather feedback, rather than the usual process for when new standards are being discussed and agreed.
- (b) The CMA has heard that Google has provided little detail and transparency on the Privacy Sandbox Proposals and their effectiveness compared to TPCs. Market participants said that there is a lack of transparency over how Google intends to test the effectiveness of the Privacy Sandbox Proposals, including the criteria it will use in evaluating their effectiveness and how feedback from market participants will be taken into account. For example, Google's test of the effectiveness of FLoC, as a replacement signal for TPCs, was seen to reflect Google's use cases only. Further, where Google has made claims about the effectiveness of the Privacy Sandbox Proposals,<sup>100</sup> some market participants say that insufficient underlying evidence has been provided to allow third parties to assess such claims.
- (c) There was concern that some Privacy Sandbox Proposals are a 'black box', in that the workings of Google's algorithms in Chrome cannot be observed, and their impartiality and effectiveness cannot be assessed or audited by anyone outside Google.
- (d) Some market participants argue that Google has made no, or insufficient, statements of any ambition to minimise distortions of competition.

3.93 The CMA considers that these concerns reflect the strong asymmetry of information between Google and market participants as well as the commercial incentives that Google faces in developing the Privacy Sandbox Proposals given its likely dominant position in the browser market and its significant presence in open display advertising, where it competes with publishers and ad tech providers which could be significantly impacted by the Privacy Sandbox Proposals. For these reasons, the CMA considers that it is important to ensure greater transparency in relation to the process for developing the Privacy Sandbox Proposals and regarding the effectiveness of

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<sup>100</sup> For example, in January 2021 Google stated publicly that 'FLoC can provide an effective replacement signal for third-party cookies. Our tests of FLoC to reach in-market and affinity Google Audiences show that advertisers can expect to see at least 95% of the conversions per dollar spent when compared to cookie-based advertising'. See Google Ads, '[Building a privacy-first future for web advertising](#)' (accessed on 4 February 2022). Note that, in January 2022, Google replaced FLoC with Topics. See Appendix 3 for further details.



the Privacy Sandbox Proposals themselves to ensure that Google does not gain a competitive advantage from its likely dominant position in browsers.

### ***Announcements not competition on the merits***

- 3.94 The CMA's preliminary view is that Google is likely to have been aware that these announcements, including the setting of a two-year deadline for deprecating TPCs, would adversely affect market participants and reduce competition. For example, studies cited by Google in the announcement of 22 August 2019 suggested that when advertising is made less relevant by removing TPCs, funding for publishers falls by 52% on average.
- 3.95 In view of this awareness that the announcements would reduce competition, the CMA's preliminary view is that these announcements were not competition on the merits.

### ***Likely effects***

- 3.96 Market participants have expressed concerns in discussions with the CMA about the impact that these announcements have on the relationship with their clients and expected trajectory of their businesses.
- 3.97 For the reasons set out in the previous section, the CMA's preliminary view is that the implementation of the Privacy Sandbox Proposals, without sufficient regulatory scrutiny and oversight, would be likely to lead to a reduction in competition and adverse impacts on Google's competitors in open display advertising, in the absence of commitments or other changes to mitigate these effects. The announcements and/or implementing steps made by Google prior to issue of the June Notice created an expectation that there is likely to be a reduction in competition and there is a lack of transparency and asymmetry of information between Google and third parties.
- 3.98 Given Google's position on the relevant and related markets, its status as an unavoidable trading partner and its commercial incentives, a rational market participant would understand that the announcements and/or implementing steps have adverse implications for them. The expectation of a reduction in competition is reflected, for example, in actions that have already been taken by advertisers, publishers and ad tech providers to adjust to the likely future removal of TPCs.

## Summary of concerns

- 3.99 The CMA is concerned that, without sufficient regulatory scrutiny and oversight, the Privacy Sandbox Proposals would:
- (a) distort competition in the market for the supply of ad inventory and in the market for the supply of ad tech services, by restricting the functionality associated with user tracking for third parties while retaining this functionality for Google;
  - (b) distort competition by the self-preferencing of Google's own advertising products and services and owned and operated ad inventory; and
  - (c) allow Google to exploit its likely dominant position by denying Chrome web users substantial choice in terms of whether and how their personal data is used for the purpose of targeting and delivering advertising to them.
- 3.100 In addition, the CMA is concerned that the announcements have caused uncertainty in the market as to the specific alternative solutions which will be available to publishers and ad tech providers once TPCs are deprecated. The announcements and actions prior to issue of the June Notice showed (and created the expectation) that Google was determined to proceed with changes in the relevant areas, including by deprecating TPCs within two years of the announcements, in ways which advantage its own businesses and limit competition from its rivals.
- 3.101 In this regard, the CMA considers that the concerns that third parties have expressed to it regarding the impact that the Privacy Sandbox Proposals are likely to have in the future, reflect in part:
- (a) the asymmetry of information between Google and third parties regarding the development of the Privacy Sandbox Proposals, including the criteria that Google will use to assess different design options and evidence relating to their effectiveness against these criteria; and
  - (b) a lack of confidence on the part of third parties regarding Google's intentions in developing and implementing the Privacy Sandbox Proposals, given the commercial incentives that Google faces in developing Google's Proposals and the lack of independent scrutiny of Google's Proposals.

## 4. The Commitments

4.1 This Chapter summarises responses from the two rounds of consultation on Google's commitments offer, and the CMA's views on whether the commitments need to be modified further to address its competition concerns. Overall, the CMA considers that the regulatory scrutiny, oversight and obligations put in place by the Final Commitments address its competition concerns as they:

- (a) Establish a clear purpose that will ensure that the Privacy Sandbox Proposals are developed in a way that addresses the competition concerns identified by the CMA during its investigation;
- (b) Establish the criteria that must be taken into account in designing, implementing and evaluating the Privacy Sandbox Proposals;
- (c) Provide for greater transparency and consultation with third parties over the development of the Privacy Sandbox Proposals, including through operating a formal process for engaging with Google's third-party stakeholders;
- (d) Provide for the close involvement of the CMA in the development of the Privacy Sandbox Proposals to ensure that the purpose of the commitments is met, including through: regular meetings and reports; working with the CMA without delay to identify and resolve any competition concerns before the removal of TPCs;
- (e) Provide for a Standstill Period of at least 60 days before Google proceeds with the removal of TPCs, giving the CMA the option, if any outstanding concerns cannot be resolved with Google, to continue this investigation and, if necessary, impose any interim measures necessary to avoid harm to competition;
- (f) Include specific commitments by Google not to combine user data from certain specified sources for targeting or measuring digital advertising on either Google owned and operated ad inventory or ad inventory on websites not owned and operated by Google;
- (g) Include specific commitments by Google not to design any of the Privacy Sandbox Proposals in a way which could self-preference Google, not to engage in any form of self-preferencing practices when using the Privacy Sandbox technologies and not to share information between Chrome and other parts of Google which could give Google a competitive advantage over third parties;

- (h) Include robust provisions on reporting and compliance, which provide for a CMA-approved Monitoring Trustee to be appointed; and
- (i) Provide for a sufficiently long duration, ie 6 years from the date of this Decision.

## **The First Consultation**

- 4.2 The First Consultation took the form of publication of the June Notice and an invitation to comment issued on the CMA's website on 11 June 2021. The consultation ran for 20 working days and closed on 8 July 2021.
- 4.3 The CMA received 45 sets of written representations on the Initial Commitments, from 41 different respondents.<sup>101</sup> These included ad tech providers, advertisers, publishers as well as other types of respondent (such as industry associations and academics).
- 4.4 Most responses welcomed the Initial Commitments. However, almost all raised certain concerns about, or suggested adding, certain aspects – as set out below.
- 4.5 In light of the concerns raised in the responses to the First Consultation, and subsequent discussions on these issues between the CMA and Google, Google offered Modified Commitments on 19 November 2021.<sup>102</sup>

## **The Second Consultation**

- 4.6 The Second Consultation took the form of publication of the November Notice and an invitation to comment issued on the CMA's website on 26 November 2021. The consultation ran for 16 working days and closed on 17 December 2021, during which period the CMA received representations from a wide range of respondents.<sup>103</sup>
- 4.7 Following a careful assessment of the Second Consultation responses, the CMA considers that in substance the Modified Commitments were sufficient to meet its competition concerns. However, in light of the Second Consultation

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<sup>101</sup> Three respondents also published a blog during the First Consultation period which came to the CMA's attention. The CMA has also taken into account those blogs for the purposes of its assessment.

<sup>102</sup> The Modified Commitments are included at Appendix 1A of the November Notice. A comparison of the Initial Commitments and the Modified Commitments is included at Appendix 1B of the November Notice. A comparison of the Modified Commitments and the Final Commitments is included at Appendix 1B of this Decision.

<sup>103</sup> The CMA received 29 written responses as part of the Second Consultation.

responses, the CMA identified a small number of ways in which Google's commitments could be clarified.

## **Google's offer of Final Commitments**

- 4.8 On 4 February 2021, Google offered its Final Commitments incorporating minor changes which seek to address these concerns.
- 4.9 A wide variety of issues were raised by respondents to the First and Second Consultations. The CMA considers that certain key themes among these issues are directly relevant to whether the Final Commitments address the competition concerns identified by the CMA during its investigation. These key themes, and the CMA's assessment of them, are set out below.<sup>104</sup>
- 4.10 The rest of this Chapter provides:
- (a) An overview of the key features of each section of the Final Commitments;
  - (b) An overview of the key themes raised in relation to each section of the commitments by respondents during the First Consultation;
  - (c) A summary of responses raised in relation to each section of the commitments during the Second Consultation;
  - (d) The CMA's assessment of the responses to the First and Second Consultations, and how these are addressed by the Final Commitments.
- 4.11 The CMA's assessment of how the Final Commitments meet its competition concerns is set out in Chapter 5 of this Decision.

### ***Introduction (Section A of the commitments)***

#### **Overview**

- 4.12 Section A of the Final Commitments sets out the context for the commitments, including the legal framework within which Google offers them. Section A also cross-refers to the specific Google entities offering the commitments.
- 4.13 The CMA considers that Section A contains wording which is both sufficient and appropriate to cover the matters noted above. In particular, Section A

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<sup>104</sup> In addition, a description and assessment of further issues raised by respondents to the First Consultation can be found in Appendix 2. For the majority of the further issues listed in Appendix 2, the CMA considered that no or limited changes were required to address its concerns.

includes wording which sets out Google's intentions in developing and implementing the Privacy Sandbox Proposals, and which does not imply any endorsement or approval by the CMA or the ICO of Google's aims.

- 4.14 The key issues raised by respondents to the First and Second Consultations are set out below.<sup>105</sup>

### *Privacy aims*

#### *First Consultation responses*

- 4.15 Six consultation respondents (three industry associations, two ad tech providers and a media agency) commented on the references in Section A of the Initial Commitments to Google's alleged privacy aims.<sup>106</sup>
- 4.16 Respondents suggested – to varying degrees, and for different reasons – that these references should not be included in Section A, at least not without certain amendments. Four respondents (two industry associations, an ad tech provider and a media agency), suggested that these references were unnecessarily long, or misleading and potentially harmful. Three of these respondents raised a concern that these references could create justifications on which Google may later rely and/or imply CMA endorsement of Google's aims.

#### *Second Consultation responses*

- 4.17 Five respondents submitted that, despite having been revised since the Initial Commitments, the references to Google's alleged privacy aims in Section A of the commitments still needed to be either deleted or at least amended further. Different respondents cited different reasons for their submissions, as outlined below:
- (a) Four respondents (two industry associations and two ad tech providers) raised concerns that the references implied that Google's privacy aims had ICO and/or CMA endorsement or approval<sup>107</sup> – which could give Google an unfair competitive advantage, and/or a role as *de facto*

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<sup>105</sup> See Appendix 2, paragraphs 2–3, for the CMA's summary (and assessment) of certain other issues raised by respondents to the First Consultation in relation to Section A of the Initial Commitments.

<sup>106</sup> Paragraphs 1 and 2 of the Initial Commitments referred to, for example: early Google announcements about its Privacy Sandbox Proposals; Google's stated 'goal of making the web more private and secure for users, while also supporting publishers'; and Google's view that the Privacy Sandbox Proposals were 'privacy preserving and open-standard'.

<sup>107</sup> One of these respondents also submitted that the CMA should make it clearer that any acceptance of commitments in this investigation did not imply that the Privacy Sandbox Proposals had CMA endorsement.

standard setter.<sup>108</sup> One of these respondents (an industry association) welcomed the statement in footnote 1 of the commitments that '[t]o date neither the CMA nor the ICO have concluded on the privacy impacts of the Privacy Sandbox Proposals', noting that it was in line with the ICO Opinion. The other three respondents (an industry association and two ad tech providers) suggested more prominence for this statement, eg moving it to the main body of Section A or Section C.

- (b) Four respondents (two ad tech providers and two industry associations) suggested that Google's view of privacy was not shared, and had been contested by others in the industry – eg because Google's view of privacy was overly focused on phasing out cross-site tracking using third-party data and on promoting the use of first-party cookies.
- (c) Three respondents (two industry associations and an ad tech provider) raised doubts about whether privacy aims underpinned the introduction of the Privacy Sandbox. These respondents suggested that Google's real aims were anti-competitive: to harm Google's competitors.<sup>109</sup>

#### *CMA assessment*

- 4.18 In paragraph 1 of the Final Commitments, Google has clarified that any privacy aims referred to are ones that have been stated by Google.<sup>110</sup>
- 4.19 In the CMA's view, Section A addresses the concerns, as outlined above, of respondents to the First and Second Consultations.
- 4.20 The CMA notes that, within the Final Commitments, any references to any aim underlying the Privacy Sandbox Proposals should only serve to provide context for the commitments offered by Google. The CMA's view is that it is not necessary to delete all references to Google's privacy aims entirely, since these are an important aspect of the context of the CMA's investigation. However, as indicated within footnote 1 of the Final Commitments, to date neither the CMA nor the ICO has concluded (let alone endorsed or approved) on the privacy-related aims or impacts of the Privacy Sandbox Proposals.<sup>111</sup> That footnote also makes it sufficiently clear that claims made as to Google's privacy objectives are Google's own, by referring to Google blogs in which Google 'declared its goal' of enhancing privacy for users. The CMA considers

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<sup>108</sup> Similarly, another respondent (a data company) submitted that the commitments would, more generally, have the unfortunate effect of allowing Google to retain control over the setting of industry standards.

<sup>109</sup> Some respondents cited documents published in the context of an antitrust complaint currently being considered in the USA.

<sup>110</sup> Google has made a similar clarification in paragraph 10.a. of the Final Commitments.

<sup>111</sup> The ICO set out its position in the ICO Opinion (as referred to footnote 9 above).

that this is sufficiently prominent, and clear, to prevent any unfair advantage accruing to Google as a result of any perceived endorsement.

#### *Entities offering/subject to the commitments*

##### *First Consultation responses*

- 4.21 Three respondents (two industry associations and a media agency) to the First Consultation noted that according to paragraph 4 and the definitions of 'Google' and 'Group' in the Initial Commitments, the commitments were offered by, and applied only to, Google UK Limited and Google LLC, and should apply more widely to Google's corporate group.

##### *Second Consultation responses*

- 4.22 The CMA received no similar or related responses to the Second Consultation in relation to Section A of the commitments.

##### *CMA assessment*

- 4.23 The Final Commitments have been offered by Alphabet Inc., Google UK Limited and Google LLC. This fact is reflected in paragraph 3 of the Final Commitments. The Final Commitments are expressed as binding these three companies and 'any other member of their corporate Group'.
- 4.24 In the CMA's view, this addresses concerns raised in relation to Section A during the First Consultation, as outlined above, about the scope of any commitments.

#### ***Definitions (Section B of the commitments)***

##### ***Overview***

- 4.25 The key issues raised in relation to definitions in the commitments by respondents to the First and Second Consultations are set out below.

##### *Main definitions*

##### *First Consultation responses*

- 4.26 In the First Consultation, some respondents (an industry association, two ad tech providers, a publisher and a media agency) identified the need to clarify certain definitions to better identify the scope and application of the



commitments while others proposed additional defined terms for the same reasons.

- 4.27 Most consultation responses on the definitions in the Initial Commitments concerned the following defined terms:<sup>112</sup>
- (a) ‘Privacy Sandbox’ and/or ‘Alternative Technologies’;
  - (b) ‘Removal of Third-Party Cookies’ and ‘Removal’;
  - (c) ‘Individual-level User Data’; and
  - (d) ‘Google’ and/or ‘Group’.
- 4.28 In relation to the definition of ‘**Privacy Sandbox**’ three respondents (an industry association, an ad tech provider and a publisher) submitted that the definition was not broad enough and may exclude some of the Privacy Sandbox Proposals.<sup>113</sup> Respondents expressed concerns that neither the deprecation of the user-agent string, nor Google’s Gnatcatcher proposal, fell clearly within the definition’s sub-categories (for example, neither could be described as ‘workarounds’). Respondents suggested referring in the definition to the Privacy Sandbox blog page and using an anti-avoidance provision to prevent Google from making changes to this. Responses included a proposed amended definition for ‘Privacy Sandbox’ referring to ‘proposed or actual functionalities’, which itself contained a detailed, specific new defined term (‘Competing Functionality’).<sup>114</sup>
- 4.29 With regard to the definition of ‘**Alternative Technologies**’ included within the Initial Commitments, nearly half of all consultation respondents commented on the testing of technologies and what this would or should entail.
- 4.30 Some respondents (including an industry association, an ad tech provider, a media agency) submitted that the dual definition of ‘**Removal of Third-Party Cookies**’ and ‘**Removal**’ within the commitments would allow Google to avoid breaching the standstill provisions in the commitments by clearing TPCs every 31 days or longer. One respondent (an ad tech provider) contended that ‘Removal’ should encompass any reduction in the lifetime of rivals’ TPCs, and more generally any significant change to rivals’ reliance on state management

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<sup>112</sup> For the CMA’s assessment of additional consultation responses on Section B of the Initial Commitments, see paragraphs 4–20 of Appendix 2.

<sup>113</sup> The Privacy Sandbox Proposals are listed in full in Appendix 3 of this Decision.

<sup>114</sup> Referred to in paragraph 9 of Appendix 2, which lists additional responses to the First Consultation.

via cookies support in Google Chrome.<sup>115</sup> Another respondent (an industry association) made a similar submission on shorter timeframes for clearing TPCs and queried why such cookies were accorded 'special treatment' in the commitments, where the removal of other technologies also presents significant concerns (such as user-agent string and IP addresses). The respondent also suggested that it was not clear in the commitments from when the lifespan of a cookie should be measured.

- 4.31 A small number of respondents (including an industry association) suggested replacing the definition of '**Individual-level User Data**' within the Initial Commitments with a new term ('Personal Data') which could refer to applicable data protection legislation.
- 4.32 The CMA received several responses (from two industry associations and a media agency/advertiser) in relation to the definition of '**Google**' and '**Group**'. With regards to the definition of '**Google**', one respondent (an industry association) submitted that Alphabet Inc. has many vertical businesses that collect user data (including its ad tech business, YouTube, and Fitbit) and its ability to freely use data outside of the commitments would create additional competition concerns. Another respondent (a media agency) submitted that the commitments should apply to any company within the '**Group**' definition and to any corporate affiliate that is part of the ad tech ecosystem regardless of direct involvement with the Privacy Sandbox. It was suggested that if the Privacy Sandbox leads to lower prices in open display advertising, advertising spend could shift to Google companies not 'operating a business involved in the Privacy Sandbox', such as YouTube or Google Search. The respondent considered that Google's commitments should apply to Google as a whole. One respondent (an industry association) submitted that a group company could be defined in a more straightforward way by reference to a 'standard definition' in company law.<sup>116</sup>
- 4.33 To address these concerns, Google:
- (a) Amended the definition of 'Privacy Sandbox' to clarify that it covers all of Google's relevant proposals, including Gnatcatcher, Privacy Budget, and all other changes to Chrome listed at Annex 1 of the commitments.
  - (b) Amended the definition of 'Alternative Technologies' to clarify that it covers the Google technologies intended as alternatives to TPCs in

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<sup>115</sup> Including, for instance, but not limited to: reduced persistence, reduced cross-site interoperability, disruptive prompts for per cookie acceptance, etc.

<sup>116</sup> This may be a reference to section 1161 (meaning of undertaking) of the [Companies Act 2006 \(legislation.gov.uk\)](#) 2006 or section 1159 (meaning of subsidiary) of that Act.

Chrome which are listed at Annex 1 of the commitments, and any successor technologies with the same aim.

- (c) Amended the 30-day lifespan for TPCs referred to in the definition of 'Removal of Third-Party Cookies' or 'Removal' to 90 days.
- (d) Replaced the term 'Individual-level User Data' with a new term, 'Personal Data', which is defined explicitly with reference to Applicable Data Protection Legislation (which has been included as a defined term).
- (e) Clarified the appropriate scope of the commitments by amending the definition of 'Google' and 'Group' so that they explicitly refer to Alphabet Inc., and incorporate company law.

#### *Second Consultation responses*

4.34 Most consultation responses on the definitions in the commitments concerned the following defined terms:

- (a) Privacy Sandbox;
- (b) Removal of Third-Party Cookies or Removal;
- (c) Google and/or Group;
- (d) Google First-Party Personal Data;
- (e) Gnatcatcher;
- (f) Non-Google Technologies; and
- (g) Privacy and Privacy Budget.

4.35 One respondent (an industry association) made a number of submissions relating to the definition of '**Privacy Sandbox**':

- (a) The respondent suggested that the removal of the reference to 'workarounds' created a risk that the commitments be interpreted in a way that would not oblige Google to also perform its testing with respect to these 'workarounds', as the testing obligations in paragraph 17.c. of the commitments relate only to the Privacy Sandbox Proposals.
- (b) The respondent also expressed concerns that limiting Google's commitments merely to changes in the Privacy Sandbox would allow Google to avoid its obligations under the Final Commitments. For example, Google could simultaneously make changes to other

‘advertising products and services’ by merely re-labelling a process from, for example, ‘Privacy Sandbox’ to ‘Google Ads’.

- (c) The respondent said that the definition should specifically refer to all aspects of the proposals announced by Google, in particular to the User-Agent Reduction and User-Agent Client Hints proposal.

4.36 One respondent (an industry association) suggested the addition of anti-avoidance phrases such as ‘and any successor product’ to the definition of **‘Removal of Third-Party Cookies’** or **‘Removal’**.

4.37 An industry association queried whether the definitions of **‘Google’** and **‘Group’** would cover XXVI Holdings Inc., a holding company created in 2015 which sits below Alphabet Inc., and whether, potentially, that holding company should also be specifically named within the definition rather than relying on it being proven to be part of a relevant Group.

4.38 Several respondents raised concerns about the added defined term of **‘Google First-Party Personal Data’**:

- (a) One respondent (an ad tech provider) expressed concern that Google might assign to itself a ‘first-party’ relationship whenever its software is used by media owners and therefore consider itself exempt from restrictions due to this common ‘affiliation’ across sites.

- (b) Two respondents (industry associations) suggested clarifying whether ‘Google First-Party Personal Data’ refers to ‘Personal Data’ as defined in the commitments. The respondents submitted that the current definition gave the impression that the term is not limited to ‘Personal Data’.

- (c) One respondent (an ad tech provider) submitted that Google describes all of users’ data of its consumer software (eg, Chrome and Android) as ‘Google First-Party Personal Data’. They submitted that this enables Google to cause direct and indirect consumer harms, and ties Google’s dominant B2C consumer software with their B2B Ads Systems, leading to self-preferencing conduct in the B2B market.

- (d) Three respondents (industry associations) submitted that the definition of first-party data is too wide and could give Google an unfair advantage:

- (i) One respondent (an industry association) raised concerns that the current definition gives Google a ‘carte blanche’ for the use of first-party data while neglecting the privacy risks associated with it.

- (ii) One respondent (an industry association) submitted that the current definition allows Google to phase out TPCs while continuing to use its own data to track users in a similar manner. They argued that the use of first-party data to track users is not less harmful than the tracking of users via TPCs.
- (iii) Another respondent (an industry association) submitted that the definition of 'Google First-Party Personal Data' was unrelated to first-party cookie data, and potentially endangered the distinction between first- and third-party data. The same respondent referred to the commitments being based on the view that third-party data processing is bad, but first-party data processing being fine since Google would be able to use Google first-party data for its own purposes.
- (iv) The same industry association also submitted that under the current definition, data from users signed into the Chrome browser and browsing other websites could be considered 'Google First-Party Personal Data'.
- (v) Another respondent (an industry association) noted that the current commitments do not impose any limit on Google's ability to use data from its various user-facing services for the purpose of informing advertising across its owned and operated properties. The respondent's view was that Google should by default not use data it collects from one of its services for the purpose of Targeting or Measuring digital advertising shown on another service, unless the user has proactively granted free, informed, and explicit consent.

4.39 In relation to Gnatcatcher, one respondent (an ad tech provider) argued that terms such as 'covert tracking' and 'IP privatising server' are value-laden and should be replaced with more neutral descriptors. Another respondent (an industry association) also suggested that the inclusion of such language within the Gnatcatcher definition is misleading, as Gnatcatcher will also prohibit many legitimate uses of IP addresses which do not constitute 'covert tracking'. In addition, the respondent noted that Google did not commit to changing its own practices of 'covert tracking' associated with reCAPTCHA statistical identifier generation (also called 'fingerprinting') or sending Personal Data gathered across sites via its Chrome browser while in incognito mode back to Google servers.

4.40 One respondent (an industry association) was concerned that the definition of '**Non-Google Technologies**' is unclear and difficult to objectively assess,

potentially enabling Google to decide what is included within the term. It suggested that third-party technologies not designed as alternatives to TPCs would not be caught by the current definition, nor would technologies designed but not implemented as alternatives to TPCs. They also objected to the implication that the purpose of any Non-Google Technologies would be to 'enable users to be tracked for the Targeting or Measurement of advertising on the web,' pointing to other advertising and non-advertising use cases for alternatives to TPCs.

- 4.41 Two respondents (an ad tech business and an industry association) welcomed the replacement of the term 'Individual-level User Data' by the term '**Personal Data**'. An industry association noted that the current definition of Personal Data would still allow Google to use data from Chrome and Analytics for the purpose of Targeting or Measurement of digital advertising if it was deemed to be outside of the definition of 'Personal Data' (eg if anonymised).
- 4.42 Two respondents (an ad tech provider and an industry association) raised concerns that the commitments did not include a definition of 'Privacy', despite the importance of the term within the commitments (for example in the definition of 'Privacy Budget') and despite its wide-ranging implications for the industry. One respondent (an industry association) expressed concern that this would enable Google to ascribe its own meaning to the term.
- 4.43 An ad tech provider and an industry association argued that the definition of '**Privacy Budget**', like the definition of 'Gnatcatcher', should use more neutral descriptors, instead of terms they perceived to be pejorative such as 'covert tracking' and 'fingerprinting', suggesting instead the less-charged term 'statistical identifier'.

#### *CMA assessment*

- 4.44 The definition of '**Privacy Sandbox**' was modified between the Initial and Modified Commitments to remove the reference to 'workarounds' which was deemed vague by First Consultation respondents, and to more explicitly include all of the Privacy Sandbox Proposals as listed at Annex 1 of the commitments. The CMA considers that these modifications add substantial clarity to the definition of Privacy Sandbox. In response to specific submissions:
- (a) Paragraph 17.c. of the Final Commitments expressly applies to Alternative Technologies and all of the Privacy Sandbox Proposals which are

amenable to Quantitative Testing.<sup>117</sup> Proposals previously described as ‘workarounds’ are listed in Annex 1 and are therefore in scope for testing.

- (b) If Google relabeled its products or services to remove them from the scope of the Final Commitments, the CMA considers that this would be a clear breach of the anti-circumvention clause at paragraph 33 of the Final Commitments.
- (c) The CMA notes that User-Agent Reduction, and all other Privacy Sandbox Proposals, are already listed in full at Annex 1, and as such, no further modification to the definition of Privacy Sandbox is required.

- 4.45 As regards the suggestion that anti-avoidance phrases be included in the definition of **‘Removal of Third-Party Cookies’** or **‘Removal’**, the CMA considers that this is already covered by paragraph 33 of the Final Commitments and no further such clarification is required. On the amendment relating to the lifespan of TPCs, the CMA’s view is that this amendment provides greater assurance for third parties who may otherwise be concerned about their continued ability to access data from TPCs until the Standstill Period – both by removing any potential loophole by which Google could avoid its obligations under the standstill provisions by clearing TPCs every 31 days or longer, and by ensuring a longer lifespan for TPCs (ie longer than 30 days) until the Standstill Period.
- 4.46 As regards the inclusion of XXVI Holdings Inc. in the definition of **‘Google’** and **‘Group’**, the CMA considers that the company would be encompassed by the definition set out in ‘Group’ and that such clarification is not necessary. The CMA’s view is that defining ‘Group’ with reference to the Enterprise Act 2002 provides useful clarity. The CMA also considers that the explicit reference to Alphabet Inc. confirms that the commitments will apply to Google’s whole group regardless of which subsidiaries are directly involved with the Privacy Sandbox Proposals.
- 4.47 In the Final Commitments, Google has clarified the definition of **‘Google First-Party Personal Data’** by replacing ‘data’ with the defined term ‘Personal Data’. The CMA considers that this clarifies that the data referred to in this definition is Personal Data (as defined under the Applicable Data Protection Legislation) collected from Google’s user-facing services or services on the Android operating system as deployed in smartphones, connected televisions

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<sup>117</sup> ‘Quantitative Testing’ is defined as ‘testing which would provide quantifiable metrics in comparison to the situation existing before implementation of the Privacy Sandbox Proposal concerned that are materially informative for the application of the Development and Implementation Criteria’: see the Final Commitments, Section B.

or other smart devices. In accordance with the current legislative framework, this term does not apply to data from which a living individual cannot be identified. The term does not apply to, for example, truly anonymised data.

- 4.48 The CMA refers to the CMA's response to Section G below on Google's first-party data use (see paragraphs 4.266 to 4.286). The CMA clarifies that Google cannot declare that it is a first party to websites it does not own just because it is embedded in them. The definition does not depend on types of cookies and the CMA considers that the definition does not need to be amended to reflect this, as it is agnostic of particular functionality and pertains to all data from Google's user-facing surfaces. Furthermore, in paragraph 30 of the Final Commitments, Google commits to not use Chrome functionality which has been deprecated for other market participants by the Privacy Sandbox Proposals. This would include the use of TPCs.
- 4.49 The CMA does not consider that the definition of '**Gnatcatcher**' should be amended. The description of 'covert tracking' here is accurate as IP addresses are a passive surface for tracking, not visible, understood or easily controlled by most users.<sup>118</sup> The definition closely follows Google's own description of the proposal as outlined on GitHub.<sup>119</sup>
- 4.50 The CMA does not consider that it is necessary to modify the definition of 'Non-Google Technologies'. The definition refers to technologies 'designed, developed and implemented by parties other than Google as alternatives to Third-Party Cookies'. This definition is not restrictive as the respondent above suggests, but is drafted in a broad and inclusive manner. To the extent that technologies are not being used as alternatives to TPCs for the Targeting or Measurement of advertising on the web, these technologies would fall outside the scope of the CMA's investigation and the Final Commitments. The suggestion that the term 'Targeting or Measurement' should be extended is addressed at paragraph 4.69 below.
- 4.51 The CMA welcomes the clarity that the definition of '**Personal Data**' provides in the Final Commitments in terms of alignment and compliance with the Applicable Data Protection Legislation. The respondent is correct that the definition of Personal Data will not encompass data that has truly been anonymised. If, however, a living individual can be identified from the data

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<sup>118</sup> IP addresses are sent by default with every network request online. Users do not have a way to turn this off or control it via the browser. They could install a Virtual Private Network software for this, but only a tech-savvy minority of users are aware of this.

<sup>119</sup> Google, [documentation on Gnatcatcher](#) (accessed on 4 February 2022).



despite attempts made to anonymise it, it will be Personal Data under the Applicable Data Protection Legislation.

- 4.52 As regards the responses concerning the definition of '**Privacy**', these mirror similar representations made following the First Consultation. As set out in paragraph 16 of Appendix 2, the CMA does not consider an additional definition of 'Privacy' to be necessary.
- 4.53 In relation to the definition of '**Privacy Budget**', as set out at paragraph 4.49 above in relation to 'Gnatcatcher', the CMA does not consider it necessary to replace terms such as 'covert tracking' with more technical language. The language used is both accurate and commonly used in the industry.

### *Other definitions*

#### *First Consultation responses*

- 4.54 A small number of respondents (an industry association, an ad tech provider and a publisher) suggested that the commitments should include certain additional, or modified, defined terms.
- 4.55 One respondent (an ad tech provider) considered that references to 'ads systems' (eg in Section G of the Initial Commitments) were unclear, as the phrase was not commonly used in relation to digital advertising – and if it was intended to refer to all of Google's advertising technology products and services (present or future) then Google should expressly state so.
- 4.56 One respondent (an industry association) suggested replacing references to 'Chrome' in the commitments with a new defined term, which would refer to 'the Google Chrome web browser and interactions between Google and the Chromium project with like effect'.
- 4.57 Seven respondents (two publishers, three ad tech providers, and two industry associations), considered that it was unclear whether 'targeting or measurement of digital advertising' included activities such as attribution and frequency capping, and that these should be included. One of these respondents (an ad tech provider) further considered that ad delivery should be included. Furthermore, two respondents (an ad tech provider and a publisher) suggested defining each of the terms 'targeting' and 'measurement' because, while it might be difficult to dispute the scope of the terms within digital advertising, there appeared to be many ways that Google could advantage itself by using data outside of a strict definition of targeting or

measurement.<sup>120</sup> Those included frequency capping, attribution, ad creative and inventory performance.

- 4.58 One respondent (an ad tech provider) considered that references to '**third-party inventory**' (eg in paragraph 23 of the Initial Commitments) did not make clear whether the phrase meant a 'third party' vis-à-vis Google, in particular as the phrase was not defined. That respondent submitted that if the term was intended to exclude any ad inventory on a website other than a Google-owned website, each such reference could be replaced by 'any ad inventory on any website not owned by Google'.
- 4.59 To address the concerns, Google:
- (a) Defined '**Ads Systems**' as 'the computer systems that constitute Google's various products and services used for Targeting or Measuring digital advertising on the web' to address this concern.
  - (b) Revised the definition of '**Chrome**', referring to the Chrome web browser as built on Chromium and Blink.
  - (c) Added a definition for '**Targeting or Measurement**', clarifying that it also includes frequency capping, reporting and attribution.
  - (d) Replaced references to 'third-party inventory' with the phrase 'ad inventory on websites not owned and operated by Google'.

#### *Second Consultation responses*

- 4.60 In relation to '**Ads Systems**' several respondents submitted that the definition should be amended or clarified:
- (a) One respondent (an ad tech provider) suggested that the definition of 'Ads Systems' be amended to explicitly include Google's other 'ad software and services'. It also noted that, to the extent Privacy Sandbox and Google Ad Manager are involved in Targeting or Measurement, Google's Commitments should apply to both products identically and the definition of 'Ads Systems' should reflect this.
  - (b) One respondent (an industry association) noted that the commitments use four different phrases to describe ad solutions, including the defined term

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<sup>120</sup> In addition, it was submitted that 'measurement' could mean either measurement in the sense of determining whether the digital advertising was actually seen (that is, assessing viewability, ad fraud and/or brand safety) or measurement of attribution (that is, measuring the effectiveness of the digital advertising by determining whether conversion occurred), whereas both should be covered by the definition.

‘Ads Systems’, thus creating potential confusion.<sup>121</sup>

- (c) The same respondent submitted that the definition of Ads Systems is too narrowly focused on sell-side functionality and did not include a number of advertising functionalities, such as ‘viewability, ad fraud and or brand safety’, or multiple buy-side functionality such as frequency capping, real-time budget reallocation and bid optimisation.
- (d) The same respondent submitted that the definition of Ads Systems should be modified to say ‘products and services used for Targeting and Measurement of digital advertising *across the web*’ (as opposed to *on the web*) to reflect the fact that Google’s ad products and services happen across different domains.

- 4.61 One respondent (an ad tech provider) welcomed the updated definition of ‘**Targeting or Measurement**’ but suggested that, for added clarity, the definition should also explicitly include ‘viewability, ad fraud and/or brand safety’.
- 4.62 An industry association suggested amending the definition of ‘**Applicable Data Protection Legislation**’ to include ‘*but not limited to*’ after ‘*including*’, and to specify that the legislation referred to would also include future updates by adding ‘*in each case as amended from time to time*’ at the end of the sentence.
- 4.63 An industry association expressed concern that by not defining ‘covert tracking’ or ‘fingerprinting’, Google’s interpretation of these terms would prevail, stating that technical language should be used as much as possible.
- 4.64 An industry association raised concerns that leaving ‘digital advertising’ undefined could create uncertainty as to what the commitments cover and how objective assessments can be made.
- 4.65 One respondent (an industry association) submitted that there should be a definition of ‘Google Analytics’ such that the definition would catch any

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<sup>121</sup> In particular, the respondent noted that the commitments refer to Google Ad Manager as an ‘ad management platform for publishers’; in Section H the expression ‘advertising products and services’ is used; in the Monitoring Statement at Annex 3 of the Final Commitments the expression ‘ads services or individuals’ is used and finally ‘Alternative Technologies for the Targeting and Measurement of digital advertising’ is referred to without it being clear whether this is synonymous with the Privacy Sandbox Proposals designed to provide ‘advertising products and services’ or not. The respondent said that if it is intended to be synonymous, then it appears that Google’s proposal, in response to the CMA’s competition concerns, is that they are given a monopoly over such Alternative Technologies, which is not acceptable.

successor analytics product (for example under a different branding) to prevent Google from circumventing the Google Analytics data commitment.

#### *CMA assessment*

- 4.66 The CMA considers that the definition of '**Ads Systems**' does not require any further adjustment. The remit of the defined term 'Ads Systems' is sufficiently clear, and correctly applied only in relation to the use of data commitments in paragraphs 25 and 26 of the Final Commitments. In its Final Commitments, Google has replaced the term 'ads services' with the defined term 'Ads Systems' in point A2 of Annex 3 of the Final Commitments (the Outline Monitoring Statement), which specifically relates to the remit of the data separation commitments in paragraphs 25 to 27. The CMA welcomes this clarification, which provides consistency between the use of data commitments and relevant monitoring clause. It would not be appropriate to apply this term more widely in other sections of the Commitments.
- 4.67 The definition applies broadly to 'Google's various products and services used for Targeting or Measurement of digital advertising on the web', and as such does not require extending to explicitly include other ads software and services. The CMA notes that the definition includes both Google Ad Manager and Privacy Sandbox. The CMA considers that the definition should not be extended to explicitly include advertising functionalities, such as viewability, ad fraud and or brand safety and buy-side functionalities such as frequency capping, real-time budget reallocation and bid optimisation. 'Ads Systems' as defined already encompasses Google products used for 'Targeting or Measurement' of digital advertising on the web. Budget allocation and bid optimisation are part of 'Targeting and Measurement'; frequency capping is already included in the definition of 'Targeting or Measurement'; and viewability, brand safety and fraud are all aspects of advertising to which paragraphs 25 to 27 of the Final Commitments are not intended to apply, but instead are relevant to other commitments (such as in Section H).
- 4.68 The definition of '**Chrome**', added after the First Consultation, improves clarity as to the intended coverage of the commitments. The commitments are not intended to cover browsers which are developed by undertakings other than Google.
- 4.69 The CMA notes that the defined term '**Targeting or Measurement**' is mostly used in relation to Section G of the Final Commitments. Fraud is an aspect of advertising to which paragraphs 25 to 27 of the Final Commitments are not intended to apply (apart from the carve out for fraud prevention included at paragraph 29.a.), but instead is relevant to other commitments (such as in

Section H), where the defined term 'Targeting or Measurement' is not used. Similarly, brand safety and viewability are more relevant to paragraph 30 of the Final Commitments (where the term 'Targeting or Measurement' is not used). As such, the CMA considers that no modification to this definition is necessary.

- 4.70 The CMA considers that a clarification to the definition of '**Applicable Data Protection Legislation**' is not necessary. The current wording of the definition allows it to apply to both future updates and other relevant legislation.
- 4.71 The CMA's view is that 'covert tracking' and 'fingerprinting' are sufficiently clear and common industry terms that do not need to be defined in the commitments.
- 4.72 The CMA does not accept that the term 'digital advertising' is unclear or requires any further definition. The CMA has set out the scope of its competition concerns clearly in Chapter 3 of this document.
- 4.73 The CMA considers that the definition of '**Google Analytics**' does not need to be clarified: any attempt to use a successor product to circumvent the data commitment would be a clear breach of the anti-circumvention clause set out in paragraph 33 of the Final Commitments.

### ***Purpose of the Commitments (Section C of the commitments)***

#### ***Overview***

- 4.74 Section C of the Final Commitments sets out the 'Purpose of the Commitments', namely to address the competition concerns identified by the CMA during its investigation. In summary, the purpose is to ensure that Google's design, development and implementation of the Privacy Sandbox Proposals does not lead to a distortion of competition in digital advertising markets and/or the imposition of unfair terms on Chrome's web users. Section C also requires Google to design, implement and evaluate the Privacy Sandbox Proposals by taking into account a number of specific factors (referred to as the 'Development and Implementation Criteria').<sup>122</sup>
- 4.75 The CMA considers that Section C contains wording which is both sufficient and appropriate to cover the matters noted above.

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<sup>122</sup> In addition, Section C sets out (at paragraph 9) an overview of the structure of the Final Commitments.

- 4.76 A number of consultation responses identified a need for clear, strong obligations on Google, in order to address the CMA's competition concerns and ensure compliance with Applicable Data Protection Legislation.
- 4.77 The key issues raised by respondents to the First and Second Consultations are set out below.<sup>123</sup>

### *Purpose of the Commitments*

#### *First Consultation responses*

- 4.78 Five respondents (two industry associations, a browser, and two ad tech providers) considered the Initial Commitments to have a clear purpose or be based on clear principles. However, as outlined below, some respondents suggested that Section C should contain more specific wording relating to the CMA's competition concerns and data protection.<sup>124</sup>
- 4.79 One respondent (an ad tech provider) submitted that the commitments should not re-frame the CMA's concerns, ie imply that these concerns differed from how they were summarised in the June Notice.
- 4.80 Subsequent to these concerns, Google amended the 'Purpose of the Commitments', to: (i) provide that this is to 'address the competition concerns identified by the CMA during its investigation'; and (ii) include a summary of the competition concerns identified by the CMA which aligned more closely to how these concerns were summarised in the June Notice.

#### *Second Consultation responses*

- 4.81 A number of respondents commented on the specific wording used to specify the Purpose of the Commitments in paragraph 7 of the commitments.
- 4.82 Four respondents (an industry association, an ad tech provider, a publisher and a browser) suggested that paragraph 7 of the Modified Commitments may not have reflected faithfully the competition concerns identified during the CMA's investigation (as summarised in Chapter 3 above).
- 4.83 Three respondents (an ad tech provider, a publisher and an industry association) raised concerns that publishers appeared to be excluded from

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<sup>123</sup> See Appendix 2, paragraphs 21–25, for the CMA's summary (and assessment) of certain other issues raised by respondents to the First Consultation in relation to Section C of the Initial Commitments.

<sup>124</sup> For the CMA's summary (and assessment) of additional consultation responses on Section C of the Initial Commitments, see Appendix 2, paragraphs 21–25.

the list of those affected by the Privacy Sandbox Proposals.<sup>125</sup> This would mean that publishers were excluded from the scope of concerns that the commitments sought to address (as summarised in paragraph 7 of the commitments).

- 4.84 One of these respondents (an ad tech provider) noted that paragraph 7.a. of the Modified Commitments did not explicitly name publishers and referred merely to ‘the supply of inventory’, which suggested that the commitment did not seek to address concerns about harm to publishers and/or their ability to control the monetization of their inventory.
- 4.85 The same respondent cited the references in paragraph 7.a. to ‘ad tech services’ and ‘functionality associated with user tracking’. The former implied that the commitments excluded Google’s B2B software (which, the respondent submitted, should be prevented from tracking by accessing and sharing Personal Data across sites). The latter implied that the commitments did not aim to support advertising technology providers’ ability to help media owners and marketers transact across the open internet, or address anticompetitive conduct in media-buying solutions (eg DSPs, ad servers, ad auditing, fraud detection and data enrichment services).
- 4.86 The same respondent suggested that the references in paragraph 7.b. to Google’s ‘advertising products and services’ when monetizing its ‘owned and operated ad inventory’ appeared to exclude various things, eg Google’s conduct relating to policies, services and other non-advertising software.
- 4.87 The same respondent submitted that paragraph 7.c. of the commitments should mention not just targeting and delivery, but also measurement (a key B2B processing purpose).
- 4.88 One respondent (an industry association) submitted that paragraph 7.c. of the commitments did not adequately reflect a broad CMA concern about exploitative end user terms and harm.
- 4.89 Two respondents (an ad tech provider and an industry association) noted that paragraph 7 of the commitments did not refer to CMA concerns about Google’s Privacy Sandbox-related announcements having caused uncertainty in the market as to the alternative solutions which would be available to publishers and ad tech providers once TPCs were deprecated.

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<sup>125</sup> The publisher based its submission on a comparison of the summaries of the CMA’s concerns which were set out, respectively, in paragraph 3.24(a) of the June Notice and in paragraph 2.3(a) of the November Notice.

- 4.90 Another respondent (a browser) suggested that the commitments should state more explicitly that their purpose was to help facilitate competition within a privacy-respecting legal framework.

#### *CMA assessment*

- 4.91 The CMA notes that the purpose of commitments in any investigation under the Act is to address the competition concerns identified during that investigation. Paragraph 7 of the Final Commitments makes this aim clear and includes a summary of the concerns in this investigation which aligns more closely to how these were summarised in the June Notice. The CMA considers that this confirms that the Purpose of the Commitments is to address the CMA's competition concerns.
- 4.92 Paragraph 7 of the Final Commitments is intended to present a short-form summary of the concerns in this investigation. This summary is not intended to be an exhaustive list of all concerns identified in the investigation. Those concerns are set out more fully in eg Chapter 3 of this Decision.
- 4.93 The CMA does not accept that, to the extent any particular aspects of the CMA's competition concerns are not explicitly referenced in Google's summary at paragraphs 7.a. to 7.c. of the Final Commitments, this provides a loophole by which Google may avoid addressing these aspects of the CMA's competition concerns.
- 4.94 The CMA considers that its competition concerns do not need to be set out any more fully, or specifically, within paragraph 7 of the commitments.
- 4.95 For example, it is clear that publishers are in scope of the commitments offered by Google. Publishers have been identified as a group potentially affected by the Privacy Sandbox Proposals, both within a fuller description of the CMA's competition concerns (see Chapter 3 of this Decision) and the commitments text (see eg the reference in paragraph 8.c. of the Final Commitments to 'impact on publishers' as one of the Development and Implementation Criteria which Google will take into account).
- 4.96 For the same reasons as set out above, it is also clear that Google has offered commitments designed to address broadly exploitative end user terms and exploitative harm: see eg the fuller description of the CMA's competition concerns, at Chapter 3 of this Decision.
- 4.97 The CMA has identified a concern relating to certain Google announcements having caused uncertainty in the market: see Chapter 3 of this Decision. The Final Commitments do not seek to directly remedy the harm created by (or



oblige Google to retract) any past announcement by Google. However, the CMA considers this appropriate, insofar as the aim of commitments in any investigation under the Act is to address future harm and shape future conduct. In the CMA's view, the Final Commitments contain provisions which are adequate to shape future Privacy Sandbox-related announcements by Google, and to prevent them causing any further harm of the sort identified in relation to previous announcements. These provisions of the Final Commitments include:

- (a) paragraph 3, which states that '[t]hese Commitments provide for scrutiny and oversight by the CMA over implementation of, and announcements relating to, Google's Privacy Sandbox proposals'; and
- (b) paragraph 10, under which Google commits to not only agreeing the wording of an initial public statement, but also involving the CMA on an ongoing basis in relation to Privacy Sandbox-related announcements.

4.98 While the aim of the commitments is to ensure that Google designs, develops and implements the Privacy Sandbox Proposals in a way which protects competition within a privacy-respecting legal framework, the CMA considers that the commitments do not need any further amendments in order to reflect that. The Purpose of the Commitments is clearly stated to be addressing the CMA's competition concerns. In addition, the importance of compliance with Applicable Data Protection Legislation is clear both from the text of the commitments and from the CMA's ongoing collaboration with the ICO.

4.99 The references within paragraph 7.a. to 'functionality associated with user tracking' and 'ad tech services' faithfully reflect Concern 1 identified by the CMA in this investigation (see eg paragraphs 3.32 to 3.69 of this Decision). Similarly, the wording of paragraphs 7.b. and 7.c. faithfully reflect Concern 2 and Concern 3 identified in this investigation (see, respectively, paragraphs 3.70 to 3.80 and 3.81 to 3.83 of this Decision). The CMA therefore considers that this wording does not require any further adjustment.

4.100 However, the CMA notes that the commitment at paragraph 7.c. of the Modified Commitments was intended to cover measurement, as well as targeting. This has now been clarified, by replacing the word 'targeting' with the defined term 'Targeting or Measurement' in the Final Commitments. The CMA considers that this increases consistency within the commitments text.

## *Development and Implementation Criteria*

### *First Consultation responses*

- 4.101 Two respondents (an industry association and a civil society interest group) submitted that the first of the Development and Implementation Criteria, set out at paragraph 9.a. of the Initial Commitments, should not simply refer to 'data protection principles' and should instead refer to applicable law.

### *Second Consultation responses*

- 4.102 A number of respondents raised concerns relating to the Development and Implementation Criteria set out in paragraph 8 of the commitments:
- 4.103 Two respondents (an ad tech provider and a publisher) queried what Google 'taking into account' these criteria would involve and raised a concern that this wording seemed not to oblige Google to address the criteria.
- 4.104 One respondent (an industry association) raised a concern that the first of the Development and Implementation Criteria had been revised since the First Consultation so that paragraph 8.a. of the commitments appeared to cite 'impact on privacy outcomes' and 'compliance with data protection principles as set out in the Applicable Data Protection Legislation' as two separate considerations. The respondent considered that this may enable Google to impose Privacy Sandbox Proposals which *de facto* required other parties to go beyond what is required of them by Applicable Data Protection Legislation.
- 4.105 One respondent (an industry association) suggested paragraph 8.b. should contain more specific wording than 'impact on competition in digital advertising and in particular the risk of distortion to competition between Google and other market participants', as this criterion should include an assessment of competitive constraints on Google (and a clearer definition of 'digital advertising').
- 4.106 Two respondents (an ad tech provider and an industry association) suggested clarifying paragraph 8.c. One of these respondents suggested that the paragraph should state explicitly that the CMA had concerns about Google's conduct interfering with rival publishers' choice to effectively monetize their inventory, and both respondents requested that the paragraph be amended to more clearly support the idea that publishers should have a free choice of B2B ad solution providers (eg publishers should not be forced to use Google tools – such as Fenced Frames – in order to generate such revenue).

- 4.107 One respondent (an industry association) submitted that paragraph 8.d. should be amended, both to prevent Google from disintermediating users and the websites that they may choose to visit, and to capitalize ‘personal data’.
- 4.108 One respondent (an industry association) submitted that the relevant criteria should not include ‘technical feasibility’, as had been set out in paragraph 8.e. This was on the basis that Google could state that Google cannot feasibly accomplish its ‘not owned but operated’ goals with certain technical designs that provide for open market competition.
- 4.109 Two respondents (an ad tech provider and an industry association) submitted that Google should take into account costs incurred by other market participants, not just by Google. One of these respondents requested that ‘cost’ within paragraph 8.e. of the commitments be amended to reflect this.

#### *CMA assessment*

- 4.110 The assessment of whether the Purpose of the Commitments has been achieved will inevitably require a balanced consideration of a number of factors, as set out in the Development and Implementation Criteria. The CMA considers it is therefore appropriate for Google to be ‘taking into account’ each of these criteria and to make an assessment in the round. The CMA considers that the Final Commitments provide the CMA with sufficient mechanisms to ensure that each of these criteria is given appropriate weight, for example via testing and trialling and regular reporting on how Google has taken into account third-party views. The CMA therefore considers that it is not necessary to artificially define subjective terms which will necessarily involve a certain level of judgement and discretion.
- 4.111 After the First Consultation, Google offered to amend the first element of the Development and Implementation Criteria, so that paragraph 8.a. of the Final Commitments includes ‘compliance with data protection principles as set out in the Applicable Data Protection Legislation’. In the CMA’s view, this introduces greater clarity and reflects the fact that Google is bound by the Applicable Data Protection Legislation, both as it applies to the commitments and more generally.
- 4.112 Privacy is a fundamental right ensured by law, and the CMA recognises that privacy outcomes are an important competitive parameter within the digital advertising market, and important to users of digital services. Paragraph 8.a. of the Final Commitments refers to both ‘impact on privacy outcomes’ and ‘compliance with data protection principles as set out in the Applicable Data Protection Legislation’. The CMA considers this to be appropriate, as the two

terms serve different purposes within the Development and Implementation Criteria. For example, 'impact on privacy outcomes' may relate more to users having choice in relation to their data. In any event, it is important that the CMA and the ICO are involved in ensuring that the Privacy Sandbox is developed taking into account, among other things, impact on privacy outcomes and compliance with the applicable data protection legislation.

- 4.113 The CMA has set out its competition concerns in detail in Chapter 3 of this Decision, referring to a number of potential impacts on competition and certain groups of industry players (including publishers). Paragraphs 8.b. and 8.c. necessarily refer in broad terms to these concerns and potential impacts. The CMA considers that this is appropriate, in particular in light of the principles-based approach adopted in the Final Commitments. In the CMA's view, paragraphs 8.b. and 8.c. are sufficiently clear and do not require any further amendment.
- 4.114 Similarly, paragraph 8.d. of the Final Commitments refers in broad terms to potential impacts on user experience. After the Second Consultation, Google offered to amend paragraph 8.d. so that, for increased consistency, the defined term 'Personal Data' is used (rather than simply 'personal data'). The CMA considers that this criterion does not require any further modification.
- 4.115 The CMA considers the 'technical feasibility' of implementing the Privacy Sandbox Proposals to be of clear relevance when assessing whether the Purpose of the Commitments has been achieved. The anti-circumvention clause in paragraph 33 of the Final Commitments ensures that Google cannot abuse the Development and Implementation Criteria to further Google's own aims and prevent open market competition without proper justification.
- 4.116 The CMA considers that, while costs incurred by other market participants are relevant when assessing the Purpose of the Commitments, the impact of such costs will be taken into account in the context of paragraph 8.b. The CMA therefore considers that the Final Commitments need not be amended to clarify this.

### ***Transparency and consultation with third parties (Section D of the commitments)***

#### ***Overview***

- 4.117 Section D of the Final Commitments sets out Google's commitments to undertake certain measures to improve transparency and consultation with third parties.

4.118 The commitments relate to four specific actions to be taken by Google:

- (a) making a public statement highlighting the criteria (as specified in paragraph 8 of the Final Commitments) by which the Privacy Sandbox tools will be evaluated (including impacts on privacy, competition, publishers, advertisers and aspects of user experience);<sup>126</sup>
- (b) publicly disclosing the timing of key Privacy Sandbox Proposals, including information on timing of trials, and removal of TPCs, such disclosure to take place in a range of fora including the World Wide Web Consortium ('W3C');<sup>127</sup>
- (c) publishing a formal process for engaging with third-party stakeholders (including, but not limited to, in a W3C context), which should include:
  - (i) reporting to third-parties on the process;
  - (ii) providing quarterly reports to the CMA explaining how Google has substantively taken into account representations by third-parties; and
  - (iii) taking into consideration reasonable views and suggestions expressed to Google by publishers, advertisers and ad tech providers in relation to the Privacy Sandbox Proposals (including in relation to testing);<sup>128</sup>
- (d) seeking to facilitate CMA involvement in W3C discussions.<sup>129</sup>

4.119 In addition, Google has committed to instruct its staff and agents not to make claims to other market players that contradict the commitments, and to provide training to its relevant staff and agents to ensure that they are aware of the requirements of the Final Commitments.<sup>130</sup>

4.120 The key issues raised by respondents to the First and Second Consultations are set out below.<sup>131</sup>

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<sup>126</sup> Final Commitments, paragraph 10.

<sup>127</sup> Final Commitments, paragraph 11.

<sup>128</sup> Final Commitments, paragraphs 12 and 32.a.

<sup>129</sup> Final Commitments, paragraph 13.

<sup>130</sup> Final Commitments, paragraph 14.

<sup>131</sup> See Appendix 2, paragraphs 26–35, for the CMA's summary (and assessment) of certain other issues raised by respondents to the First Consultation in relation to Section D of the Initial Commitments.

## *Google's public statements*

### *First Consultation responses*

- 4.121 Around half of all consultation respondents (seven ad tech providers, two publishers, five industry associations, a comparison shopping service, and a data owner) commented on the importance of Google's future disclosures about the Privacy Sandbox. Respondents welcomed the transparency offered by Google but sought further improvements, for example in relation to the content of (and the CMA's involvement in) public statements made by Google:
- (a) Two respondents (an industry association and an ad tech provider) submitted that Google should be required to make any public statements required from it under paragraph 10 of the commitments via the same means, and with the same prominence, as its prior public announcements about Privacy Sandbox's potential advantages. For example, Google should inform customers directly of any commitments accepted by the CMA.
  - (b) Four respondents (an industry association, two ad tech providers and a publisher) objected to paragraph 10.a. of the commitments, citing Google's stated aim of making the web 'more private and secure for users'. On a similar theme, another respondent suggested that Google should publicise that its technology is neither 'more privacy-friendly' than others' technology, nor 'certified' by the CMA or the ICO.
- 4.122 Two respondents (an ad tech provider and an industry provider) suggested amending 'intends to' in paragraph 10.a. of the commitments to 'will', when referring to Google's commitment to design, develop and implement the Privacy Sandbox Proposals in line with the Development and Implementation Criteria set out in paragraph 8 of the commitments.
- 4.123 One respondent (an industry association) suggested that Google should obtain prior CMA approval for any future Privacy Sandbox-related public communication mentioning privacy. On a related theme, one respondent (an industry association) suggested that any Google public statements about Privacy Sandbox should refer expressly to Google not implementing its proposals until the Standstill Period provided for under Section F of the commitments had expired.
- 4.124 Subsequent to these concerns, Google offered to commit to:
- (a) replace 'Google intends to pursue its objective of making the web more private and secure for users' in paragraph 10.a. of the commitments with

‘Google’s objectives in developing the Privacy Sandbox Proposals are to make the web more private and secure for users’;

- (b) replace ‘intends to’ in paragraph 10.c. of the commitments with ‘will’; and
- (c) involve the CMA on an ongoing basis in announcements relating to the Privacy Sandbox<sup>132</sup> – and to use Google’s best endeavours to ensure that Google’s public announcements expressly refer as appropriate to the involvement of, and regulatory oversight provided by, the CMA in consultation with the ICO.<sup>133</sup>

### *Second Consultation responses*

4.125 One respondent (an industry association) continued to hold concerns about the public statement that Google has committed to make under paragraph 10 of the commitments. In particular, it said that:

- (a) As regards Google’s obligation to make a public statement ‘in a blog post, a dedicated microsite or equally prominently’, the word ‘prominently’ has no metric set against it, making it difficult to measure compliance. According to the respondent, a definition of ‘prominence’ should be included in the commitment to mean a publication of similar reach and readership and of an equivalent scale to Google’s previous announcements.
- (b) Google’s stated objective in developing the Privacy Sandbox of ‘making the web more private and secure’ was disputed and should not be used as part of Google’s public statement, as otherwise this would imply that the CMA has validated Google’s claims.

### *CMA assessment*

4.126 The CMA is satisfied that the public statement which Google is required to make under paragraph 10.a. of the Final Commitments will have the same prominence as previous announcements that Google has made in relation to the Privacy Sandbox. In the CMA’s view, the word ‘prominence’ can be given its ordinary meaning and does not need to be defined in the commitments.

4.127 In the Final Commitments, Google has clarified that the reference in paragraph 10.a. is to Google’s ‘stated objectives’ of making the web more

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<sup>132</sup> Final Commitments, paragraph 10.d.

<sup>133</sup> Final Commitments, paragraph 11. In relation to the CMA’s consultation with the ICO, as mentioned in paragraphs 5.21–5.24 of this Decision, the CMA will consult the ICO on aspects of the Privacy Sandbox Proposals that relate to matters of privacy and data protection.

private and secure for users. The CMA considers that this amendment, which corresponds with the amendment to paragraph 1 of the Final Commitments,<sup>134</sup> makes clear that this is Google's stated position which has not been endorsed by the CMA (nor the ICO).<sup>135</sup>

- 4.128 Google has also committed to involve the CMA on an ongoing basis not only as regards the design, development and implementation of the Privacy Sandbox but also in relation to any related announcements (see paragraph 10.d.). In practice, this means that the CMA will review Google's announcements before they are published, also ensuring that the CMA's process under the commitments is referenced. In the CMA's view, this addresses the concerns expressed in paragraph 4.123 above.
- 4.129 The aim of this specific provision is to ensure Google provides sufficient transparency to market participants by communicating clearly Google's stated objectives; how its proposals will be assessed; and how it commits to developing and implementing its proposals with input from publishers, advertisers and ad tech providers together and the involvement of the CMA. The CMA's view is that the provision achieves this purpose effectively.

### *Third-party engagement*

#### *First Consultation responses*

- 4.130 Eight consultation responses (two ad tech providers, a publisher, four industry associations, and comparison shopping service) identified a need for enhanced transparency and consultation with third parties in the implementation of the Privacy Sandbox Proposals.
- 4.131 Some respondents suggested that Google's ongoing future public disclosures should be enhanced by giving sufficient information, regular updates and providing third parties with enough notice to allow them to assess and meaningfully comment on proposals:
- (a) Two respondents (two industry associations) suggested that Google's commitment to publicly disclose the timing of key Privacy Sandbox Proposals lacks a clear notice period.
  - (b) One respondent (an ad tech provider) suggested obliging Google to publish regular updates, for example fortnightly updates on the progress

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<sup>134</sup> See paragraphs 4.18–4.20 in Section A above.

<sup>135</sup> This point is reinforced by footnote 1 of the Final Commitments which states that 'To date neither the CMA nor the ICO have concluded on the privacy impacts of the Privacy Sandbox Proposals'.



of each proposal against each applicable criterion.

- (c) One respondent (a publisher) submitted that any timelines or updates published should include greater detail, in order for market players to be able to assess the impact of any changes. For example, Google should provide further explanations publicly on how the Privacy Sandbox will operate and interact with existing ad tech.

4.132 Other respondents expressed concerns that the technical complexity of engineering behind the Privacy Sandbox Proposals may be a barrier for certain stakeholders participating in the development and feedback processes and asked that Google provide greater access to engineering teams and to code contributing to draft proposals.

- (a) One respondent (an industry association) said that, in Google's regular reporting to the CMA and in the subsequent publishing process, Google should ensure it provides clear and understandable progress reports, recognising its diverse audience.
- (b) Two respondents (an ad tech provider and an industry association) suggested that any commitments accepted by the CMA should require Google to publish more technical details (and code) of the proposals being developed.
- (c) Some respondents (two industry associations, an ad tech provider and a specialist search provider) particularly valued more transparency or proof of no bias for certain Privacy Sandbox components in solutions (for example, algorithms which Google uses to create cohort-based audiences).

4.133 Seven respondents (four ad tech providers, a data owner, a comparison shopping service and an advertiser) suggested that any commitments accepted by the CMA should set out a wider range of obligations than were contained in the Initial Commitments, including pre-agreed processes for Google to consult with third parties to actively solicit views, and with the involvement and oversight of the CMA.

- (a) One respondent (an ad tech provider) suggested providing for regular discussions (for example, monthly) between Google, the CMA, marketers, publishers and ad tech providers – after which, details of each discussion would be published.
- (b) Two respondents (a data owner and a comparison shopping service) proposed that Google should be required to seek input proactively from

market participants, ie consult on (and not just publish) certain things. One respondent also said that Google should seek to also obtain input from internet users.

- (c) Five respondents (an industry association, a data owner, two ad tech providers and an advertiser) contended that Google should give a specified degree of consideration to third parties' views: for example, Google should update the CMA on views received by Google, and how Google plans to respond.
- (d) One of these respondents (an ad tech provider) said that Google should commit to dedicating more resources to engaging with, and supporting, the businesses impacted, directly or indirectly, by the proposals.

4.134 To address the concerns, Google offered to commit to:

- (a) disclose timing updates with sufficient advance notice, and publish key information, to allow third parties time to assess, comment and adjust their business models accordingly;<sup>136</sup>
- (b) publish a formal process for engaging with its third-party stakeholders and take account of reasonable views and suggestions made in the W3C and other fora, reporting publicly and to the CMA.<sup>137</sup>

### *Second Consultation responses*

4.135 Two respondents (a browser and a data company) welcomed the improvements to the process around transparency and consultation with third parties that is envisaged under the commitments. Other respondents raised the following concerns:

- (a) One respondent (a media company) said that, although the commitments were clear on what information Google would publish and that it would be published in one place, it was unclear what level of engagement and dialogue stakeholders could expect and whether this would take place in a single, structured way or across multiple fora. Another respondent (a browser) said that the CMA should clarify the process for ensuring that third-party feedback is fairly captured and addressed by Google.
- (b) Two respondents (ad tech providers) said that it is critical that Google takes into account input from third parties, maintaining an open and

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<sup>136</sup> Final Commitments, paragraph 11.

<sup>137</sup> Final Commitments, paragraphs 12 and 32.a.

clearly documented approach to the development of the Privacy Sandbox tools. According to one of the respondents (an ad tech provider), affiliate marketing models should be considered and accommodated.

- (c) One respondent (a publisher) said that, in general, the provisions of Section D of the commitments lacked objective and measurable targets. According to the respondent, the reference in paragraph 10.a. to 'supporting the ability of publishers to generate revenue from advertising inventory' was unclear. In its view it was not a commitment that existing revenues will be maintained or improved. The same respondent acknowledged that there may be advantages in the commitments not being precisely defined, giving the CMA greater flexibility, but it said that this also means that in the absence of objective metrics it will be difficult for the CMA to monitor compliance.
- (d) As regards the obligation under paragraph 12 of the commitments that 'Google will take into consideration reasonable views and suggestions expressed to it...', respondents made the following comments:
  - (i) Three respondents (two industry associations and one publisher) said that the framework in paragraph 12 appears as an obligation on Google to listen but not to act.
  - (ii) One of the respondents (an industry association) said it was unclear who would be the arbiter of what is 'reasonable'. In its view, the CMA or the Monitoring Trustee could play a role in assessing, on an impartial basis, what is reasonable or not.
  - (iii) Another respondent (an ad tech provider) expressed concern that if Google has the discretion to decide whether a suggestion is 'reasonable' it may disregard those that are not beneficial to its own business interests. It said that Google should be required to keep a record of assessments made on reasonableness which it should share with the CMA.
  - (iv) A further respondent (an ad tech provider) said in relation to this issue that the commitments should not allow Google to determine what 'reasonable' concerns are, as otherwise this would remove the 'effective scrutiny and oversight' functions of the CMA. It suggested that the CMA could for example confidentially poll respondents or ecosystem participants to determine 'reasonableness' associated with test design, measurement or decisions based on reasonable feedback.

- (v) Another respondent (a media company) said that the obligation to 'take into consideration reasonable views and suggestions' was vague and non-committal, suggesting that it should be strengthened and directly tied to the Purpose of the Commitments and the Design and Implementation Criteria.
- (e) On reporting, one respondent (a media company) said that Section D is vague as to the frequency and level of detail of updates to be provided by Google to market participants. It is suggested that they are at least as frequent as updates to the CMA, including similar information (while respecting commercial confidentiality). Two respondents (a non-profit organisation and a browser) said that the reports provided by Google to the CMA under paragraph 32.a. should be made public and open to comment by third parties. One of the respondents (a non-profit organisation) suggested that the summaries are published, for example, in W3C or other fora.
- (f) One respondent (a media company) said that the engagement between the CMA and other market participants should be clarified. According to the respondent, the CMA should implement a process to receive periodic and ad hoc feedback from market participants, particularly where they feel the commitments are not working as intended. It said that the CMA would also benefit from ongoing and informal dialogue with market participants, and suggested that the CMA implement formal and informal channels of communication with market participants.
- (g) The same respondent (a media company) said that the CMA should proactively engage with both Google and market participants in a timely manner and regularly, including for the purposes of ensuring that market participants have sufficient time to adapt after implementation of solutions and in order to consider the impact on competing firms of enforced engineering 'sprints'. On a similar point, another respondent (a data platform) said that, if Google proceeds to implement the Gnatcatcher proposal, market participants should be given four to five years to adjust their operations.
- (h) On staff training, two respondents (an ad tech provider and industry association) said that the commitments could be strengthened by deleting the reference to 'other market players' in paragraph 14 of the commitments and encouraging stricter compliance measures.

## *CMA assessment*

- 4.136 The CMA considers that, to the extent they relate to the process and timing for third-party engagement, the Final Commitments, and in particular those mechanisms set out in paragraphs 12 and 32.a., provide an effective and transparent method to address the CMA's competition concerns and for the CMA to hold Google to account for its actions.
- 4.137 The onus will be on Google to demonstrate to the CMA that (and how) it takes account of reasonable concerns raised by market participants (including publishers, advertisers, and ad tech providers) as part of the stakeholder engagement process, in order to show compliance with the obligations set out in the Final Commitments.
- 4.138 In terms of clarity on Google's stakeholder engagement process (and the CMA's role within that process), which it has committed to in paragraph 12 of the Final Commitments, the CMA has set out within Appendix 4 of this Decision its expectations as to how Google will implement the obligations it has entered into under the Final Commitments.
- 4.139 The key features of Google's stakeholder engagement process, which will evolve over time, include the following:
- (a) Google will publish its stakeholder engagement process on a dedicated microsite (either [privacysandbox.com](https://privacysandbox.com) itself, or a page prominently signposted and linked to that site).<sup>138</sup>
  - (b) The process will include dedicated stakeholder feedback channels for engaging with Google (including relevant GitHub issues and developer repositories on individual Privacy Sandbox Proposals; blink-dev and Origin Trial mailing lists; and the relevant W3C groups<sup>139</sup> and other industry fora).
  - (c) The process will also include a specific feedback form enabling any stakeholder to submit suggested use cases and API feature requests, as well as for sharing direct feedback with Google's Chrome team.
  - (d) Where stakeholders are concerned that their views are not taken into account then they should first raise their concerns with Google. The CMA

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<sup>138</sup> Google has told the CMA that the microsite will be published by no later than 28 February 2022, and will be created within [www.privacysandbox.com](https://www.privacysandbox.com).

<sup>139</sup> Currently these groups include, in particular: [Improving Web Advertising Business Group](#); [Privacy Advertising Technology Community Group](#); [Privacy Community Group](#); and [the Web Incubator Community Group](#) (all accessed on 8 February 2022).

expects that, as part of this process and in engaging with stakeholders, that Google will explain to stakeholders how it is responding to suggestions and concerns raised. This includes through Google's public reporting and reporting to the CMA, as outlined further in Appendix 4.

4.140 In terms of the CMA's role in facilitating third-party stakeholder engagement, the CMA intends to use a mix of formal and informal channels as set out in Appendix 4 in order to understand stakeholders' concerns and raise these with Google.

4.141 The key features of the CMA's role within Google's stakeholder engagement process include the following:

- (a) **Pre-standstill engagement:** Engagement with market participants during this period has two main objectives:
  - (i) to provide a route for informing the CMA about the technical operation or specific concerns and potential unintended consequences of specific Privacy Sandbox Proposals;
  - (ii) to provide a route for alerting the CMA to any suspected failure of Google to follow its own stakeholder engagement process or adhere to the broader commitments.
- (b) **Standstill engagement:** Engagement with market participants will inform the CMA's assessment of the effectiveness of the Privacy Sandbox Proposals individually as well as in the round against the Development and Implementation Criteria. At a minimum, the CMA anticipates that this will include:
  - (i) a consultation on the Privacy Sandbox Proposals; and
  - (ii) discussions with market participants, for example via meetings or roundtables.
- (c) **Post-standstill engagement:** Engagement with market participants will continue to take a similar form as during the pre-standstill period, but will be reviewed in light of the CMA's experience and operational readiness of the Digital Markets Unit and the regime relating to competition in digital markets.

4.142 The CMA is satisfied that the Final Commitments, and the information set out in Appendix 4 provides sufficient clarity on Google's proposed reporting on its engagement with third parties.

4.143 The key features of Google's public reporting, and its reporting to the CMA, (including its frequency) is set out below:

- (a) **Public reporting:** Google has committed to publish regular updates on the design and development process for each Privacy Sandbox API on the microsite, and a summary of common feedback themes in relation to those matters arising from its overall stakeholder engagement. Further details of the CMA's expectations are set out in paragraphs 58 to 60 of Appendix 4.
- (b) **Reporting to the CMA:** Google has committed to, on a quarterly basis, provide a summary of aggregated feedback themes and common feature suggestions per API based on public discussions and comments on GitHub and via the W3C and other public fora; and a summary of feedback themes and common feature suggestions per API based on 1:1 consultations, relevant partner discussions and input from their dedicated feedback form.

4.144 The details set out in this Decision and in Appendix 4 about Google's stakeholder engagement process, the CMA's minimum expectations and the details about the CMA's involvement in that process are intended to provide further clarity to third parties about how the commitments will operate in practice. The CMA is satisfied that the process will ensure that stakeholders' views are considered as part of the development and implementation of Google's Privacy Sandbox Proposals.

4.145 In relation to concerns expressed relating to the metrics that will be used to assess the Privacy Sandbox Proposals, including the impacts on revenue mentioned in paragraph 10.a., the CMA will take these into account as part of the testing and trialling of Privacy Sandbox tools, applying the Development and Implementation Criteria (see also Section C and Section E).

4.146 As regards the provisions relating to staff training under paragraph 14 of the Final Commitments, the CMA considers that the wording of this provision does not need to be amended. The reference to 'other market players' is intended to cover all players active in digital advertising, including customers of Google's services.

## *Involvement of the W3C*

### *First Consultation responses*

- 4.147 The CMA received responses from 18 respondents (nine ad tech providers, six industry associations, a browser, a publisher, and a specialist search provider) on whether the W3C is an appropriate forum for Google (and the CMA) to engage with stakeholders in developing the Privacy Sandbox Proposals:
- (a) Six respondents (five ad tech providers and an industry association) commented on the impact that the choice of W3C as a forum, and choice of a specific 'group' within W3C, could have on stakeholders' ability to engage with the development of proposals and that there is no meaningful or structured engagement with industry in relation to the proposals and the feedback provided – and, because of the make-up of stakeholders including Google in selected W3C Business Groups and Community Groups, views may not be representative of all industry players.
  - (b) Two respondents (two industry associations) suggested engagement by Google with a broader set of stakeholders, including publishers (additional compulsory industry roundtables, for example, to address this concern).
- 4.148 Other respondents (an ad tech provider and a publisher) said that the Privacy Sandbox Proposals should be developed through a dedicated W3C Working Group, subject to the W3C's design principles and governance processes.
- 4.149 Subsequent to these concerns, and in relation to its ongoing participation in the W3C, Google confirmed that it intends for the Privacy Sandbox Proposals to progress to the relevant W3C Community Groups, Business Groups and Working Groups, according to W3C processes.<sup>140</sup> Also, Google offered to commit to take into consideration reasonable views and suggestions expressed to it by publishers, advertisers and ad tech providers, including (but not limited to) those expressed in the W3C or any other fora.<sup>141</sup>

### *Second Consultation responses*

- 4.150 One respondent (a browser) said that the formal processes and oversight mechanisms at standard development organisations (SDOs), such as the W3C and the Internet Engineering Task Force ('IETF'), provide an ideal forum

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<sup>140</sup> Final Commitments, paragraph 13.

<sup>141</sup> Final Commitments, paragraph 12.



to ensure that the Privacy Sandbox Proposals are vetted by all relevant stakeholders prior to implementation. Others raised the following concerns:

- (a) One respondent (an ad tech provider) queried whether the Privacy Sandbox Proposals are being subjected to standardisation scrutiny either at the W3C or the IETF.
- (b) As regards the W3C specifically, five respondents (two ad tech providers and three industry associations) said that the W3C is not a neutral organisation; instead, it is dominated by the major tech players, including Google, and it does not adequately address third-party concerns. One of the respondents (an industry association) noted that the major tech players are based in the USA, meaning that UK actors are not represented, although decisions have an immense impact on European players. Another respondent (an industry association) said that W3C is subject to allegations that it is operating anti-competitively. The same respondent said that the W3C's decision-making processes are opaque and subjective and 'major players' ignore the views of other participants that do not support their agenda, or exclude them. It is suggested that conflicts of interest should be avoided, for example by ensuring independent chairs are in place.
- (c) One respondent (an ad tech provider) said that the W3C is not an appropriate or productive forum for discussing policy issues relating to the Privacy Sandbox Proposals, given that the W3C's historical focus has been on technical standards. The respondent said that Google should also be engaging with other standards groups (eg Pre-Bid.org, PRAM and Project Rearc/IAB Tech Lab). Another respondent (a media company) noted that while Google has the resources and expertise to drive the development of new standards in multiple fora, the timelines for these processes are open-ended and engagement is expensive and resource intensive for competing providers of ad tech services.
- (d) One respondent (an industry association) mentioned that any misalignment between the CMA and the ICO on the role and practices of the W3C will significantly influence whether the commitments will have meaningful impact.
- (e) One respondent (an industry association) suggested that ad tech needs an independent Joint Industry Committee, supported by public authorities, instead of relying on W3C. The Joint Industry Committee could mediate between Google and the rest of the industry.

- (f) As regards Google's modification to paragraph 13 and its stated intention 'for the Privacy Sandbox Proposals to proceed, where appropriate, to the relevant Community, Business and Working Groups in accordance with W3C processes', one respondent (an industry association) queried the reference to W3C's Community and Business Groups in this provision as it stated that only Working Groups fall within the W3C process for the purpose of standard-making. It also said that Google's statement of intent does not confer an actual obligation on Google to put the proposals through the standards-making process.

#### *CMA assessment*

- 4.151 The CMA considers that the Final Commitments enable Google to engage third parties through a range of fora, and are not limited to the W3C. In order to reinforce this point, and to ensure consistency with paragraphs 12 and 13 of the Final Commitments, paragraph 11 has been amended to indicate that disclosures relating to the Privacy Sandbox may be made not only within W3C but also 'within any other fora'.
- 4.152 The CMA considers that the Final Commitments, in so far as they relate to the role of the W3C and other fora in enabling Google to provide third parties with updates on its Privacy Sandbox Proposals and as a method of engagement, is likely to be a transparent and effective component of its overall engagement. The CMA will be working closely with the ICO to ensure there is no misalignment in relation to the role and practices of the W3C.
- 4.153 As regards the reference to the W3C's Community, Business and Working Groups in paragraph 13 of the Final Commitments, the CMA understands that creating a W3C Working Group to refine proposals into recommendations requires the making of a decision by consensus among W3C members and must be initiated by W3C staff and that a W3C Director decides which initiatives can move into a Working Group phase. Google has explained to the CMA why Google cannot commit to develop the Privacy Sandbox Proposals through a dedicated W3C Working Group: this is not a step which Google can take independently – ultimately, it is for the W3C to decide.<sup>142</sup>
- 4.154 In relation to allegations that W3C is operating anti-competitively, the CMA notes it is outside the scope of its current investigation to consider these claims, and they do not form part of the competition concerns that are addressed by the commitments.

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<sup>142</sup> See also paragraph 30 of Appendix 2.

## ***Involvement of the CMA and the ICO, including proposed testing and trialling (Section E of the commitments)***

### **Overview**

4.155 In Section E of the Final Commitments, Google has offered to engage with the CMA in an open, constructive and continuous dialogue, providing the CMA with a timeline of Google's plans with respect to the Privacy Sandbox.<sup>143</sup> The Final Commitments include provisions relating to the way in which Google and the CMA will organise their dialogue. These cover, for example: efforts to identify and resolve competition concerns quickly (paragraph 17.a.);<sup>144</sup> holding regular check-in meetings (paragraph 17.b.);<sup>145</sup> submitting quarterly reports on the progress of the Privacy Sandbox Proposals;<sup>146</sup> the design of tests as well as the involvement of the CMA in testing;<sup>147</sup> and updating the CMA on Google's plans for user controls.<sup>148</sup> The Final Commitments also include provisions on the basis of which the CMA can take action under the Act, including by continuing the investigation, if any remaining competition concerns are not resolved.<sup>149</sup>

4.156 In the Final Commitments, Google has committed to:

- (a) ensure that testing will be conducted on all Privacy Sandbox Proposals amenable to 'Quantitative Testing';
- (b) clarify that Google will take into consideration third parties' reasonable views and suggestions regarding testing of the Privacy Sandbox Proposals, by also applying the provisions of paragraph 12 of the Final Commitments (process for engagement) to testing;<sup>150</sup>
- (c) give the CMA sufficient advance notice of any intention to carry out any 'alternative tests' (ie ones not approved by the CMA), explain the nature of any such tests and discuss with the CMA whether (and if so, how) Google should publish the results of any such tests.<sup>151</sup>

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<sup>143</sup> Final Commitments, paragraphs 15 and 16.

<sup>144</sup> Final Commitments, paragraph 17.a.

<sup>145</sup> Final Commitments, paragraph 17.b.

<sup>146</sup> Final Commitments, paragraph 32.a.

<sup>147</sup> Final Commitments, paragraph 17.c.

<sup>148</sup> Final Commitments, paragraph 17.d.

<sup>149</sup> Final Commitments, paragraphs 17.a.iii. and 17.c.iv.

<sup>150</sup> Final Commitments, paragraphs 12 and 17.c.ii.

<sup>151</sup> Final Commitments, paragraph 17.c.vi.

- 4.157 The CMA has outlined, at Appendix 4, further detail on how it intends to implement certain aspects of the Final Commitments, including with respect to the testing and trialling of the Privacy Sandbox Proposals.
- 4.158 The Final Commitments also provide for the involvement of the ICO in the process.<sup>152</sup>
- 4.159 The key issues raised by respondents to the First and Second Consultations are set out below.<sup>153</sup>

*Efforts to quickly identify and resolve CMA concerns*

*First Consultation responses*

- 4.160 Details of related submissions that were included in responses to the First Consultation are set out in Appendix 2 to this Decision, paragraphs 36 to 50.

*Second Consultation responses*

- 4.161 Three respondents (an ad tech provider, an industry association and a publisher) commented on the process which applies to the identification and resolution of CMA concerns under paragraph 17.a. of the Final Commitments.
- 4.162 Two respondents (an ad tech provider and an industry association) took issue with the trigger event for identifying potential concerns at paragraph 17.a.i. of the Final Commitments, whereby Google must notify the CMA of any change to Privacy Sandbox which is 'material' to the Purpose of the Commitments:
- (a) One respondent (ad tech provider) considered the requirement that a change be 'material' should be tightened in order to ensure effective scrutiny and oversight.
  - (b) One respondent (an industry association) suggested that notifiable changes should not be limited to the Privacy Sandbox but to any conduct or policy relating to the Chrome browser which would exacerbate the CMA's competition concerns.
- 4.163 Two respondents (an ad tech provider and an industry association) raised concerns as regards the lack of specific timeframes which apply to elements of the process for addressing CMA concerns including, eg the lack of a

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<sup>152</sup> The CMA expects to involve the ICO, in line with paragraph 18 of the Final Commitments, on the application of the Applicable Data Protection Legislation to the Privacy Sandbox Proposals.

<sup>153</sup> See Appendix 2, paragraphs 36–50, for the CMA's summary (and assessment) of certain other issues raised by respondents to the First Consultation in relation to Section E of the Initial Commitments.

specific timescale within which Google must identify a material change under paragraph 17.a.i. of the Final Commitments to the CMA and the lack of a specific timescale within which Google must seek to resolve CMA concerns under paragraph 17.a.ii.

- 4.164 Three respondents (an ad tech provider, an industry association and a publisher) raised issues with the strength and enforceability of Google's obligation at paragraph 17.a.ii. to 'work with' the CMA to 'seek to resolve' concerns or comments which the CMA may have in relation to its proposals. Two respondents (an ad tech provider and an industry association) suggested the Final Commitments could be strengthened by requiring that Google resolve CMA concerns before moving forward with any proposal or material change.
- 4.165 One respondent (an industry association) expressed concerns that if Google were to implement proposals giving rise to CMA concerns it would be able to continue unimpeded for at least 20 working days before action could be taken by the CMA to continue its investigation under s.31B(4) CA98.

#### *CMA assessment*

- 4.166 The CMA considers that no amendments to Section E of the Final Commitments are necessary to address these concerns.
- 4.167 Under paragraph 17.a.i. of the Final Commitments, Google must proactively inform the CMA of any changes to the Privacy Sandbox that are material to the Purpose of the Commitments. Under the Final Commitments, Privacy Sandbox encompasses all Google proposals relating to the removal of TPCs, the design, development and implementation of the Alternative Technologies, and the changes listed at Annex 1 of the Final Commitments. The CMA is satisfied that the scope of the trigger notification is appropriate in light of the scope of its current investigation and should not be extended to cover all changes to browser functionality which may raise competition concerns.
- 4.168 The CMA considers that Google updating it 'proactively' on 'material' changes to the Privacy Sandbox is appropriate in particular given, for example, the continuous dialogue and regular meetings with the CMA provided for elsewhere in Section E.<sup>154</sup> The question as to which changes are 'material', or whether notification is made 'proactively' under the Final Commitments is not a judgement for Google, and the CMA would be willing to challenge Google (via the notification process provided for under paragraph 17.a.iii. of the Final

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<sup>154</sup> For example, see paragraphs 15 and 17.b. of the Final Commitments.

Commitments) if it had good reasons to think that Google had failed to meet its obligations. The lack of prescriptive timescales within which Google will work with the CMA to resolve concerns under paragraph 17.a.ii. is beneficial in that it builds in flexibility and allows opportunity for discussion between the CMA and Google on the implementation of proposals. Appendix 4 sets out the process that is envisaged to apply, with the CMA anticipating its main involvement would be in designing the programme of testing with Google, potentially facilitating testing activities with Google and third parties, evaluating results, ensuring their publication and scrutiny, and using the findings and additional input for the CMA's overall assessment.

4.169 The possibility of continuing the CMA's investigation remains in the event that Google fails to cooperate within 20 working days of a notification from the CMA, as set out in 17.a.iii.<sup>155</sup> It will not be for Google to determine whether it has met what is required by the commitments, and the CMA may take action pursuant and subject to the provisions of section 31B(4) of the Act as necessary.<sup>156</sup>

4.170 A concern has been raised that Google could circumvent the commitments by reversing changes made immediately prior to the expiry of the 20 working day time period from the notification of the CMA's concerns. The CMA considers that such conduct could amount to a breach of other commitments offered by Google, for example Google's commitment to 'work with the CMA without delay' to resolve concerns (provided for at paragraph 17.a.ii.), or Google's over-arching commitment not to circumvent the Final Commitments (provided for at paragraph 33). It therefore considers no amendment to the Final Commitments is necessary to deal with this eventuality.

### *Testing to be undertaken under the commitments*

#### *First Consultation responses*

4.171 Almost half of all respondents to the First Consultation commented on the testing of technologies in the context of developing the Privacy Sandbox Proposals.

4.172 Consultation respondents welcomed the increased transparency provided for by the provisions relating to testing. However, responses focused on the

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<sup>155</sup> See also paragraph 17.c.iv. of the Final Commitments.

<sup>156</sup> The CMA's views on the appropriate scope of the Standstill Period and the availability of interim measures are discussed further below, eg at paragraphs 4.193–4.262 below and at paragraphs 4.432–4.473 below.

importance of ensuring that testing covers all of the Privacy Sandbox Proposals.<sup>157</sup>

- 4.173 Some respondents (four industry associations, eight ad tech providers, a publisher, and a media agency) also suggested amending who would be involved in designing, undertaking and/or evaluating tests in the context of the Privacy Sandbox – eg to allow for the testing of the Privacy Sandbox Proposals to be designed and/or conducted by third parties and/or independent experts.
- 4.174 Some respondents suggested tightening or clarifying the CMA’s oversight role in relation to Google’s testing of the Privacy Sandbox Proposals. Three respondents (an industry association and two ad tech providers) submitted that the CMA’s role in designing tests should be greater than Google seeking to ‘agree with the CMA parameters’ – and should include defining applicable objective measures of efficacy. One respondent (an industry association) called for specification of the data and benchmarks to be used for Google’s testing and trials.<sup>158</sup>
- 4.175 Subsequent to these concerns, Google offered to commit to:
- (a) test all Privacy Sandbox Proposals which are amenable to Quantitative Testing.
  - (b) give the CMA advance notice and explanation of any alternative tests of its own design which Google may wish to carry out, and to discuss publication of the results of such tests with the CMA.
  - (c) take account of third parties’ reasonable views in relation to testing.

### *Second Consultation responses*

- 4.176 A number of respondents commented on the provisions relating to testing in the commitments. One respondent (an ad tech provider) commented favourably on the expansion of scope for quantitative testing to include all Privacy Sandbox Proposals. However, some respondents suggested that the scope of testing should be further expanded or clarified in the Final Commitments:
- (a) Two respondents (an ad tech provider and an industry association) raised

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<sup>157</sup> As mentioned above, only ‘Alternative Technologies’ would have been subject to certain testing and trials by Google under the Initial Commitments.

<sup>158</sup> Details of related submissions that were included in responses to the First Consultation are set out in Appendix 2 to this Decision, paragraphs 36–50.

questions as to how amenability for 'Quantitative Testing' can be objectively determined, including as regards testing for privacy outcomes.

- (b) One respondent (an industry association) suggested that the commitments overlook the role which qualitative testing should play in the CMA's assessment and called on Google to publish how it plans to balance the criteria for determining whether quantitative or qualitative tests are appropriate in specific situations.
- (c) One respondent (an industry association) suggested that the scope of the testing should encompass broader changes to standard browser functionality, not just those related to Privacy Sandbox.
- (d) Two respondents (an ad tech provider and an industry association) stated that Google should evaluate changes against their impact on rivals.

4.177 One respondent (an ad tech provider) raised concerns as to whether the measure of 'effectiveness' of the Privacy Sandbox Proposals will be limited to an examination of functionality for Google, rather than how well these address the CMA's competition concerns.

4.178 Some respondents (an ad tech provider and an industry association) have taken issue with the level of oversight and control which the CMA will have in the development of testing parameters and the conducting of the tests themselves.

4.179 One respondent (an ad tech provider) submitted that the Final Commitments should set out exactly how each proposal will be tested, not for their functionality but in terms of how they address the CMA's competition concerns. It suggested that the commitments do not address the conflict of interest that Google has in testing its own proposals. According to this respondent, Google should be prohibited from moving forward with any proposal if the CMA is not satisfied that the proposal would not distort competition or impose unfair terms on end users. Also, the same respondent said that Google should be prevented from marketing changes as inevitable or viable replacements for TPCs until the CMA has reached a decision.

4.180 Three respondents (an industry association, a standards' setting body and a publisher) commented on industry engagement and involvement in testing, including in the design of test parameters:

- (a) One respondent (an industry association) suggested that Google should commit to the publication of a testing roadmap, including methodologies and benchmarks, in advance to allow for proper stakeholder engagement



when designing test parameters.

- (b) Another respondent (a standards setting body) emphasised the importance of ensuring industry participation in the design, running and evaluation of the tests through an appropriate forum.
- (c) One respondent (a publisher) noted that, in the absence of objective metrics, it will be difficult for the CMA to determine whether Google's obligations under the commitments are met.

#### *CMA assessment*

- 4.181 The CMA considers that the provisions in Section E of the Final Commitments address the concerns raised by stakeholders in both the First and Second Consultation as outlined above.
- 4.182 The CMA's view is that the scope of the testing required under the Final Commitments is appropriate given the scope of its current investigation.
- (a) In terms of its Final Commitments, Google will ensure that testing will be conducted on all Privacy Sandbox Proposals 'amenable to Quantitative Testing', not just those intended as replacements for TPCs.
  - (b) The CMA has powers within the Final Commitments to require Google to carry out tests according to the CMA's preferred parameters, under paragraphs 17.c.iii. and 17.c.iv. combined. Ultimately what is 'amenable to Quantitative Testing' under the commitments is not a judgement for Google to make, and the CMA would be willing to challenge Google if it claims a test is not possible when the CMA has reasons to think that it is possible. The intention of including the clause 'amenable to Quantitative Testing' was that the CMA recognised that some outcomes may be difficult to measure in a quantitative way, and the CMA thinks that the overall assessment of effectiveness of the Privacy Sandbox should draw on a wider range of quantitative and qualitative evidence.
  - (c) In the course of the CMA's continued involvement other tests may inform its assessment, including qualitative assessment, as set out in Appendix 4.
  - (d) The CMA's competition concerns relate to changes attributable to Privacy Sandbox, but the CMA has also clarified that requirements for testing attach to broader elements such as changes to data sharing in relation to anti-fingerprinting measures.

- (e) The Development and Implementation Criteria do cover impacts on rivals – including impact on publishers in competition with Google’s owned and operated inventory, and impact on ad tech providers in competition with Google’s ad tech services.

4.183 The CMA considers that the Final Commitments should not set out exactly how each Privacy Sandbox Proposal should be tested, as a number of Privacy Sandbox Proposals are still at an early stage of development. Rather, the CMA is confident in the process described in paragraph 17, which provides that Google should set out to the CMA and market participants how it will test each proposal, during the course of their development and implementation.

4.184 Appendix 4 outlines how the CMA plans to engage with Google to ensure the process is effective and transparent, in particular by:

- (a) Seeking to agree relevant metrics; and
- (b) Ensuring industry participation in the design, run and evaluation of tests. This includes the need for Google to provide sufficient, timely information and resources to market participants.

#### *User controls*

##### *First Consultation responses*

4.185 Details of related submissions that were included in responses to the First Consultation are set out in Appendix 2 to this Decision, paragraphs 48 to 50.

##### *Second Consultation responses*

4.186 Two respondents (an ad tech provider and an industry association) made submissions relevant to paragraph 17.d. of the Modified Commitments on user controls. This respondent raised questions about the reliability of user research that Google may submit to the CMA. One such respondent (an ad tech provider) suggested that Google must give users a choice to opt-in or out of Privacy Sandbox tools where data is used by Google for the purposes of B2B processing. The other respondent (an industry association) noted that the Modified Commitments would not oblige Google to allow TPC setting. The respondent submitted that allowing users to opt out of TPCs blocking was insufficient, and that Google should allow publishers to obtain consent from users without a default blocking of TPCs.

- 4.187 One of these respondents (an ad tech provider) also raised questions about the reliability of user research that Google may submit to the CMA, and suggested that Google has not published information on the choice architecture contemplated to provide users with the information needed to make informed decisions. The respondent suggested that Google should be prevented from proceeding with changes until it can prove the controls are fair.

#### *CMA assessment*

- 4.188 The CMA considers that no amendments are necessary to the Final Commitments to address the concerns outlined above. Google's user controls are within the scope of the Final Commitments, and the Development and Implementation Criteria require that account is taken of the impact on user experience and user control in assessing overall effectiveness of the Privacy Sandbox Proposals.

#### *Involvement of the CMA and the ICO*

##### *First Consultation responses*

- 4.189 Many respondents supported the proposed involvement of the CMA, and the ICO, after the acceptance of any commitments under the Act.<sup>159</sup> Some of these underlined the importance of CMA involvement – in particular, through the Digital Markets Unit ('DMU') in future – at every stage of the future development of the Privacy Sandbox Proposals. A number of responses contained suggestions as to how to improve the commitments with regard to the involvement of the CMA as well as that of the ICO.

##### *Second Consultation responses*

- 4.190 One respondent (an ad tech provider) commented positively on the collaboration between the CMA and the ICO envisioned in the commitments. However, another respondent (a non-profit organisation) warned against the CMA and the ICO, as UK regulators, appointing themselves as sole arbitrators of Google's Privacy Sandbox Proposals and expressed concerns that the commitments would prevent the adoption of privacy-enhancing changes worldwide.

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<sup>159</sup> The CMA expects to involve the ICO, in line with paragraph 18 of the Final Commitments, on the application of the Applicable Data Protection Legislation to the Privacy Sandbox Proposals.

### *CMA assessment*

- 4.191 The CMA considers that no amendments to paragraph 18 of the Final Commitments, dealing with the involvement of the ICO, are necessary.
- 4.192 Although Google has confirmed it will apply the Final Commitments on a global basis, the Final Commitments have been offered in the context of a CMA investigation. The CMA and the ICO remain the competent regulatory bodies, in this context, to determine whether the Privacy Sandbox Proposals adequately address competition and privacy issues which arise in the UK. However, the CMA will work closely with its international counterparts as the Privacy Sandbox Proposals are being developed to ensure consistency of approach.

### ***Standstill Period before the Removal of TPCs (Section F of the commitments)***

#### ***Overview***

- 4.193 Section F of the Final Commitments sets out a Standstill Period of 60 days (which could be extended by a further 60 days) triggered by giving notice to the CMA of Google's intention to remove TPCs (the '**Standstill Period**'). This period enables the CMA to consult on Google's final proposals, to ensure that the CMA's competition law concerns have been addressed, and to notify Google if the CMA has any remaining competition concerns.
- 4.194 The CMA's expectation is that, should such concerns be raised, Google will resolve those concerns. The CMA is accepting the Final Commitments on that basis.
- 4.195 If those concerns were not resolved, the CMA would have the opportunity to decide to continue this investigation, which in turn could lead to it making an infringement decision or give an interim measures direction (see section 31B(4) of the Act).
- 4.196 Various submissions in response to the First Consultation and the Second Consultation referred to the Standstill Period. The key issues raised by these submissions are set out below.<sup>160</sup>

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<sup>160</sup> See Appendix 2, paragraphs 51–69, for the CMA's summary (and assessment) of certain other issues raised by respondents to the First Consultation in relation to Section F of the Initial Commitments.

## *The appropriate trigger for the Standstill Period*

### *First Consultation responses*

- 4.197 Three respondents (two industry associations and an ad tech provider) suggested that the trigger for and/or the suspensive effect<sup>161</sup> of the Standstill Period should not only be the removal of TPCs as set out in the commitments, but should be expanded to include the removal of other functionalities or data. Respondents suggested that the trigger and/or suspensive effect should apply to the implementation by Google of any of the Privacy Sandbox Proposals which would limit data accessibility or interoperability for third parties, or would otherwise significantly impact the web advertising ecosystem. In particular, submissions referred to the removal of interoperable data, used for purposes including fraud detection, such as the user-agent string and IP addresses.
- 4.198 Two respondents (a browser and an ad tech provider) suggested that the trigger for and/or the suspensive effect of the Standstill Period should apply to Google's deployment, in Chrome, of any new Privacy Sandbox functionality (eg User-Agent Client Hints, Gnatcatcher, Privacy Budget, FLoC and TURTLEDOVE).
- 4.199 Following the First Consultation, Google offered to also commit to not implement, before Google removes TPCs: (a) the Privacy Budget element of the Privacy Sandbox Proposals; or (b) the Gnatcatcher element of the Privacy Sandbox Proposals, without Google making reasonable efforts to support websites' non-ads use cases for IP addresses.<sup>162</sup> Google also offered to commit to allow third parties to make unlimited requests for User-Agent Client Hints, so that all of the information available in the user-agent string as of the date of this Decision would remain accessible, before the removal of TPCs.<sup>163</sup>

### *Second Consultation responses*

- 4.200 A number of respondents to the Second Consultation suggested expanding the scope of what could trigger, or be covered by, the Standstill Period.
- (a) Two respondents (an ad tech provider and an industry association) submitted that the Standstill Period should apply to Privacy Sandbox Proposals other than the removal of TPCs. One of these respondents

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<sup>161</sup> Namely, the effect of the words 'Google will not implement the Removal of Third-Party Cookies before the expiry of a standstill period [...]', contained in paragraph 19 of the commitments.

<sup>162</sup> Now reflected in paragraph 20 of the Final Commitments, having first been added within the Modified Commitments.

<sup>163</sup> Now reflected in footnote 3 to the Final Commitments, having first been added within the Modified Commitments. Within those commitments, the 'Effective Date' refers to the date of this Decision.

submitted, similarly, that it did not understand why paragraph 20 of the commitments applied only to Gnatcatcher and Privacy Budget, rather than all Privacy Sandbox Proposals which would limit data accessibility or interoperability for Google's rivals.

- (b) Three respondents (a data platform, a data company and an industry association) submitted that Google should commit not to implement Gnatcatcher before Google removes TPCs. Reasons cited included: Gnatcatcher having no privacy benefits while TPCs remained; the market needing a few more years to adapt to a proposal as new as this one; and a need for ICO/CMA assessment before the proposal was implemented.

4.201 One respondent (an industry association) submitted that the User-Agent Reduction – ie Google's proposal to reduce the information available to websites via the user-agent string – and/or Google's further implementation of User-Agent Clients Hints should be included in Section F and considered as part of the Standstill Period. This respondent, and one other respondent (an ad tech provider) raised concerns that statements contained in paragraph 4.83.a. of the November Notice appeared to understate the scale of changes and cost entailed by User-Agent Reduction and Google's introduction of User-Agent Client Hints.<sup>164</sup> The latter respondent (the ad tech provider) also submitted that a particular hint (device model) from User-Agent Client Hints was only announced by Google in November 2021, that the respondent had been unable to observe much traffic sending this particular hint, and that there was therefore a reduction in real information available as compared to that available via the user-agent string. Similarly, one respondent (an ad tech provider) suggested that Google's implementation of User-Agent Clients Hints entailed changes to the basis on which third parties can access certain information, and that smaller publishers did not have the time or skill to make the changes that would be required.

4.202 Several respondents to the Second Consultation raised queries about Google's commitment, in paragraph 20 of the commitments, to not implement Gnatcatcher before making 'reasonable efforts' to support websites in relation to three specified use cases.

- (a) Two respondents (an ad tech provider and an industry association) submitted that more clarity was required on what 'reasonable efforts'

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<sup>164</sup> The latter respondent also submitted that Google's proposed changes to user-agent string information had not been agreed by the standards community. Two further respondents (a media company and a data company) made similar submissions, albeit not referring to Section F of the commitments, about how Gnatcatcher and Privacy Budget may have wide-ranging potential impacts, both individually and together, and the timescale for their refinement is unclear.

meant, or on who would decide what ‘reasonable efforts’ meant.

- (b) Two respondents (an industry association and a data company) submitted that there may be many other legitimate uses for IP addresses which Google should not prevent. One of these respondents added that Google should commit not to prevent the uses which a regulator deemed legitimate and which did not facilitate cross-site tracking. Both of these respondents also suggested that Google should allow the sharing of real IP addresses with users’ consent.

4.203 Two respondents to the Second Consultation (a browser developer and a non-profit organisation) repeated previous suggestions made during the First Consultation that the Standstill Period should not delay the introduction of privacy-enhancing changes which would restrict current data collection practices (eg the removal of TPCs, and the introduction of Gnatcatcher and Privacy Budget).<sup>165</sup> One of these respondents submitted that a Standstill Period may however be merited before the introduction of new features that support more ‘private’ advertising (eg FLoC and TURTLEDOVE).

4.204 One respondent (an industry association) suggested strengthening footnote 3 to the Modified Commitments, since it did not oblige Google to respond to the ‘unlimited requests for User-Agent Client Hints’ referred to in that footnote.

#### *CMA assessment*

4.205 The CMA has carefully considered the points outlined above (including on paragraph 20, which was added to Section F following the First Consultation, relating to the implementation of Gnatcatcher and Privacy Budget). The CMA’s view is that the provisions of Section F of the Final Commitments are appropriate for addressing the competition concerns set out in Chapter 3 of this Decision, both with regard to the introduction of new features and the deprecation of existing features. The rationale for the Standstill Period is explained further in Chapter 5 of this Decision.

4.206 In relation to Gnatcatcher, the CMA notes that IP addresses can be used for the fingerprinting of users.<sup>166</sup> The CMA considers that the commitments at Section F – when considered in the overall context of the Final Commitments – are appropriate for addressing the CMA’s competition concerns, and strike a

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<sup>165</sup> For the CMA’s summary (and assessment) of those previous suggestions, see Appendix 2, paragraphs 52 and 53.

<sup>166</sup> Fingerprinting is the practice of collecting, linking, and using a wide variety of information about the browser, other software, or the hardware of the user, in conjunction, for the purpose of identification and tracking. For an overview of fingerprinting, see Market Study, [Appendix G](#), pages 14–19.

balance between, on the one hand, supporting advertising use cases (for which TPCs will be available before the Standstill Period) and legitimate non-ads use cases for the IP address and, on the other hand, limiting opportunities for fingerprinting.

- 4.207 In relation to concerns that a particular hint (device model) from User-Agent Client Hints was only announced by Google in November 2021, Google has told the CMA that ‘device model’ has been part of a publicly-announced User-Agent Client Hints specification since October 2018, and available since November 2019 behind a flag (with rollout to pre-release populations in May 2020, before being available by default for 100% of users in March 2021).<sup>167</sup>
- 4.208 The proposed User-Agent Reduction does not involve the removal of all information currently available through the user-agent string, only specific granular information. For important common use cases,<sup>168</sup> which do not rely on this granular information, developers will not need to make any changes, such that their adjustment costs will be nil.
- 4.209 For use cases relying on the granular, high-entropy information (usually employed by advanced websites), some changes will be required to adjust to User-Agent Client Hints and actively request the granular hints. Entities with advanced websites that rely on granular information are likely to have access to development resources. The CMA considers that for such entities, the adjustment costs (including for testing) would be typical of other similar changes which developers would need to make on a regular basis. Google has published guidance<sup>169</sup> to assist developers with making the adjustments, including ‘retrofill’ code<sup>170</sup> which can be used as a quick solution, lowering costs further. In many cases, the advanced website is embedded as third-party code to a less advanced website (such as a small publisher). In these cases, the third-party embed is the one that will make any significant changes to the code (not the small publisher, who may only need to approve it by adding a line or two of code).<sup>171</sup>
- 4.210 The CMA also notes that, according to information provided by Google to the CMA, as of December 2021 over 8,000 websites had already adopted or tested User-Agent Client Hints. One respondent (an ad tech provider) also

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<sup>167</sup> See publicly available documents relating to: the specification (the GitHub page [here](#)); the availability behind a flag (see the Chromium Gerrit page [here](#)); and pre-release rollout (see the Chromium page [here](#)).

<sup>168</sup> For instance, the reduced user-agent string will still show the browser name and major version, whether a user’s device is a mobile device, and the name of the user’s operating system.

<sup>169</sup> Google web.dev, ‘[Migrate to User-Agent Client Hints](#)’ (accessed on 4 February 2022).

<sup>170</sup> Google Chrome Labs [uach-retrofill GitHub repository](#) (accessed on 4 February 2022).

<sup>171</sup> This is known as the Permission Policy within the User-Agent Client Hints documentation, for server-side implementations. At the time of writing, the client-side implementation does not require permissions.



indicated that it has observed a reasonable presence of User-Agent Client Hints enabled devices (around [30-40]% of the overall traffic that it has seen).

- 4.211 To address the point outlined above relating to footnote 3, Google has offered a minor modification to add clarity. Footnote 3 of the Final Commitments now confirms that before the removal of TPCs, Google will allow publishers, advertisers and ad tech providers to not only make unlimited requests for User-Agent Client Hints, but to also receive responses. The CMA considers that this is a helpful clarification.
- 4.212 As regards the submission relating to observed traffic sending a particular hint (device model), the CMA understands that the low traffic for this particular hint is to be expected and is not a sign of reduction of real information. This is because the device model is not something that the user-agent string usually specified (even before the implementation of User-Agent Client Hints), at least for desktop browsers which account for a large proportion of the traffic.<sup>172</sup> Given that this particular hint was not always specified by the original user-agent string, a GitHub issue was raised on privacy grounds that even introducing the hint in the User-Agent Client Hints API might increase the amount of information available if it was not clear that it was optional and could be left blank.<sup>173</sup> The CMA therefore continues to consider that the effect of the User-Agent Reduction and introducing the User-Agent Client Hints API is not to reduce the information available to market participants – at least not until the removal of TPCs, before which point unlimited requests to (and responses from) the User-Agent Client Hints API are provided for, by footnote 3 to the Final Commitments.
- 4.213 The CMA does not consider it necessary for ‘reasonable efforts’ within paragraph 20 of the Final Commitments (in relation to Gnatcatcher) to be explained in more detail. What is ‘reasonable’ for pursuing the objectives in paragraph 20 is to be considered in the context, and it would not be usual for one party’s view of what is or is not reasonable to prevail automatically. In any event, Google will be required to inform the CMA of the steps that Google has taken in this regard, pursuant to paragraph 32.e. of the Final Commitments.
- 4.214 In light of the above, the CMA considers that the Final Commitments are appropriate to address its competition concerns, without the Standstill Period being triggered by the introduction of Gnatcatcher or the User-Agent Reduction.

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<sup>172</sup> The respondent did not specify whether its cited traffic figures were taken from desktop browsers, mobiles or both. On any of these bases, however, the CMA’s understanding on this matter would remain the same.

<sup>173</sup> For more information, see [this GitHub issue](#) (accessed on 8 February 2022).

- (a) The Final Commitments do not include a general commitment by Google not to remove or reduce any functionality or data at all before the Standstill Period is triggered (as some respondents suggested). Google's timeline for deploying the Privacy Sandbox Proposals indicates that the main deprecations or reductions that might occur before TPCs include user-agent string and IP addresses. The Final Commitments address consultation respondents' specific concerns about the removal of the user-agent string before the removal of TPCs, and/or losing support for non-ads use cases for IP addresses during that period. Google has also informed the CMA of Google's rationale for implementing some Privacy Sandbox Proposals before the removal of TPCs. Namely, Google's aim is to address a risk that before the removal of TPCs third parties will – in expectation of TPCs being removed – shift to other potentially problematic means of tracking users (particularly fingerprinting).
- (b) Overall, the CMA is satisfied that the Final Commitments cover the key substantive concerns expressed by consultation respondents about Google removing other functionality or data before the Standstill Period (and/or before the removal of TPCs), without restricting unnecessarily Google's ability to continue to prevent third parties from resorting to other means of continuing to track users across sites after the removal of TPCs. The CMA considers that the Final Commitments suffice to protect the key other non-advertising use cases cited as important by consultation respondents.

4.215 The CMA considers that the Final Commitments address the additional points arising from consultation responses, in particular as the changes provide third parties with greater certainty that Google will not remove certain functionalities and data in advance of the Standstill Period. In any event, the CMA notes that if any concerns do arise in relation to the removal or reduction of any data or functionality before the Standstill Period pursuant to any specific elements of the Privacy Sandbox Proposals, the CMA can notify Google of this concern and trigger the need to resolve it, under the provisions in paragraph 17.a. of the Final Commitments.<sup>174</sup>

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<sup>174</sup> In addition, under paragraph 17a.i. of the Final Commitments Google will proactively inform the CMA of changes to the Privacy Sandbox that are material to ensuring that the Purpose of the Commitments is achieved. See also Appendix 4 for more detail on how the CMA envisages certain aspects of the Final Commitments will be implemented.

### *Prerequisites for the start of the Standstill Period*

#### *First Consultation responses*

- 4.216 Details of related submissions that were included in responses to the First Consultation are set out in Appendix 2 to this Decision, paragraphs 56 to 61.

#### *Second Consultation responses*

- 4.217 One respondent (an industry association) suggested that the commitments would not reduce market uncertainty if Google did not notify the CMA under Section F of the commitments, ie the Standstill Period were not triggered.
- 4.218 This respondent also submitted that there would be a 'loophole' in the commitments if Google were to notify the CMA 'tomorrow' of Google's intention to implement the removal of TPCs.

#### *CMA assessment*

- 4.219 The concern generally expressed by market participants to the CMA has been that Google intends to proceed with its proposed browser changes (including its intention to remove TPCs, notification of which to the CMA would trigger the Standstill Period). Therefore, the suggestion that Google would not intend to proceed with such changes during the lifetime of the commitments contrasts with the majority of views expressed, as well as Google's well-publicised intention to implement its Privacy Sandbox Proposals within the next few years.
- 4.220 The CMA therefore considers the situation posited by the respondent to be unlikely. If Google were to abandon its intention to proceed with removal of TPCs, the Final Commitments would be devoid of purpose and the CMA would consider whether the Final Commitments should then be released.
- 4.221 The submission outlined at paragraph 4.218 above appears to be the inverse of suggestions made during the First Consultation that Google could arbitrarily delay the removal of TPCs.<sup>175</sup> If Google were to notify the CMA on the day after this Decision is issued of Google's intention to implement the removal of

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<sup>175</sup> See Appendix 2, paragraph 52, for a summary of those previous submissions.

TPCs, the CMA could consider this a material change of circumstances since the commitments were accepted, or a breach of the commitments, or both.<sup>176</sup>

### *Notifiable concerns*

#### *First Consultation responses*

4.222 One respondent (an industry association) suggested that a wider scope of concerns – wider than those concerning the removal of TPCs – should be notifiable by the CMA to Google in the context of the Standstill Period under paragraph 19 of the Initial Commitments.<sup>177</sup>

4.223 To address these concerns, Google offered to revise Section F. Paragraph 21 of the Final Commitments therefore allows for a wider scope of concerns to be notified by the CMA to Google in the context of the Standstill Period.

#### *Second Consultation responses*

4.224 The CMA received no similar or related Second Consultation responses.

#### *CMA assessment*

4.225 The aim of Section F of the commitments is to ensure, among other things, that the CMA can notify an appropriate range of concerns to Google during the Standstill Period. Paragraph 21 of the Final Commitments provides that the CMA may notify Google of any competition law concerns remaining which indicate that the Purpose of the Commitments will not be achieved. The CMA considers that this provision will achieve its intended purpose effectively.

### *Interactions between the CMA and Google to resolve concerns*

#### *First Consultation responses*

4.226 One respondent (an industry association) queried whether the Initial Commitments could be more specific on the possible outcomes at the end of the Standstill Period. This prompted the CMA to discuss with Google

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<sup>176</sup> For Google's updated timeline for the removal of TPCs: 'Subject to our engagement with the [...] [CMA] and in line with the commitments we [ie Google] have offered, Chrome could then phase out third-party cookies over a three month period, starting in mid-2023 and ending in late 2023'. See Chrome blog, [An updated timeline for Privacy Sandbox milestones](#), 24 June 2021 (as accessed on 3 February 2022):

<sup>177</sup> Namely, 'During the standstill period, the CMA may notify Google that competition law concerns remain concerning Removal of Third-Party Cookies such that the Purpose of the Commitments will not be achieved'.

mechanisms to provide assurance that where concerns were resolved at the end of the Standstill Period, that resolution would be recognised.

- 4.227 Following the First Consultation, Google offered to revise Section F. Paragraph 21 of the commitments therefore provides that Google will commit to work with the CMA to resolve (and to inform the CMA of how Google has responded to) any such concerns notified to Google pursuant to that paragraph.

#### *Second Consultation responses*

- 4.228 The same respondent as mentioned above also suggested, in its response to the Second Consultation, that Google might 'walk back' from the terms of the commitments. This formed part of submissions on section 31B(4) of the Act, covered at paragraphs 4.237 to 4.262 below.

#### *CMA assessment*

- 4.229 The aim of Section F is to ensure, among other things, that during the Standstill Period Google will take appropriate action if notified by the CMA of any competition concerns.
- 4.230 Under the Final Commitments, Google will provide the CMA with an account of how Google has responded to resolve competition concerns notified by the CMA to Google during the Standstill Period.<sup>178</sup> This will form part of the quarterly reporting in addition to the signed Compliance Statement.<sup>179</sup> This wording was added in order to address a CMA concern that the CMA and Google could resolve concerns notified to Google during the Standstill Period, but there was no provision specifically aimed at preventing Google from rowing back on that resolution. The CMA therefore considers that the relevant provisions of the Final Commitments will achieve their intended purpose effectively. Further detail on how the CMA considers that the provision will be implemented in practice is included in Appendix 4.

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<sup>178</sup> Final Commitments, paragraph 21. Concerns raised outside of the Standstill Period will be resolved on the basis of paragraphs 17.a.ii. and 17.a.iii. of the Final Commitments.

<sup>179</sup> Final Commitments, paragraphs 21 and 32.a. The reporting obligations also relate to concerns raised outside of the Standstill Period based on paragraph 17.a.ii. of the Final Commitments.

## *Length of the Standstill Period*

### *First Consultation responses*

- 4.231 Details of related submissions that were included in responses to the First Consultation are set out in Appendix 2 to this Decision, paragraphs 62 to 63.

### *Second Consultation responses*

- 4.232 One respondent (an ad tech provider) submitted that the 60-day minimum duration of the Standstill Period should be longer, ie should be six months. This respondent repeated part of its response to the First Consultation – albeit adding (by way of an expanded explanation) that it had few staff and would need time and resources to conduct certain tests during the Standstill Period.
- 4.233 One further respondent (a media company) submitted that third parties should be given time to adapt to changes after their implementation by Google.

### *CMA assessment*

- 4.234 The aim of the Standstill Period is to provide a specific opportunity for the CMA to consult on Google's final proposals, during an appropriate period – to ensure that the CMA's competition law concerns have been addressed, and to notify Google if the CMA has any remaining competition concerns.
- 4.235 Paragraph 19 of the Final Commitments provides for a Standstill Period of 60 days (which could be extended by a further 60 days). Set out in Appendix 2 to this Decision, at paragraphs 62 to 63, is a summary of related responses to the First Consultation, and the reasoning underlying the CMA's view that the length of the Standstill Period need not be extended beyond this period. In particular, the CMA notes that under paragraph 19 of the Final Commitments Google will, at the CMA's request, increase the Standstill Period to a total of 120 days. The CMA does not consider that it would require additional time to analyse and consult during the Standstill Period. The CMA intends to engage closely with various types and sizes of industry stakeholder throughout the process provided for under the Final Commitments. The CMA is also conscious that extending the Standstill Period may delay the implementation of new, potentially beneficial, technologies.
- 4.236 The CMA's view is therefore that the length of the Standstill Period provided for by the Final Commitments is appropriate to achieve its intended purpose.

### *The availability of section 31B(4) of the Act as a basis for further CMA action*

- 4.237 Under section 31B(2) of the Act, if the CMA has accepted (and not released) commitments under section 31A, it ‘shall not [...] continue the investigation, make a[n infringement] decision or give a[n interim measures] direction’.
- 4.238 Under section 31B(4) of the Act, section 31B(2) of the Act does not prevent the CMA from continuing the investigation, making an infringement decision or giving an interim measures direction where (among other scenarios) the CMA ‘has reasonable grounds for believing that there has been a material change of circumstances since the commitments were accepted’.
- 4.239 Section F of the Final Commitments, relating to the Standstill Period, contains various references to section 31B(4) of the Act. Broadly, if the CMA notifies Google that competition concerns remain such that the Purpose of the Commitments will not be achieved, and Google and the CMA do not resolve those concerns during the Standstill Period, the CMA may decide to continue this investigation and, potentially, make an interim measures direction and/or an infringement decision.
- 4.240 Other parts of the Final Commitments also refer to section 31B(4) of the Act, ie paragraph 4 (as part of the introduction to the commitments) and paragraph 17 (concerning how Google and the CMA will organise their dialogue). However, since section 31B(4) of the Act is of particular relevance to what happens after the Standstill Period, the CMA has set out in this part of this Decision below its views on its applicability as a basis for further CMA action.

### *First Consultation responses*

- 4.241 No response to the First Consultation contained any submissions querying directly the availability of section 31B(4) as a basis for further CMA action.

### *Second Consultation responses*

- 4.242 One respondent (an industry association) noted various provisions in the commitments which referred to the CMA’s ability to take action pursuant and subject to section 31B(4) of the Act. In this respondent’s view, this was the only CMA power provided for under those commitments in a scenario where the CMA failed to resolve concerns with Google. The respondent’s preference was for the CMA to impose interim measures: see paragraphs 4.256 to 4.262 below for a discussion of the more practical (rather than legal) considerations.

- 4.243 The same respondent suggested that various legal hurdles – each described below – may prevent the CMA from taking action under and pursuant to section 31B(4) of the Act. In summary, these were that the CMA may not:
- (a) be able to show a ‘material change of circumstances’;
  - (b) be able to rely on paragraph 22 of the commitments, which the respondent referred to as a ‘waiver’ of Google’s ‘procedural rights’ to have it ‘proven’ that there has been a material change of circumstances; and
  - (c) have reasonable grounds for suspecting that the Chapter II prohibition has been infringed.
- 4.244 As regards the CMA’s ability to show a ‘material change of circumstances’, the respondent submitted that it was unclear that section 31B(4) of the Act could be used in practice, as there would have been no change to the Privacy Sandbox Proposals, let alone any ‘material change’ which would (given the wording of the statute) allow the CMA to continue this investigation.
- 4.245 The respondent submitted that risks arose from any CMA reliance on the second sentence of paragraph 22 of the commitments.<sup>180</sup> It submitted that paragraph 22 is contrary to the Act because, in the respondent’s view, section 31B(4) requires the CMA to ‘prove’ that there has been a ‘material change of circumstances’, rather than rely on a ‘waiver’ of Google’s procedural rights. The respondent suggested that paragraph 23 of the commitments<sup>181</sup> was inconsistent with, and highlighted the legal risk inherent in, the ‘waiver’ in the second sentence of paragraph 22. The respondent considered that, in any event, the ‘waiver’ set out in the second sentence of paragraph 22 of the commitments did not however apply in the same way to (i) other parts of the commitments in which section 31B(4) of the Act was mentioned, or (ii) section 31B(4)(b) of the Act, which concerns failure to adhere to commitments.
- 4.246 Third, if the CMA were to seek to continue its investigation on the basis of section 31B(4) of the Act,<sup>182</sup> the CMA would need to make out reasonable grounds for suspecting that the Chapter II prohibition has been infringed.

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<sup>180</sup> This stated that, in the circumstances set out in the first sentence of paragraph 22, ‘the CMA will have reasonable grounds for believing that there has been a material change of circumstances since the Commitments were accepted: Final Commitments, paragraph 22 (and Modified Commitments, paragraph 22).

<sup>181</sup> ‘Nothing in these Commitments prevents the application of any part of section 31B(4) or other provisions of the Act’: Final Commitments, paragraph 23 (and Modified Commitments, paragraph 23).

<sup>182</sup> The respondent also made some submissions on section 31B(3) of the Act, which states that nothing in section 31B(2) prevents the CMA ‘from taking any action in relation to competition concerns which are not addressed by commitments accepted by it’. The respondent considered that the CMA had referred implicitly



4.247 Finally, the respondent suggested that if the CMA were to (seek to) continue its investigation on the basis of section 31B(4), it could not use the interim measures powers under section 35 of the Act. These powers are available if the CMA has ‘begun [...] and not completed’ an investigation under the Act. The respondent submitted that once the CMA has accepted commitments during an investigation, then the CMA would have ‘completed’ that investigation for the purposes of section 35(1) of the Act.

#### *CMA assessment*

4.248 The CMA has considered these submissions carefully.

4.249 As regards whether the CMA would have reasonable grounds for believing that there had been a material change of circumstances since the Final Commitments were accepted within the meaning of section 31B(4) of the Act, this would be assessed by reference to the terms of this Decision. The CMA has stated at paragraph 4.194 above the basis on which the CMA is accepting Final Commitments, and by reference to which it would assess whether a ‘material change of circumstances’ had arisen.

4.250 If the respondent’s objection to paragraph 22 of the commitments is that it relieves the CMA of its discretion or ability to exercise its judgement, or that the CMA will only be able to exercise its power to continue an investigation under section 31B(4) of the Act if Google concedes that a legitimate concern has not been addressed, then this is a misreading of paragraph 22. If the CMA has notified Google (under paragraph 21 of the commitments) that competition law concerns remain, such that Google will work with the CMA to resolve them, the CMA considers that the CMA will have discretion to assess whether or not to view those concerns as having been resolved, depending on Google’s response and actions. Paragraph 22 simply confirms that where Google and the CMA do not resolve those competition law concerns during the Standstill Period, the CMA is entitled to find that there has been a material change of circumstances since the Final Commitments were accepted – which, in turn, would allow the CMA to continue its investigation. In the CMA’s view, there is no inconsistency with the operation of the law under the Act.

4.251 In relation to the third point, the CMA considers that in the circumstances described at paragraph 4.253 below, the threshold in section 25 of the Act (ie

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within paragraph 1.13 of the November Notice to section 31B(3), and that section 31B(3) may conceivably provide a basis for further CMA action. This was on the basis that section 31B(3) governed a situation in which commitments were ‘ineffective’. However, the respondent considered that it also required fresh competition concerns to be stated. This respondent also submitted that the existence of section 31B(3) underlined, in its view, that the Act set a high bar for the CMA to meet in order to continue an investigation under the Act.

that the CMA has ‘reasonable grounds for suspecting that the Chapter II prohibition has been infringed’) would likely continue to be met.<sup>183</sup> A former President of the CAT described the threshold in section 25 of the Act as ‘about as low a test as you could have’.<sup>184</sup>

4.252 With regard to the submission regarding the wording of section 35(1) of the Act, the CMA considers that where it continues an investigation under section 31B(4) of the Act, the CMA’s powers to impose interim measures and/or to make an infringement decision become available to the CMA again.

4.253 As to the powers available to the CMA where concerns are not resolved with Google, the CMA notes the existence of: (i) section 31E of the Act, under which the CMA may apply for a court order; and (ii) the list set out in section 31B(4) of three different situations in which the CMA can continue the investigation, make a decision or give a direction.<sup>185</sup> Paragraph 23 of the Final Commitments highlights the fact that, as a matter of law, the entirety of section 31B(4) of the Act is available to the CMA, notwithstanding anything contained in the Final Commitments (ie including any express references in those commitments to a ‘material change of circumstances’). There is no ‘materiality’ threshold in section 31B(4)(b).

4.254 The availability of options for the CMA to proceed under section 31E (application to court for an order) or section 31B(4) (continuing the investigation), even in the most serious cases (where there are reasonable grounds for suspecting a breach of commitments), indicates that section 31B(4) provides a wholly appropriate basis for further CMA action. In a given context, continuing the investigation under section 31B(4) of the Act may well be preferable (depending on the circumstances) to seeking a court order.

4.255 In summary, based on the wording of section 31B(4), the CMA is confident that the CMA will have the power to take further action where necessary.

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<sup>183</sup> As detailed in this Decision, the CMA considers that the competition concerns identified during its investigation are addressed by the Final Commitments. In that context, the CMA broadly agrees with submissions that section 31B(3) of the Act confirms that the CMA may take action in relation to new competition concerns, ie concerns not already identified during its investigation – but the CMA does not agree that section 31B(3) is intended to cover a situation where there are ‘ineffective commitments’.

<sup>184</sup> *Brannigan v Office of Fair Trading*, 28 April 2006.

<sup>185</sup> Section 31B(4) states that the CMA is not prevented from ‘continuing the investigation, making a decision, or giving a direction where [...] it has reasonable grounds for’: (a) ‘believing that there has been a material change of circumstances since the commitments were accepted’; (b) ‘suspecting that a person has failed to adhere to one or more of the terms of the commitments’; or (c) ‘suspecting that information which led it to accept the commitments was incomplete, false or misleading in a material particular’.

## *Representations on section 31B(4) of the Act and interim measures*

### *First Consultation responses*

- 4.256 Notwithstanding that in autumn 2020, the CMA received applications requesting that the CMA give interim measures directions to Google under section 35 of the Act, no response to the First Consultation contained any submissions directly contrasting the two legal powers referenced above.

### *Second Consultation responses*

- 4.257 One respondent (an industry association) suggested that the process of the CMA continuing its investigation under section 31B(4) of the Act would be too slow, due to the conditions of section 31B(4) and to CMA board meetings being held only monthly. This would allow Google to continue with conduct in relation to which the CMA had articulated competition concerns. This process also compared unfavourably with a 'fast-track' to contempt of court under legal provisions relating to interim measures.

### *CMA assessment*

- 4.258 The CMA envisages that it would be able to continue this investigation promptly, if required, under section 31B(4) of the Act. The conditions of section 31B(4) have been considered above. With regard to the frequency of CMA board meetings, not all matters require a formal meeting of the CMA Board or the relevant delegates in order to proceed.<sup>186</sup>
- 4.259 If Google and the CMA do not resolve competition law concerns notified to Google during the Standstill Period, the CMA could continue its investigation. The CMA considers that where it continues an investigation, the CMA's powers to impose interim measures and/or to make an infringement decision become available to the CMA again. The CMA would expect to be well placed to consider enforcement action after the Standstill Period, given the more detailed insight that the CMA will have gained by that stage into Google's development and proposed implementation of the Privacy Sandbox Proposals.
- 4.260 The main effect of the Final Commitments is to provide for the appropriate regulatory scrutiny and oversight, by the CMA and the ICO, of the Privacy

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<sup>186</sup> For further details of the CMA Board's rules of procedures, and its specific authorised functions, see <https://www.gov.uk/government/organisations/competition-and-markets-authority/about/our-governance> (accessed on 4 February 2022). For further details of the CMA's procedures in relation to investigations under the Act, see [Procedural Guidance](#).

Sandbox Proposals. The commitments include provisions establishing processes for this regulatory scrutiny and oversight, which the CMA considers to be reasonable and necessary.<sup>187</sup> If the CMA has concerns about Google's design, development or implementation of the Privacy Sandbox, the CMA and Google will try to resolve those concerns, and there has to be a certain period for this dialogue to take place. The absence of any provision in the Final Commitments for the CMA to take any 'fast-track' to proceedings for contempt of court has no bearing on whether the commitments address the competition concerns identified in this investigation.

4.261 The relevant respondent's starting point is that the Privacy Sandbox Proposals should be blocked (or at least paused) in their entirety now. However, halting progress on the Privacy Sandbox Proposals may not be the best outcome. While neither the CMA nor the ICO has to date concluded on (let alone endorsed or approved) Google's stated aims for (or the impacts of) the Privacy Sandbox Proposals, the proposals have the potential to improve privacy outcomes – as certain consultation respondents have underlined to the CMA (see paragraph 4.203 above). Certainly, it remains to be seen, for the most part, whether and in what form the Privacy Sandbox Proposals should or should not proceed; this will be examined within the framework of the Final Commitments. Moreover, merely halting the proposals would delay the regulatory role which enables the CMA to oversee development of the Privacy Sandbox Proposals in a manner that addresses the CMA's competition concerns.

4.262 Should there be a breach of the Final Commitments, the Act provides that the CMA may continue this investigation under section 31B(4)(b) or apply to the court for an order under section 31E. In the event of a material change of circumstances, the CMA also may continue this investigation under section 31B(4)(a). Even if section 31B(4)(b) and section 31E are not mentioned in the Final Commitments, the associated courses of action are available to the CMA.

### ***Google's use of data (Section G of the commitments)***

#### ***Overview***

4.263 After the removal of TPCs, Google has committed:

- (a) not to use Personal Data from a user's Chrome browsing history (including synched Chrome history) in its Ads Systems to track users for

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<sup>187</sup> See Appendix 4 which provides details on implementation.

targeting and measurement of digital advertising on either Google owned and operated inventory or ad inventory on websites not owned and operated by Google;<sup>188</sup>

- (b) not to use Personal Data from a user's Google Analytics account in its Ads Systems to track users for targeting and measurement of digital advertising on either Google owned and operated inventory or ad inventory on websites not owned and operated by Google;<sup>189</sup>
- (c) not to track users for targeting or measurement of digital advertising on ad inventory not owned and operated by Google using either (i) Google First-Party Personal Data;<sup>190</sup> or (ii) Personal Data regarding users' activities on websites other than those of the relevant advertiser and publisher (including Customer Match).<sup>191</sup>

4.264 In addition, Google has said that, after Chrome ends support for TPCs, it intends to use the Privacy Sandbox tools for the targeting or measurement of digital advertising on websites not owned and operated by Google.<sup>192</sup>

4.265 The key issues raised by respondents to the First and Second Consultations are set out below.<sup>193</sup>

#### *Clarifications on Google's use of data*

##### *First Consultation responses*

4.266 Several respondents to the First Consultation suggested amending the commitments, to provide:

- (a) a clarification of what is meant by 'Individual-level User Data', and whether this includes aggregated data where individuals may still be identifiable by Google;
- (b) a clarification of the purposes and uses of data included in 'targeting or measurement of digital advertising', and whether this included attribution, reporting and frequency capping;
- (c) a stronger commitment that Google would only use data provided by its

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<sup>188</sup> Final Commitments, paragraph 25.

<sup>189</sup> Final Commitments, paragraph 26.

<sup>190</sup> For the definition of 'Google First-Party Personal Data', see Section B above.

<sup>191</sup> Final Commitments, paragraph 27.

<sup>192</sup> Final Commitments, paragraph 28.

<sup>193</sup> See Appendix 2, paragraphs 70–98, for the CMA's summary (and assessment) of certain other issues raised by respondents to the First Consultation in relation to Section G of the Initial Commitments.

publisher customers for the purpose for which it was provided;

- (d) a clarification of the exception, proposed by Google, enabling it to make 'indirect use' of the data from the sources in paragraph 25 of the Initial Commitments;
- (e) a confirmation that Section G's specific wording supplemented, and did not override, broader obligations elsewhere in the Final Commitments or in generally applicable law; and
- (f) a commitment that Google will only use data collected through the Privacy Sandbox.

4.267 Subsequent to these concerns, Google has:

- (a) replaced all references to Individual-level User Data with 'Personal Data' as defined in applicable data protection legislation, which will include aggregated data from which individuals can be identified;
- (b) clarified that the defined term 'Targeting or Measurement' includes attribution, reporting and frequency capping, as discussed in paragraph 4.59 above in Section B;
- (c) provided a clearer commitment not to use Personal Data provided by Analytics customers to track users for targeting or measurement of digital advertising on either Google owned and operated inventory or ad inventory on websites not owned and operated by Google, except to allow each Analytics customer to share or export its own Analytics data, including through a linked Google Ads account, for ads targeting and/or measurement;
- (d) removed the exception allowing Google to make 'indirect use' of data from the sources in paragraph 25 of the Initial Commitments;
- (e) included a clarification that the specific wording of Section G supplements, and does not override, the broader obligations in the commitments or in generally applicable law;<sup>194</sup> and
- (f) further clarified that, with respect to ad inventory on websites not owned and operated by Google, it intends to use the Alternative Technologies developed as part of the Privacy Sandbox for targeting or measurement. Google has told the CMA that Google will have the same ability as other market participants to use data points made accessible by the browser

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<sup>194</sup> Final Commitments, paragraphs 29.a. and 29.b. respectively.

(including but not limited to Chrome) or network, such as IP address, user agent, or device information, to the extent that these are equally available to other market participants.<sup>195</sup>

4.268 Google clarified that it would still use Personal Data (regarding users' activities) on the websites of the relevant advertiser and publisher to track users for the purpose of targeting or measuring digital advertising on the relevant ad inventory.<sup>196</sup> It would not use Personal Data (regarding users' activities) on websites other than those of the relevant advertiser and publisher.

### *Second Consultation responses*

4.269 In the Second Consultation, two respondents (an ad tech provider and an industry association) welcomed the restrictions on Google's use of data included in Section G.

4.270 Ten respondents (five industry associations, four ad tech providers and one browser developer) said the commitments did not go far enough in terms of restricting Google's use of its first-party data for advertising. Six of these respondents (three ad tech providers, two industry associations and one browser developer) said that without further restrictions Google might entrench its data dominance and Google's advertising business would have an unfair advantage over its competitors. One respondent (an industry association), referring to paragraph 27 of the commitments, said that the commitments, as modified, appear to allow Google to use even more data exclusively for its own inventory, compared with the Initial Commitments. Two respondents (an ad tech provider and an industry association) said First-Party Sets would make it possible for data to be shared between Google services.<sup>197</sup>

4.271 Specifically, in addition to restrictions on Chrome and Analytics data provided for in paragraphs 25 and 26 of the commitments, seven respondents (three ad

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<sup>195</sup> For example, Google will not have any access to IP addresses and user agent information that is not available to other market participants following implementation of the Privacy Sandbox. Instead, Google may use the versions of IP address and user agent information that the Privacy Sandbox will make available (ie. proxied IP address or limited to certain uses via Willful IP Blindness, and the User Agent-Client Hints API).

<sup>196</sup> Google has explained that the reference to 'relevant advertiser and publisher' in the last sentence of paragraph 27 of the Final Commitments refers to the publisher on whose website the ad is shown and the advertiser for that ad. For example, if an ad leading to Nike.com is shown on www.nytimes.com, Nike is the relevant advertiser and the New York Times is the relevant publisher. Google is therefore committing not to use Personal Data regarding the user's activity on, say, www.theguardian.com in order to target or measure this ad.

<sup>197</sup> On First-Party Sets, two industry associations mentioned they knew of ad tech vendors proposing that First-Party Sets could be used by any data controller (or co-controllers), instead of businesses owning related domains.

tech providers, a publisher association, an industry association, a browser and a media company) suggested Google should not be allowed to use data from the following Google services for advertising on Google owned and operated inventory:

- (a) Android (two ad tech providers and a publisher's association);
- (b) YouTube, including embeds on third-party websites (a browser, an ad tech provider and a publisher's association);
- (c) Google Maps including embeds on third-party websites (a browser, a publisher's association, a media company);
- (d) Google Sign-In (an industry association, an ad tech provider and a media company);
- (e) Google Search (an ad tech provider, a media company);
- (f) Gmail (a publisher's association, a media company);
- (g) Google Photos (a media company);
- (h) Information learned by serving web users AMP pages (a browser);
- (i) Other Google services eg Google News, Google Discover and Google News Showcase (a publisher's association).

4.272 Two respondents (industry associations) said that Google should by default not use data it collects from one of its services for the purpose of targeting or measuring digital advertising shown on another service, unless the user has proactively granted free, informed, and explicit consent.

4.273 Respondents made a number of specific points about Google's use of data:

- (a) Three respondents (two industry associations and an ad tech provider) said that section G referring to 'Personal Data' rather than 'Individual-level User Data' was an improvement compared to the Initial Commitments. However, the same respondents also said restrictions on Google's use of data should not be only about Personal Data but also aggregated data. They suggested it was unclear whether or not Google uses non-personal data, and questioned who will enforce and decide what is Personal data and what is not.
- (b) In relation to paragraph 27, two respondents (an ad tech provider and an industry association) thought restrictions on Customer Match data did not



go far enough, and that Google retaining an ability to use Customer Match data for advertising on its owned and operated inventory gave Google the ability to self-preference its owned and operated inventory and its Ads Systems. Further to this, one respondent (an ad tech provider) said that Customer Match policy discriminates against smaller marketers, as it only allows larger marketers to send directly identifiable Personal Data from their properties to Google. They also asserted that Google's use of marketers' Customer Match data present more risks to data privacy than other rivals' use of pseudonymised identifiers.

- (c) One respondent (an ad tech provider) suggested that paragraph 25 was ambiguous as to whether inventory not owned but operated by Google was covered by the commitments.
- (d) One respondent (an ad tech provider) was concerned that the restriction on Google's use of Chrome browsing history for targeting and measurement may not apply to creative optimisation or optimising ad campaign effectiveness.
- (e) Two respondents (an ad tech provider and an industry association) said Google's contracts and policies do not provide market participants choice in restricting Google's use of their data specifically to the service being requested, and the commitments would be strengthened if Google committed not to use media owners or competitors' data in such a way. For instance, an ad tech provider and an industry association said that Google should commit not to use data it obtains from Google Sign-In (SSO), reCAPTCHA and Analytics for targeting ads.<sup>198</sup>

4.274 One respondent (an ad tech provider) said that 'Google First-Party Personal Data', as a defined term,<sup>199</sup> suggests that Google intends for all Personal Data that Google's B2C software can collect and process to be exempted from its commitments, unless explicitly and expressly limited by an overriding commitment.

4.275 Respondents also made a number of observations about whether the restrictions on Google's use of data would prevent distortions to competition:

- (a) One respondent (a browser developer) welcomed the addition that Google

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<sup>198</sup> A similar concern was expressed by a respondent (an ad tech provider), who highlighted that Google's policies state it is a co-controller of all data. The respondent was concerned that Google could argue it has a first-party relationship and, therefore, is not a third-party when providing B2B advertising products and services. In this event, the respondent suggested that Google would be allowed to use Personal Data that it restricts from rival publishers, due to the method of data transfer, rather than the access to the data itself.

<sup>199</sup> On the definition of 'Google First-Party Personal Data', see paragraph 4.47 at Section B above.

will only be able to use Privacy Sandbox technologies in the same ways as third parties will be able to use them.

- (b) In relation to paragraph 29.a, three respondents (an ad tech provider, an industry association and a consultancy) expressed concern that Google will retain the ability to use user activity data across the web to prevent fraud and spam, while Privacy Sandbox may remove this ability from rivals.
- (c) One respondent (an industry association) was concerned about the removal of access to interoperable data that many market participants rely on. One respondent (an ad tech provider) explained that the Privacy Sandbox would restrict access to data for other market participants, which means restricting innovation by ad tech competitors: all market participants would have to use FLoC (now replaced by Topics), Measurement APIs, and Trust Tokens, and they no longer would have inputs to create their own value-adding targeting, attribution and fraud prevention. Another respondent (an ad tech provider) said that the rest of the marketplace will be using the less powerful Privacy Sandbox while Google will be using much more powerful tools.
- (d) One respondent (an ad tech provider) said that it would be helpful for Google to list in a table the data inputs for each advertising product or service and whether these will have access to a different granularity, accuracy, timeliness or precision of information available versus what rivals would be able to access if wholly reliant on its proposed changes to Chrome and potential implementation of Privacy Sandbox Proposals.
- (e) Two respondents (ad tech providers) said the scope of the case was too limited, and Google's advertising products and services as a whole ought to be investigated.
- (f) Two respondents (industry associations) noted that the CMA may consider stronger data separation measures at a later stage if it has outstanding competition concerns.

#### *CMA assessment*

4.276 Paragraphs 25 to 27 of the Final Commitments do not prevent Google from sharing data collected from its user-facing services and Customer Match to target or measure advertising on its owned and operated inventory.

- 4.277 Nevertheless, as set out previously in the June Notice, the CMA considers that the Final Commitments are sufficient to address the CMA's concerns about Google's use of data for two reasons.
- 4.278 First, the Final Commitments give the CMA the ability to influence the design and development of the Privacy Sandbox Proposals to avoid distortions to competition.<sup>200</sup> For example, if through the process of development, testing and trialling set out above, the Privacy Sandbox tools were shown to be fully effective substitutes for the functionality provided by TPCs and the other information deprecated by the Privacy Sandbox Proposals, this would address concerns that the implementation of the Privacy Sandbox Proposals would give Google a competitive advantage over rival publishers and ad tech providers. Even if the Privacy Sandbox tools were shown not to be fully effective substitutes for these functionalities, the design of other elements of the Privacy Sandbox Proposals (notably First-Party Sets) could be used to address any remaining issues through directly determining the extent of data sharing which could occur within Google (and other large businesses).
- 4.279 Second, if, before the removal of TPCs, the CMA were to have remaining competition concerns, the CMA would notify Google to that effect. The CMA's expectation is that, should such concerns be raised, Google will resolve those concerns. If, contrary to the CMA's expectations, such competition concerns are not resolved, the CMA could continue its investigation under section 31B(4) of the Act<sup>201</sup> and, where necessary, the CMA could impose interim measures under section 35 of the Act to avoid harm to competition. In this context, the CMA could consider other interventions to address the remaining competition concerns, such as imposing separation of certain sources of data used by Google to advertise on its own ad inventory.
- 4.280 In relation specifically to responses to the Second Consultation, the CMA considers that Chrome personal data and Analytics personal data are the key means by which Google can obtain *cross-site* information on users, from sites not owned by Google. This is why the CMA considers that these extra avenues of data are the most obviously important to restrict to ensure Google does not have an advantage after TPC deprecation. The Customer Match service Google offers allows customers to upload data that Google will then match against its first-party data and target the user with. Google told the CMA that it will not use customer-uploaded data for the benefit of advertisers

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<sup>200</sup> The criteria that the CMA and Google would use to assess the effectiveness of Alternative Technologies would give the CMA the opportunity to evaluate whether and the extent to which Google's data advantage would distort competition in digital advertising markets (see Final Commitments, paragraph 8).

<sup>201</sup> The CMA could also continue its investigation under section 31B(4) of the Act where the CMA 'has reasonable grounds for suspecting that a person has failed to adhere to one or more of the terms of the commitments'.

other than the customer in question. After the removal of TPCs, Google will only use Google First-Party Personal Data<sup>202</sup> to carry out audience expansion of the respective customer-uploaded data.<sup>203</sup> The CMA's understanding is that Google is not able to engage itself in cross-site tracking in Customer Match beyond the bilateral data sharing between Google and the customer that the service offers.

- 4.281 Some respondents asked whether 'inventory not owned but operated' by Google was covered by restrictions in paragraphs 25 and 26 of the Final Commitments, and Google confirmed that this is covered by the commitments.<sup>204</sup> Similarly, the CMA is of the view that the restrictions on data use covered by paragraph 27 in the Final Commitments do not allow Google greater data access compared with the Initial Commitments.
- 4.282 The CMA previously noted that the general position in Google's privacy policy allows it to collect and combine user data across all its services for various purposes including delivering personalised advertising.<sup>205</sup> In relation to first-party ad inventory, Google previously confirmed that currently, subject to web user consent, the activity of web user A on Search can inform ads and related functionalities shown to web user A on YouTube.<sup>206</sup> However, Google mentioned exceptions to the CMA: Google does not use user activity data from Google Sign-In, Gmail, Translate, Drive, Photos or Google Fit for advertising purposes.<sup>207</sup>
- 4.283 In response to concerns expressed in the Second Consultation, Google confirmed to the CMA that it does not use any personal data derived from Google Sign-In on third-party sites nor reCAPTCHA for targeting or measurement of digital advertising, that it does not have any plans to use such data for this purpose in the future, and that to do so would require material changes to Google's systems.

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<sup>202</sup> As defined in Section B.

<sup>203</sup> Customer Match Similar Audiences allows a customer to reach people who share characteristics with the users listed in that customer's Customer Match file.

<sup>204</sup> In the same way that Initial Commitments distinguished Google's first-party inventory and third-party inventory.

<sup>205</sup> Market Study, [Appendix G](#).

<sup>206</sup> CMA, [Notice of intention to accept binding commitments offered by Google in relation to its Privacy Sandbox Proposals](#), paragraph 5.55.

<sup>207</sup> '1) Gmail – Google stated that it does not use Gmail data to personalise advertising. The ads that are shown in Gmail are completely independent from the user's content within the Gmail service (ads are selected based on users' general profile). Google Sign-In – Google stated that it does not collect data from third-party sites and apps and services via Google Sign-In about the user's activity in that app. 2) Google Sign-In does store the context under which the user authenticates, like information about the device that was used, IP address, and identifiers for the app to which the user has authenticated. This helps prevent abuse and provide transparency and control to users about which apps they can sign into via Google Sign-In, and allows them to revoke access.' Market Study, [Appendix G](#), footnote 268.

- 4.284 As regards the concerns that Google may use media owners' or competitors' data for purposes other than those requested, the CMA notes that the Final Commitments in footnote 4 restrict the purposes for which Google can use data from Google Analytics.
- 4.285 Google has told the CMA that 'Targeting or Measurement', as defined in the commitments, covers a broad range of use cases including creative optimisation or optimising ad campaign effectiveness.
- 4.286 The CMA recognises that preventing fraud and spam is key both for Google to ensure the safety and security of the infrastructure it provides to its users, and in the same way for the ability of other market participants to compete. Verification and the prevention of fraud is a use case that the CMA will pay close attention to in the testing and implementation of Privacy Sandbox Proposals.

### ***Non-discrimination (Section H of the commitments)***

#### ***Overview***

- 4.287 Under paragraph 30 of the Final Commitments, Google commits to develop and implement the Privacy Sandbox Proposals in a manner consistent with the Purpose of the Commitments and in accordance with the Development and Implementation Criteria. Accordingly, Google will not design, develop or implement the Privacy Sandbox Proposals in a way that would distort competition by discriminating against its rivals in favour of its own advertising products and services. For example, any Privacy Sandbox Proposal deprecating Chrome functionality will do so for both Google and other market participants alike. In addition, Google will not use competitively sensitive information provided by an ad tech provider or publisher to Chrome in a way that would distort competition. Paragraph 31 of the Final Commitments also contains limits on Google's ability to change certain Google policies in a way that would restrict a customer's use of Non-Google Technologies.
- 4.288 The key issues raised by respondents to the First and Second Consultations are set out below.<sup>208</sup>

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<sup>208</sup> See Appendix 2, paragraphs 99–108, for the CMA's summary (and assessment) of certain other issues raised by respondents to the First Consultation in relation to Section H of the Initial Commitments.

## *Conflicts of interest*

### *First Consultation responses*

- 4.289 Several respondents suggested that Google should offer additional commitments to address competition concerns that Google may be in a privileged position, in terms of the data that it can access via Chrome compared to third parties.
- 4.290 Subsequent to these concerns, Google included a new final sentence within paragraph 30 of the Final Commitments to confirm that the removal of Chrome functionality will remove that functionality not only for other market participants but also for Google.

### *Second Consultation responses*

- 4.291 One respondent (a data owner) raised concerns about whether the commitments as modified provide a level playing field, expressing particular doubt about the effectiveness of the final sentence in paragraph 30 as addressing the concerns relating to potential information asymmetries or data advantages.<sup>209</sup> Another respondent (an industry association) considered that the clarification added to paragraph 30 was insufficient, stating it should be applicable to all of Google's products and services (i.e. not only 'advertising products and services') and that it did not address concerns about Google's data advantage.
- 4.292 One respondent (a data platform) expressed concerns that Google's Gnatcatcher proposal includes an option to bypass IP address masking or 'Wilful IP Blindness',<sup>210</sup> only for anti-spam and anti-fraud use cases. It is concerned that, under this proposal, Google would be solely responsible for selecting the websites to which the real IP addresses would be revealed, providing Google with the ability to block competitors' access. The respondent considered the exclusion of anti-spam and anti-fraud as insufficient.

### *CMA assessment*

- 4.293 In terms of the concerns expressed that Google may be in a privileged position as regards the data that it can access via Chrome compared to third

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<sup>209</sup> The respondent refers to paragraph 108 in Appendix 2 of the November Notice. The final sentence of paragraph 30 of the Final Commitments reads: 'For the avoidance of doubt, Privacy Sandbox proposals that deprecate Chrome functionality will remove such functionality for Google's own advertising products and services as well as for those of other market participants'.

<sup>210</sup> See Appendix 3, paragraphs 42 and 43.

parties, the CMA considers that the wording of paragraph 30 in the Final Commitments provides sufficient clarity and reassurance that the deprecation of functionality on Chrome will also remove such functionality for Google's own advertising products and services. Given the scope of the investigation and the competition concerns set out above, the CMA does not consider that the obligation should cover Google's products and services generally.

4.294 Google told the CMA that, under the Gnatcatcher proposal, servers that are 'wilfully IP blind' retain access to the actual client IP addresses. It explained that Wilful IP Blindness is a proposal to acknowledge that the web industry relies on IP addresses for technical operations that are legitimate and not harmful to users' privacy.<sup>211</sup> Google said that Chrome's proposed principles for the use cases to be supported by Wilful IP Blindness are the following: routing traffic, regulatory and legal compliance, abuse prevention (denial of service prevention, Botnet, SPAM detection, etc) and rare issue investigation. According to Google, Wilful IP Blindness will not support use of a client's IP address as a global static identifier to perform web-wide tracking for purposes other than abuse prevention.

4.295 Under the Final Commitments, Google will have regard to the Development and Implementation criteria which includes in paragraph 8.b the impact on competition in digital advertising and in particular the risk of distortion to competition between Google and other market participants. It is the CMA's view that these criteria, together with the CMA's ability to influence the design and development of the Privacy Sandbox Proposals, will help avoid distortions to competition in digital advertising and prevent Google from implementing the proposals, including Gnatcatcher, in a way that would advantage its advertising business. The Wilful IP Blindness proposal, and the governance and policy principles that Google may use to decide which use cases are legitimate and which are not, will be subject to ongoing monitoring by the CMA and evaluation as part of the testing and trialling of Privacy Sandbox. The CMA believes the commitments are appropriate and sufficient to address the concerns raised by respondents.

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<sup>211</sup> Google said that, in an effort to identify these use cases, Chrome has published proposed [principles](#) for [Wilful IP Blindness](#) as a means to engage in conversations with the ecosystem to ensure that Chrome can provide an IP privacy solution that still enables legitimate use cases such as anti-fraud (accessed on 4 February 2022).

## *Google's use of competitively sensitive information*

### *First Consultation responses*

- 4.296 The Initial Commitments included an obligation which would have prevented Google from using 'competitively sensitive' information provided by an ad tech provider or publisher to Chrome in a way that distorted competition.<sup>212</sup> Five respondents (an ad tech provider, a trade association, a publisher, an industry association, a consultant) suggested that the scope of the commitment should be extended to ensure that Google does not use publisher data for any purposes other than those explicitly requested by the publisher. Another respondent also said that Google should commit not to use information provided by a publisher or ad tech provider for any purpose other than that for which it was provided.
- 4.297 Subsequent to these concerns, Google offered not to use competitively sensitive information provided by an ad tech provider or publisher to Chrome for a purpose other than that for which it was provided.<sup>213</sup> This commitment was intended to broaden the scope of the original commitment offer, and avoid any potential ambiguity over interpreting whether information is used 'in a way that distorts competition'.

### *Second Consultation responses*

- 4.298 Two respondents (an ad tech provider and an industry association) queried the inclusion of the word 'sensitive' in paragraph 30.c. One respondent suggested removing this qualifier so that paragraph 30.c refers to 'competitive information', while the other said that Google should not use any information provided by an ad tech provider or publisher to Chrome for any purpose other than for which it was provided.

### *CMA assessment*

- 4.299 The CMA's view is that the reference to 'competitively sensitive information' in paragraph 30.c of the Final Commitments is appropriate. The intention of this obligation is to ensure that such information is used by Google only for the purpose for which it is provided, ensuring there is no distortion of competition by Google discriminating against its rivals. The CMA's competition concerns relate specifically to the use of information that could provide a competitive

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<sup>212</sup> Initial Commitments, paragraph 26.c.

<sup>213</sup> Final Commitments, paragraph 30.c.



advantage to Google; therefore, the CMA considers that it is appropriate to limit the scope of this provision to ‘competitively sensitive information’.

### *Ability to self-preference*

#### *First Consultation responses*

- 4.300 Details of related submissions that were included in responses to the First Consultation are set out in Appendix 2 to this Decision, paragraphs 99 to 108.

#### *Second Consultation responses*

- 4.301 One respondent (a browser) commented favourably on the modifications to Section H of the commitments, highlighting the strengthening of provisions on how Google cannot self-preference its own services.
- 4.302 Another respondent (an ad tech provider) raised concerns regarding the scope of section H considering it still left room for Google to self-preference. It suggested that the wording should be amended so that Google commits not to use in its business facing software any data that Google’s consumer facing software limits rivals’ access to. The respondent pointed to Google’s recent blogs on Ad Manager and support documentation, stating that Google would allow identifier-linked information to its Google Ads System while rivals were provided with an alternative. Another respondent (ad tech provider) expressed concern about the exemption of Google’s Ad Manager and Google’s ad exchanges from the commitments, suggesting that this would provide Google with an advantage over those parties that needed to rely on the Privacy Sandbox. It would also impact publishers as they would either have to further integrate with Google or accept lower CPM for their inventory through Privacy Sandbox.
- 4.303 Two respondents (an industry association and an ad tech provider) referred to Google’s current and future collection of Publisher Provided Identifier (**‘PPID’**) and Encrypted Signal for Publisher (**‘ESP’**) identifiers. They suggested that Google’s current and future use of such identifiers, and planned restrictions (after removing TPCs) on the use within Google’s systems of alternate identifiers to track individuals as they browse across the web,<sup>214</sup> may engage the non-discrimination commitments in Section H of the Final Commitments.

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<sup>214</sup> See Google Ads blog, [Charting a course towards a more privacy-first web](#), 3 March 2021 (accessed on 4 February 2022). That blog stated, for example, that Google Ads was ‘making explicit that once third-party cookies are phased out, we will not build alternate identifiers to track individuals as they browse across the web, nor will we use them in our products’.

- 4.304 A respondent (an industry association) submitted that Google carries out fingerprinting across its services so should not be permitted to forbid market participants, via the Privacy Sandbox, from doing the same.
- 4.305 One respondent (an industry association) raised concerns that the commitments would allow Google to preference its own services if it retained access to functionality that was limited for its rivals. The respondent raised concerns about the efficacy of paragraph 30 expressing the view that Google should be prevented from claiming its own products are different from those of rivals. The same respondent considered that the wording of paragraph 30 limits Google's commitments and allows for Google to preference its advertising products and services.
- 4.306 The same respondent expressed concerns regarding the removal of interoperability, stating that Google should not innovate or introduce new products that remove existing access to data.

#### *CMA assessment*

- 4.307 The CMA is of the view that the concerns raised in relation to Google's ability to self-preference are either addressed by the Final Commitments or fall outside the scope of its investigation.
- 4.308 While the Final Commitments do not prevent Google from sharing data collected from its user-facing services with its customer-facing services to target or measure advertising on its owned and operated inventory, the CMA considers that the Final Commitments are sufficient to address the CMA's concerns regarding Google's ability to self-preference. The commitments in Section H need to be read in the context of the wider commitments, most notably the Implementation and Development Criteria and Section G on Google's use of data. As such, the commitments, as set out in paragraph 4.263 on section G above, give the CMA the ability to influence the design, development and implementation of the Privacy Sandbox Proposals to avoid any distortions to competition. If through the process of development, testing and trialling, there is an indication that Google developed the tools to advantage its own services which would lead the concerns regarding the specific implementation of the Privacy Sandbox Proposals, the CMA could raise these concerns with Google and, if Google did not address the concerns the CMA could continue its investigation (and, should it be required, could impose interim measures).
- 4.309 As regards PPID and ESP, the CMA's understanding is that these are existing identifiers that are not part of the Privacy Sandbox. Further to this, Google told

the CMA that PPIDs do not allow Google to identify users across other publishers' websites; Google therefore cannot use PPID for ads measurement or ads targeting beyond the specific publisher's websites. Google said ESPs are designed to ensure that the signals shared within an advertiser-publisher pairing are unavailable to, and unusable by, Google. Google therefore cannot use ESPs for ads targeting or measurement.

4.310 The CMA notes that the commitments are aimed at addressing the competition concerns that the CMA has identified in this case, as outlined in Chapter 3 of this Decision; they are not designed to address in a general way any data advantages that Google may have.

4.311 As regards the removal of interoperability, the CMA again considers that, as the Privacy Sandbox Proposals will be developed under its oversight, this sufficiently ensures that consideration on the impacts that any relevant changes may have on interoperability will be taken into account (considerations regarding potential Non-Google Technologies are considered below at paragraphs 4.317 to 4.336).

### *Non-Google Technologies*

#### *First Consultation responses*

4.312 Various respondents noted that certain technologies are being (or may in future be) designed, developed, and implemented by parties other than Google as alternatives to TPCs and other functionalities.

4.313 Six respondents (two industry associations, three ad tech providers and a media agency) said that the Initial Commitments should be amended to oblige Google not to impede such alternative solutions, to ensure that alternative technologies are on a 'level playing field' with Google's technologies. For example, it was suggested that Google should not be able to block – or discriminate against marketers, publishers, and ad tech vendors that use – alternative technologies not developed by Google which comply with applicable data protection legislation.<sup>215</sup> Respondents' concerns arose in the

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<sup>215</sup> One respondent noted that there was a risk that Google could use its position in the ad tech supply chain to discriminate against non-Google alternative solutions. Submissions in this regard referred to amongst other things the Google Ads blog, [Charting a course towards a more privacy-first web](#), 3 March 2021 (accessed on 4 February 2022). That blog stated, for example, that Google Ads was 'making explicit that once third-party cookies are phased out, we will not build alternate identifiers to track individuals as they browse across the web, nor will we use them in our products'.

context of Google's market position as an ad tech vendor, and as a browser/browser engine.<sup>216</sup>

- 4.314 Following the First Consultation, Google offered to add to Section H an additional commitment set out at paragraph 31. That addition provided that Google would not change the customer policies of its main ad tech business to introduce any new restrictions on a customer's use of Non-Google Technologies before the removal of TPCs, absent certain exceptions. This also provided that Google would, in any event, for the duration of the commitments inform the CMA<sup>217</sup> before any such policy change.<sup>218</sup>

### *Second Consultation responses*

- 4.315 Several Second Consultation respondents commented on the additional obligations within the new paragraph 31 of the Modified Commitments.
- 4.316 Seven respondents (three ad tech providers, three industry associations and a media company) queried, directly or indirectly, whether the new paragraph would address competition concerns.
- 4.317 In particular, four respondents (two ad tech providers and two industry associations) noted that the new obligations: (i) did not apply at all to any restriction on a customer's use of Non-Google Technologies which was already set out within existing Google policies; and/or (ii) applied to only a lesser extent to any restriction that Google may introduce after the removal of TPCs but before the termination of the Modified Commitments.
- 4.318 Two of these respondents submitted that the new paragraph 31 should apply not only to Google policies in relation to its sell-side advertising software known as Google Ad Manager, but to all Google advertising services (including B2B demand-side software, such as Google Marketing Platform).

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<sup>216</sup> Relatedly, two respondents (an industry association and a browser) submitted that Google's proposed Privacy Sandbox technologies for Chrome should be interoperable with other browsers. One of those respondents similarly submitted, albeit in the context of Section C of the Initial Commitments, that the Privacy Sandbox Proposals should not distort browser competition.

<sup>217</sup> The ICO has recently set out certain general expectations in this regard: see the ICO Opinion (as referred to footnote 9 above), and in particular, the ICO's analysis of developments relating to identifiers in the ICO Opinion.

<sup>218</sup> Modified Commitments, paragraph 31. Two new defined terms used in that paragraph were set out in Section B of the commitments. First, 'Google Ad Manager' was added to refer to Google's main ad tech business, an ad management platform for publishers (on which, see footnote 220 below) and any successor product. Second, 'Non-Google Technologies' referred to the technologies (including, but not limited to, individual user-level identifiers) which are the subject of the representations summarised at paragraphs 4.317–4.329 above.

- 4.319 One of these respondents submitted that Google should only be able to interfere with rivals' ad solutions if their collection and processing of Personal Data presented greater risks than Google's data collection and processing.
- 4.320 Three respondents (an industry association, an ad tech provider and a media company) suggested widening the new obligations, so that Google also committed to ensuring Chrome's interoperability at some point with alternative solutions, eg those compliant with applicable data protection law. One other respondent (an ad tech provider) submitted that Google should commit to facilitating the adoption of such alternative solutions.
- 4.321 One respondent (an ad tech provider) noted the new paragraph 31, but nonetheless repeated a suggestion made during the First Consultation that, to address the risks to Non-Google Technologies (and to competition, more generally), Google should turn over administration of the Privacy Sandbox to an independent entity.<sup>219</sup>
- 4.322 Since the Second Consultation, Google has offered to revise its specific commitment in relation to 'Non-Google Technologies'. Paragraph 31 of the Final Commitments now confirms that Google commits to not change the customer policies of its main ad tech businesses, ie four specified Google services.<sup>220</sup>

### *CMA assessment*

- 4.323 For the reasons set out below, the CMA considers that the provisions of paragraph 31 of the Final Commitments address, adequately and appropriately, the points outlined above raised by respondents to the First Consultation and Second Consultation.
- 4.324 The CMA's concerns in this investigation, as summarised in Chapter 3 of this Decision, relate to the impact of Google's introduction of the Privacy Sandbox Proposals, not to Google's approach towards other market participants' alternative technologies. Nevertheless, the CMA recognises that Google's market position allows it to have a significant impact on the viability of

<sup>219</sup> See Appendix 2, paragraphs 103(b) and 104, for the CMA's summary (and assessment) of that suggestion.

<sup>220</sup> Three new defined terms used in that paragraph (in addition to 'Google Ad Manager') are set out in Section B of the Final Commitments – namely: (i) Display & Video 360 (also referred to as 'DV360'); (ii) Search Ads 360 (also referred to as 'SA360'); and (iii) Campaign Manager 360. These comprise the main elements of Google Marketing Platform, an ad management platform for advertisers. Google has told the CMA that the customer policies relevant to those three business, and Google Ad Manager, are the following Google documents: (a) [Platforms program policies](#); (b) [Google Ad Manager Partner Guidelines](#); (c) [Google Publisher Policies](#); (d) [About publisher provided identifiers](#); (e) [Google Ads policies](#); (f) [Data collection and use](#); (g) [DV360 Restricted products and services](#); and (h) [Understanding PII in Google's contracts and policies](#) (each accessed on 8 February 2022).

alternative technologies which could compete with the Privacy Sandbox tools following the removal of TPCs. In particular, Google's strong market position as a provider of ad tech services, including through Google Ad Manager,<sup>221</sup> means that Google's policies towards the use of alternative identifiers can impact on the ability of third parties to develop viable alternative proposals. This potential impact has been underlined within some of the wide range of submissions and evidence, including many responses to two rounds of public consultation, which the CMA has considered carefully in this investigation.

4.325 The CMA notes that both Google's Privacy Sandbox Proposals and possible third-party alternatives (eg the alternative identifiers called Unified ID 2.0 and SWAN) are still under development, and will need to comply with applicable data protection legislation.<sup>222</sup> Google's intention is for the Privacy Sandbox tools to be effective substitutes for the functionality provided by TPCs and the other information deprecated by the Privacy Sandbox Proposals. Under the Final Commitments, there will be an ongoing process of assessing the impacts and effectiveness of the Privacy Sandbox Proposals, including compliance with the applicable data protection legislation.

4.326 The aim of paragraph 31 of the Final Commitments is to provide greater certainty for third parties who are developing alternative technologies. The CMA's view is that this paragraph will do this, by ensuring that Google does not introduce restrictions under the customer policies of its main ad tech services that would limit the use of third parties' alternative technologies in transactions between publishers and advertisers facilitated by those services, absent exceptional circumstances,<sup>223</sup> and without first informing the CMA.

4.327 Google's main ad tech services of relevance in this regard include, but are not limited to, Google Ad Manager. The prospect of Google using its strong market position as a provider of ad tech services to discriminate against the use of Non-Google Technologies arises most clearly in relation to Google Ad Manager. However, Google could also use its ad tech position to limit the use of Non-Google Technologies by, for example, banning the use of/preventing advertisers from uploading non-Google 'alternative identifiers' within Google's

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<sup>221</sup> Google Ad Manager provides ad tech services to enable publishers to sell ad inventory on their websites, and includes the publisher ad server which controls which advert is shown to a particular user. In the Market Study, the CMA found that Google had a share of supply above 90% in publisher ad serving in the UK: Market Study, [Appendix C](#), paragraph 244.

<sup>222</sup> The ICO has recently set out certain general expectations in this regard: see the ICO Opinion (as referred to footnote 9 above) and, in particular, the ICO's analysis in the ICO Opinion of developments relating to identifiers.

<sup>223</sup> The CMA considers that such exceptional circumstances may include, for example, if any Google customer (in particular a customer of the services within the scope of paragraph 31) wished for paragraph 31 not to apply to any customer-specific policy that may exist. In any event, paragraph 31 of the commitments provides that any 'exceptional circumstances' within the meaning of that paragraph would need 'to be discussed with the CMA'.

Display & Video 360, Search Ads 360 and/or Campaign Manager services. While the respective customers of those services may differ, the same types of Non-Google Technologies could be used in ad tech value chain transactions using any of the four specified services. In the CMA's view, it is therefore appropriate that paragraph 31 of the Final Commitments confirms Google's commitment not to change its customer policies for any of the four aforementioned ad tech services.

4.328 In addition, the CMA notes that paragraph 31 of the Final Commitments is without prejudice to the operation of any other part of the Final Commitments, including the relatively more general principle of non-discrimination contained in paragraph 30. Other parts of those commitments also provide for the CMA to be involved in an ongoing process of assessing the impacts and effectiveness of the Privacy Sandbox Proposals, including consulting with the ICO regarding compliance with the relevant data protection rules (including consideration, globally, of emerging third-party alternative technologies). Paragraph 31 does not go so far as to impose a requirement on Google to allow any and all third-party alternative technologies access to Chrome and all Google advertising services, as certain consultation respondents requested. However, for the following reasons the CMA considers that paragraph 31 (in combination with the other parts of the Final Commitments) is appropriate to address the representations summarised at paragraphs 4.312 to 4.322 above.

- (a) The CMA recognises that Google, like any other tech vendor, has an interest in ensuring that data protection standards (including eg adequate protection for user privacy) are maintained for users of its platforms and systems.
- (b) Although it is important that Google does not seek to rely on data protection without proper justification in order to prevent third-party use cases which are consistent with data protection legislation, possible third-party alternatives – and the Privacy Sandbox Proposals – are still under development, and their consistency with applicable data protection legislation is still being evaluated.
- (c) Given this context, the CMA's view is that it would not be appropriate within these commitments to require Google to interoperate with any and all proposed third-party alternatives that might be developed. However, Google's additional commitment regarding the customer policies of its main ad tech services should ensure that Google does not introduce restrictions that would limit the use of third-party alternative technologies in the manner described at paragraph 4.326 above.

4.329 The CMA also notes that, in certain circumstances, the CMA could take further action. Examples are set out below.

- (a) If any concern does arise on the part of relevant customers, the CMA can notify Google of this concern and trigger the need to resolve it, under the provisions in paragraph 17.a. of the Final Commitments.<sup>224</sup> Accordingly, before announcing or implementing any policy change within the scope of paragraph 31, Google would work with the CMA without delay to seek to resolve any concerns raised (and address comments made) by the CMA.
- (b) If before the removal of TPCs, the CMA were to have remaining competition concerns, the CMA would notify Google to that effect.<sup>225</sup> The CMA's expectation is that, should such concerns be raised, Google will resolve those concerns. If, contrary to the CMA's expectations, such competition concerns are not resolved, the CMA could continue its investigation under section 31B(4) of the Act – and if it were to do so, where necessary, the CMA could impose interim measures under section 35 of the Act to avoid harm to competition.

### ***Reporting and compliance (Section I of the commitments)***

#### ***Overview***

- 4.330 Google has committed to taking a number of steps to ensure compliance with its obligations under the commitments, including by submitting to the CMA quarterly Compliance Statements and Monitoring Statements.<sup>226</sup>
- 4.331 The Final Commitments include, at Annex 2, a high-level outline of the Compliance Statement, and standard paragraphs on both reporting and remedying any breach of the commitments, and on anti-avoidance.
- 4.332 Google has also committed to appointing, at its own cost and subject to the CMA's approval,<sup>227</sup> a Monitoring Trustee; to instruct that trustee to monitor Google's compliance with the operational aspects of the Final Commitments (ie paragraphs 25 to 27 and 30 to 31), and provide the CMA with quarterly

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<sup>224</sup> Paragraph 17.a. of the Final Commitments allows concerns to be raised during the period of any commitments accepted, including after the Privacy Sandbox Proposals are implemented.

<sup>225</sup> Final Commitments, paragraph 21. The CMA would keep under review Google's approach to 'Non-Google Technologies', including on the basis of the information provided by Google to the CMA under those commitments (eg under Sections D, E and/or I of the Modified Commitments).

<sup>226</sup> The Final Commitments include a Template Compliance Statement at Annex 2 and an Outline Monitoring Statement at Annex 3.

<sup>227</sup> The CMA also expects to liaise with the ICO, in line with paragraph 18 of the Final Commitments, in relation to the appointment of the Monitoring Trustee.



Monitoring Statements – including a check for circumvention;<sup>228</sup> and promptly notify the CMA if it becomes aware of a breach and take all actions reasonably required to remedy a breach.<sup>229</sup> An outline of the Monitoring Statement is included in Annex 3. This outline states that each Monitoring Statement will include a summary of the Monitoring Trustee’s review of the relevant logs detailing the access history of any datasets within Google that contain data relevant to paragraphs 25 to 27 of the Final Commitments. The summary will list out exhaustively any access by ads services or individuals and provide the justification for such access. The Monitoring Statement will also include a description of training on permissible data access Google has carried out and the attendees of such training.<sup>230</sup> The Monitoring Statement also includes measures for monitoring compliance with paragraphs 30, 31 and 33 of the Final Commitments.

- 4.333 The CMA has also outlined, at Appendix 4, further detail on how certain aspects of the Final Commitments will be implemented, including the role of the Monitoring Trustee, the criteria for the selection of the Monitoring Trustee and the interaction between the Monitoring Trustee and the CMA.
- 4.334 These measures sit outside of the Final Commitments, so that they can be developed in the light of experience. Nevertheless, their design builds on the CMA’s extensive experience in designing and monitoring remedies.
- 4.335 The CMA considers the measures detailed above (and most notably the appointment of a CMA-approved Monitoring Trustee) to provide a comprehensive and effective basis for measuring Google’s compliance with the commitments. The Monitoring Trustee’s focus on measuring Google’s compliance with paragraphs 25 to 27, 30 to 31 and 33 of the Final Commitments ensures appropriate oversight over operational elements of the commitments as it provides more assurance as to Google’s compliance on these operational elements relevant to the above paragraphs.
- 4.336 The appointment also addresses a risk of information asymmetry as between Google and the CMA, and accords with approaches applied in other CMA cases. As set out in Appendix 4, the CMA will ensure that any trustee is: (i) external and independent of Google; and (ii) capable of fulfilling its role (ie

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<sup>228</sup> Final Commitments, paragraph 32.b. and Annex 3 (titled ‘Outline Monitoring Statement’). The definition of ‘Monitoring Statement’ included in Section B of the Final Commitments mentions that this statement will be prepared by Google or by the Monitoring Trustee, if appointed.

<sup>229</sup> Final Commitments, paragraphs 32.c. and 32.d.

<sup>230</sup> The Monitoring Trustee will also review any training material that Google makes available to all relevant publisher and advertiser-facing staff and agents to make them aware about how to communicate around the removal of TPCs and the Privacy Sandbox (see Annex 3 of the Final Commitments, point B9). In this context, the CMA notes that while the Monitoring Trustee’s role is defined by reference to paragraphs 25–27 and 30–31 of the Final Commitments, the Monitoring Trustee’s review of training materials will not be strictly limited to those provisions of the commitments.

possessing relevant experience or skills, and no conflicts of interest). The CMA also expects to liaise with the ICO, in line with paragraph 18 of the Final Commitments, in relation to the appointment of the Monitoring Trustee to ensure that the Monitoring Trustee also has the appropriate level of privacy and data protection expertise. The CMA intends that the trustee analyses whether Google adheres to both the actual requirements and the ‘spirit’ of the commitments in addition to providing simple factual reporting which simply confirms or denies that certain requirements have been met, informed by the Purpose of the Commitments and the Development and Implementation Criteria set out at paragraphs 7 and 8 of the Final Commitments.<sup>231</sup>

- 4.337 A large number of consultation responses in both the First and Second Consultations commented on reporting and compliance mechanisms within the commitments. The key issues raised by these submissions are set out below.

#### *Scope of reporting and compliance measures*

##### *First Consultation responses*

- 4.338 A number of respondents (five ad tech providers, five industry associations, one publisher, one comparison service, one media agency and one advertiser) commented on the importance of reporting and compliance and the scope of the monitoring regime.
- 4.339 Two respondents (an industry association and a comparison service) stressed the importance of the CMA monitoring Google’s actions, and of ensuring that Google was held accountable for any commitments accepted. Two respondents (a comparison service and an industry association) were encouraged by the CMA’s proposed rigorous approach, as successful enforcement of the commitments would require continuous monitoring of implementation and the market.
- 4.340 However, three respondents (two industry associations and an ad tech provider) in the First Consultation voiced concerns about the potential for information asymmetry as between Google and regulators, the difficulty of discerning compliance with the commitments, and scepticism about the likelihood of Google’s compliance, citing a history of Google reneging.

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<sup>231</sup> See Appendix 2, paragraphs 109–119, for the CMA’s summary (and assessment) of certain other issues raised by respondents to the First Consultation in relation to Section I of the Initial Commitments.

## *Second Consultation responses*

- 4.341 During the Second Consultation, respondents raised concerns about whether the scope of the monitoring regime was adequate to prevent anticompetitive conduct by Google. Two respondents (a data owner and an ad tech provider) expressed concern that a higher level of monitoring would be required to prevent Google from causing further anticompetitive harms of the kinds identified by the CMA. Another respondent (a data owner) said that the scope of the monitoring should extend beyond compliance with the commitments themselves and also include monitoring the impact of Google's actions on the market more widely.
- 4.342 One respondent (an ad tech provider) repeated its view (also expressed during the First Consultation) that it would be difficult to discern and monitor compliance with the commitments, and on this basis, and that of the information asymmetry between Google and third parties (including the CMA) questioned whether commitments was the correct approach to resolving the CMA's competition concerns.
- 4.343 Two respondents (an ad tech provider and a browser) sought additional clarity on the monitoring process, including how the reporting and compliance criteria are determined, what the CMA expects to see from Google through the monitoring and compliance programme and what might constitute a material violation of the commitments.
- 4.344 The same respondent (an ad tech provider) also suggested that additional transparency is required in relation to Google's quarterly reports (for example by publishing the reports, as opposed to maintaining their confidentiality) to provide the marketplace with the necessary confidence in the process.
- 4.345 One respondent (an industry association) submitted that paragraph 33 should include an obligation on the Google Group as a whole, rather than the three corporate entities listed, not to circumvent the commitments. The same respondent submitted that the compliance statement signatory should be a senior-level Google executive who can ensure compliance is truly engaged.

## *CMA assessment*

- 4.346 The CMA considers that the provisions in Section I of the Final Commitments address the concerns raised by industry stakeholders in both the First and Second Consultation as outlined above, in particular the need for continuous monitoring of the implementation of the commitments.

- 4.347 Section I puts in place a comprehensive framework for monitoring Google's compliance with the commitments. In particular, as well as committing to provide reporting on specific provisions within the commitments, at paragraph 32.e., Google undertakes to provide the CMA with any information or documents required for the CMA to 'monitor and review the operation of the Commitments or any provisions of the Commitments or for the purposes of their enforcement'. This clause, alongside the anti-circumvention clause in paragraph 33 of the Final Commitments, ensures that Google's compliance with the entirety of the commitments falls within the purview of the monitoring and compliance regime. In addition, the CMA will receive regular reporting from the Monitoring Trustee on compliance with the operational aspects of the commitments, and this should include reporting on any evidence that the Monitoring Trustee finds that the operational changes introduced by Google are not consistent with the spirit, as well as the letter of the commitments, ie. that the Purpose of the Commitments, set out at paragraphs 7 and 8 of the Final Commitments, is not being achieved.
- 4.348 The CMA does not consider that it would be appropriate, practical or proportionate for the monitoring regime to be extended beyond Google's compliance with the Final Commitments to encompass all of Google's actions on the market. As set out at paragraph 7 of the Final Commitments, the commitments are offered to address the CMA's competition concerns in this case. It would not be appropriate or proportionate for the Monitoring Trustee to monitor the market more broadly. Should any concerns arise about the nature of Google's conduct outside the scope of the competition concerns identified in this investigation, the CMA and other relevant regulatory authorities would be able to consider opening a new investigation according to their standard procedures.
- 4.349 Although respondents raise concerns about the difficulty of monitoring compliance and the information asymmetry between Google and third parties including the CMA, this is addressed by the appointment of the Monitoring Trustee to monitor compliance with the operational commitments, and the undertaking in paragraph 32.e that Google will provide the CMA with any information or documents required to monitor compliance. As set out below at paragraphs 4.360 to 4.361, and in paragraphs 34 to 35 of Appendix 4, the Monitoring Trustee will possess the relevant expertise and understanding to be able to effectively monitor compliance in this case.
- 4.350 The CMA agrees that transparency within the monitoring process is important, and as such, has provided further detail on how the commitments will be implemented, including the appointment and role of the Monitoring Trustee, working together with independent Technical Experts as required, at Appendix

4 to this Decision. As set out in Appendix 2 at paragraph 116 in response to the First Consultation, the CMA remains of the opinion that given that the Monitoring Statements are likely to contain commercially sensitive information, it would not be appropriate to require their publication under any commitments. However, Google is also required under the commitments to provide quarterly reports (under paragraph 32.a.) including compliance statements, and the CMA expects to publish a non-confidential version of these updates.

- 4.351 The CMA does not consider it necessary for the anti-circumvention provision to explicitly apply to the entire Google corporate group. The commitment, which applies to Alphabet Inc., Google UK Limited and Google LLC, ensures broad coverage of the Google group. Furthermore, paragraph 33 of the Final Commitments prevents any direct or indirect circumvention of the commitments, and the commitments bind the Google group as a whole.
- 4.352 Paragraph 32.a. of the Final Commitments provides that the Compliance Statement will be signed by the CEO or an individual with delegated authority on behalf of each company giving the commitments. The CMA considers that this will ensure compliance is being engaged with at the highest executive level.

### *Monitoring Trustee*

#### *First Consultation responses*

- 4.353 In the First Consultation, respondents said that it would be difficult to monitor Google's compliance with its commitments, with some respondents raising concerns that Google should not be permitted to monitor its own compliance, and suggesting that an independent third party or expert might be required for monitoring compliance.
- 4.354 Subsequent to these concerns, Google offered to appoint an independent Monitoring Trustee.

#### *Second Consultation responses*

- 4.355 In the Second Consultation a range of respondents (three industry associations, a data company, a consultant, a specialised search provider, and three ad tech providers) expressed broad support for the appointment of the independent Monitoring Trustee. However, a respondent (an ad tech provider) urged the Monitoring Trustee to remain vigilant to the residual risks to competition, and some respondents (a browser and an ad tech provider)

sought further clarity as to the legal status, independence and appointment criteria for any Monitoring Trustee, as well as how the Monitoring Trustee will operate.

4.356 A number of respondents (two industry associations, two ad tech providers, a consultant, and a specialised search provider) to the Second Consultation focused on the technical and multidisciplinary expertise required for any Monitoring Trustee to be effective:

- (a) Some respondents (an industry association and a consultant) stressed that any Monitoring Trustee must have relevant technical, legal and policy expertise, and cited some previous examples of where this may not have been the case.
- (b) One respondent (an ad tech provider) stated that the trustee should have expertise in the ad tech marketplace, its technologies, and in Google's ad tech suite in particular.
- (c) One respondent (a specialised search provider) identified particular areas of expertise required to monitor particular sections of the Final Commitments as described in the outline Monitoring Statement (included as Annex 3 of the Final Commitments), including data governance (A1, A2); development and execution of training programs (A3, B8 - B11); software development and system design (B1, B2); product management in ad tech (B1, B2), and compliance (B3 - B7, C1). The respondent recommended that the commitments should include further details about the diversity of expertise required from the Monitoring Trustee, and that the CMA should provide expanded definitions for each of these fields of expertise.
- (d) Three respondents (two ad tech providers and a specialised search provider) expressed concern that finding a candidate with the appropriate expertise may prove challenging. Two respondents (an ad tech provider and a specialised search provider) submitted that an individual trustee would not be able to effectively oversee all the relevant compliance and policy measures, due both to the various areas of expertise required and the volume of work that would entail. They recommended instead that the trustee role should be fulfilled by an independent organisation, cross-functional team or monitoring committee comprising multiple individuals with relevant technical, policy, legal, and societal competencies.

4.357 Four respondents (an industry association, a consultant, an ad tech provider, and a specialised search provider) to the Second Consultation also stressed

the importance of the Monitoring Trustee being impartial and independent from Google.

(a) One respondent (a specialised search provider) stated that it is essential there is no apparent or actual conflict of interest, and that the trustee should therefore not be an individual or entity with direct or indirect financial interests in Google, material transactional relations with Google, or which receives funding from Google.

(b) One respondent (an ad tech provider) noted that the CMA should appoint the Monitoring Trustee independently of Google. Alternatively, it suggested that as well as approving the trustee the CMA should have access to all instructions provided to the trustee by Google, and maintain a direct line of contact between the CMA and the trustee, which is independent of Google.

(c) One respondent (an industry association) suggested that the Monitoring Trustee will have a conflict of interest and not be genuinely independent, because the trustee is appointed and paid for by Google and the CMA is only consulted on the process. The respondent suggested the trustee should instead have no financial dependence on Google and be appointed by the Joint Industry Committee.

4.358 One respondent (a consultant) to the Second Consultation cautioned against a Monitoring Trustee who would simply carry out a 'check box' exercise, and noted that a trustee would need to monitor all aspects of the Privacy Sandbox developments, including W3C GitHub groups and related fora in order to be effective.

4.359 Two respondents (two trade associations) to the Second Consultation suggested that the Monitoring Trustee should take the views of publishers, marketers and ad tech vendors into account. A different advertiser offered to assist the Monitoring Trustee with any feedback or evidence required to assess Google's compliance.

#### *CMA assessment*

4.360 The CMA envisages the Monitoring Trustee being: (i) external and independent of Google; and (ii) capable of fulfilling its role (ie possessing relevant experience or skills, and no conflicts of interest). This section sets out how this Decision addresses the points made by respondents. Further detail on the process is included in Appendix 4.

- 4.361 The CMA agrees that any Monitoring Trustee should have a wide range of expertise and technical skill, as well as a deep understanding of the relevant aspects of Google's business. The CMA has been and remains closely involved in the process for the appointment of the Monitoring Trustee and will ensure that relevant expertise and capacity across the spectrum of necessary disciplines is secured (see paragraphs 29 to 39 of Appendix 4). Concerns about the capacity of an individual to effectively perform the role of Monitoring Trustee are misplaced. The role of Monitoring Trustee is not limited to a single individual. The 'person' appointed to be Monitoring Trustee will be a company or organisation (since 'person' includes both natural and the legal persons) which has identified sufficient individuals with the appropriate range of expertise. The CMA expects the Monitoring Trustee to work with independent Technical Experts holding the relevant skills and expertise to the extent that these skills are not available to them in-house.
- 4.362 The CMA shares the position of many respondents that any Monitoring Trustee must be genuinely external and independent of Google. Close involvement by the CMA is built into the process for the appointment of the Monitoring Trustee. The selection process will involve a conflict check, and the CMA will ensure that the Monitoring Trustee complies with best practice in managing and mitigating potential conflicts of interest (see paragraph 33 of Appendix 4), thereby ensuring the Monitoring Trustee is impartial and independent of Google. While Google will pay for the Monitoring Trustee (and any Technical Experts), they will be reporting directly to the CMA.
- 4.363 The CMA will approve the instructions provided to the trustee by Google, and will maintain an independent line of contact with the Monitoring Trustee (see paragraphs 36 and 40 to 42 of Appendix 4).
- 4.364 The CMA would expect that, between the Monitoring Trustee itself and the Technical Experts, there should be sufficient knowledge of developments around the Privacy Sandbox to be able to effectively meet the objectives for the Monitoring Trustee. The CMA does not envisage that the Monitoring Trustee would gain this knowledge directly through engagement with third parties in respect of monitoring (see paragraphs 38 to 39 of Appendix 4). However, the CMA considers that the involvement of third parties will be integral to the development of the Privacy Sandbox Proposals (on this, see paragraphs 47 to 73 of Appendix 4).



## *Access to data and feedback*

### *First Consultation responses*

- 4.365 Two respondents (an industry association and a publisher) to the First Consultation submitted that the CMA would require access to Google's data in order to monitor compliance. One respondent (an industry association) submitted that Google should grant the CMA (and third parties) access to data to allow them to test Google's compliance with the commitments.
- 4.366 A respondent (a publisher) in the First Consultation suggested that the CMA should have full audit rights to Google's ad tech services to develop a transparent view of Google's operations. This respondent also submitted that the CMA should consider working with third party specialists to process the large volumes of data involved in Google's ad tech operations, with a view to such scrutiny being on a rolling basis, rather than ad hoc spot checks. The respondent also deemed it essential that the CMA was provided with full audit rights to Google's demand side platforms ('**DSPs**'), including being able to impose on Google additional data fields that should be made available to the CMA, in order to develop a transparent view of Google's operations.

### *Second Consultation responses*

- 4.367 One respondent (an ad tech provider) to the Second Consultation argued that monitoring should rely on random testing rather than a scheduled set of data that Google produces specifically for such an audit. Another respondent (an ad tech provider) suggested that all tests of the efficacy of the Privacy Sandbox should be audited by an independent third-party auditor.
- 4.368 One respondent (an ad tech provider) suggested that the language in Annex 3 of the commitments is ambiguous about what data from Google's ads solutions would be made available to the Monitoring Trustee.
- 4.369 One respondent (an ad tech provider) in the Second Consultation expressed concern that the Monitoring Trustee would have access to Google personnel but not to Google's technology or source code, and expressed the importance of the Monitoring Trustee being able to verify Google's statements in order to be impactful.
- 4.370 A respondent (an industry association) submitted that Google does not commit to providing the Monitoring Trustee with access to all relevant information to determine whether Google is abiding by its commitments. It queried whether Google will provide access to data for all of Google's B2B

solutions or just its B2B ads solutions, or B2B sell-side ads solutions not monetizing Google's owned and operated inventory. It also stated that Google should provide access to its own internal reporting and testing on the B2B success metrics of Google's publisher and advertiser clients, as well as a list of system and logs.

#### *CMA assessment*

- 4.371 The CMA agrees with consultation respondents that it is essential that the CMA and the Monitoring Trustee have access to appropriate data to ensure Google's compliance with the commitments can be effectively monitored. Importantly, in paragraph 32.e. of the Final Commitments, Google undertakes to provide the CMA with 'any information and documents' required for the CMA to 'monitor and review the operation of the commitments or any provisions of the commitments or for the purposes of their enforcement'. This clause ensures that the CMA will be able to request any data it considers necessary to monitor and review Google's compliance with the commitments.
- 4.372 An outline of the Monitoring Statement is included as Annex 3 of the Final Commitments. This outline states that each Monitoring Statement will include a summary of the Monitoring Trustee's review of the relevant logs detailing the access history of any datasets within Google that contain data relevant to paragraphs 25 to 27 of the Final Commitments. The summary will list out exhaustively any access by 'Ads Systems or related individuals' and provide the justification for such access. The Monitoring Statement will also include a description of training on permissible data access Google has carried out and the attendees of such training. The Monitoring Statement also includes measures for monitoring compliance with paragraphs 30, 31 and 33 of the Modified Commitments.
- 4.373 In point A2 of Annex 3 of the Final Commitments, Google has clarified the data which will be made available to the Monitoring Trustee by replacing the phrase 'ads services' with the defined term 'Ads Systems' and referring to 'Ads Systems or related individuals'; thereby clarifying that the Monitoring Trustee (or independent Technical Experts) will be provided with details of the relevant logs for access by any of the Google computer systems used for Targeting or Measurement of digital advertising on the web. For consistency, a similar clarification has been included in point A1 of Annex 3. Relatedly, Google has confirmed that the reference to 'members of the Google Ads organisation' in point B5 of Annex 3 is intended to mean all staff working on ads related matters within Google (and not just Google Ads employees).

- 4.374 The CMA considers that the access to information, documents and data logs granted to the CMA, Monitoring Trustee and possible independent Technical Experts is sufficient to ensure independent verification and oversight of Google's compliance with the commitments.

### *The CMA's role in ensuring compliance*

#### *First Consultation responses*

- 4.375 In the First Consultation, respondents commented on the CMA's role in ensuring that Google complied with the commitments, with two respondents (an ad tech provider and an industry association) submitting that Compliance Statements should be subject to full audit and review by the CMA. Another respondent (an ad tech provider) suggested that the CMA should have a more active role in enforcing the commitments, and stronger auditing and verification rights, both for Privacy Sandbox and obligations related to Google's use of its own data. One respondent (an industry association) suggested that the commitments should enable the CMA to specify which actions are 'reasonably required to remedy a breach' under the commitments.

#### *Second Consultation responses*

- 4.376 One respondent (an industry association) to the Second Consultation stated that the CMA should have a meaningful role in overseeing Google's conduct, and should intervene if there are outstanding competition concerns.
- 4.377 One respondent (an ad tech provider) noted that the CMA would maintain ultimate responsibility for monitoring Google's compliance with the commitments, and stated that the CMA should set the terms of the Monitoring Trustee's mandate.

#### *CMA assessment*

- 4.378 In Appendix 4, the CMA has outlined further detail on how certain aspects of the Final Commitments will be implemented, including the CMA's role in selecting and interacting with the Monitoring Trustee, as well as testing and assessing the effectiveness of the Privacy Sandbox Proposals. The CMA will play an active and engaged role in both monitoring Google's compliance with the commitments and in assessing the effectiveness of the Privacy Sandbox Proposals and their impacts on competition as they are developed.
- 4.379 As set out in paragraph 41 of Appendix 4, the CMA will receive quarterly compliance reports direct from the Monitoring Trustee. The CMA will also be

able to request any documents, data and data logs that are or may be relevant to matters of compliance with the Final Commitments from the Monitoring Trustee. The CMA will also be able to assess the Monitoring Trustee's performance, and direct it to carry out specific tasks where appropriate. In circumstances where the CMA has reason to conclude that the Monitoring Trustee is not meeting the requirements of its role, the CMA will be able to request that Google dismiss and replace the Monitoring Trustee following the same process as before.

- 4.380 Paragraph 32.d. of the Final Commitments also specifies that any actions required to remedy a breach of the commitments will be taken by Google 'in consultation with the CMA'. The CMA considers that the measures outlined will enable the CMA to ensure Google's compliance with the commitments.

#### *Timeframe for measuring compliance*

##### *First Consultation responses*

- 4.381 During the First Consultation, four respondents (three ad tech providers and an industry association) submitted that specific time periods should be included for the purpose of measuring compliance in Section I of the commitments. One respondent (an industry association) suggested that the commitments should enable the CMA to specify which actions are 'reasonably required to remedy a breach' under the commitments.

##### *Second Consultation responses*

- 4.382 No submissions were made on the time period for measuring compliance in the Second Consultation.

##### *CMA assessment*

- 4.383 The Final Commitments state that the 'reasonable period' referred to (in paragraph 32.c. of the Final Commitments) should not exceed, absent exceptional circumstances, ten Working Days from the date on which Google becomes aware of the conduct in question. Paragraph 32.d. of the Final Commitments specifies that such actions will be taken by Google 'in consultation with the CMA'.
- 4.384 The CMA considers that the Final Commitments provide an appropriate level of clarity as to the timeframes involved in the monitoring and compliance framework, and the role that the CMA will play in overseeing a remedy to any breach.

## ***Duration (Section J of the commitments)***

### ***Overview***

- 4.385 Section J of the Final Commitments sets out that Google has offered commitments for a duration of six years from the CMA's acceptance decision (unless released earlier, under section 31A(4) of the Act).
- 4.386 The CMA considers that the provisions of Section J are both sufficient and appropriate to cover the matters noted below.
- 4.387 Many submissions in response to the First Consultation and the Second Consultation referred to Section J. The key issues raised by these submissions are set out below.

### ***Duration***

#### ***First Consultation responses***

- 4.388 Almost half of all respondents to the First Consultation submitted that the duration set out in Section J of the Initial Commitments should be extended. This was on the basis that it was too short to allow for sufficient regulatory oversight, industry certainty or technological adaptation. Respondents suggested that any commitments should end on the later (not the earlier) of two alternatives within paragraph 29 of the Initial Commitments<sup>232</sup> – or no earlier than five years from the removal of TPCs. One respondent favoured a much longer duration, as for commitments in one merger case.<sup>233</sup>
- 4.389 Other respondents suggested that the Initial Commitments (or at least some parts of them) should have no absolute end date. For example, the duration of Section G and Section H could reset after each Privacy Sandbox-related technology/policy change took place – or could continue for as long as Google was implementing any such changes. Other respondents suggested that any commitments should stay in force until: (i) Google was no longer dominant; (ii) the CMA re-evaluated and found that its concerns were addressed; or (iii) the CMA's DMU had statutory powers and sufficient resources to act.

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<sup>232</sup> Namely, '(i) the two year anniversary of the Removal of Third-Party Cookies; and (ii) five years from the date they are accepted by the CMA, unless released at an earlier date in accordance with section 31A(4) of the Act'.

<sup>233</sup> The behavioural commitments accepted by the European Commission in Case M.9660 *Google/Fitbit* had an initial 10-year period which was extendable by 10 additional years.

### *Second Consultation responses*

- 4.390 Following the First Consultation, Google offered to amend Section J of the commitments. Paragraph 34 of the Modified Commitments therefore provided for a revised duration: six years, in principle, from any CMA acceptance decision. A few Second Consultation respondents cited this revised duration.
- 4.391 Two respondents (two industry associations) welcomed Google's offer of a longer duration in the Modified Commitments relative to that in the Initial Commitments.
- 4.392 Three respondents (two ad tech providers and an industry association) suggested that the duration should be extended further than – or at least capable of being extended beyond – that set out in Modified Commitments.
- 4.393 Two submissions during the Second Consultation resembled some that the CMA received during the First Consultation. One respondent (an ad tech provider) suggested that any commitments should stay in force until Google's Chrome was no longer a dominant browser. Another respondent (an industry association) submitted that when the six-year period in Section J ended, the CMA should have the express ability to re-evaluate and assess whether it was appropriate to extend the duration beyond that six-year period.
- 4.394 One other respondent (an ad tech provider) suggested a 15-year duration, with clearly defined consequences for any failure by Google to honour its commitments during that specified duration. This was on the basis that a company of Google's size could simply 'wait out' a period of only six years.

### *CMA's assessment*

- 4.395 Section J provides for a six-year duration for the Final Commitments. Given the date of this Decision, this will expire in early 2028.
- 4.396 In the CMA's view, Section J of the Final Commitments addresses the concerns, as outlined above, of respondents to the First Consultation and Second Consultation.
- 4.397 The CMA considers that the Final Commitments allow for a long (but not an unduly long) sustained period in which the CMA can assess further the Privacy Sandbox Proposals and their impact.<sup>234</sup> Throughout that duration, the CMA will be assessing the extent of Google's compliance with its

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<sup>234</sup> By contrast, the CMA considers for example that a 10-year duration, a 15-year duration or a perpetual duration, would be an unduly long duration for any commitments given by Google in this investigation.

commitments, and able to take further action in a number of circumstances (as variously set out in the Final Commitments and/or the Act).

4.398 It is appropriate that this duration is longer than that provided for under the Initial Commitments,<sup>235</sup> not least because since the Initial Commitments were published, Google announced in late June 2021 a longer timeline to implement at least some Privacy Sandbox Proposals than Google had proposed initially.<sup>236</sup> This increase in the duration of the commitments should give comfort to respondents who expressed concern that Google may yet announce further delays, as Google did in late June 2021.<sup>237</sup>

4.399 In addition, while the role of monitoring the implementation of any commitments would fall to the CMA for their duration, in the medium term the establishment of the DMU could provide an alternative framework for regulatory oversight and scrutiny, and thus re-evaluation.

### ***Sections K, L, and M of the commitments***

#### ***Overview***

4.400 Sections K, L, and M of the Final Commitments contain provisions relating to:

- (a) Google's ability to offer a variation or substitution of any commitments (Section K);
- (b) the effect of any part of any commitments being contrary to law or invalid or unenforceable (Section L); and
- (c) the law by which any commitments would be governed, the jurisdiction for any related disputes and the agent for any related proceedings (Section M).

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<sup>235</sup> As stated in the November Notice, the CMA estimated that given the likely timing for any CMA decision to accept commitments in this investigation, the Modified Commitments would likely be in force for at least one year longer (and potentially just over three years longer) than the duration set out in paragraph 29 of the Initial Commitments.

<sup>236</sup> Chrome blog, [An updated timeline for Privacy Sandbox milestones](#), 24 June 2021 (as accessed on 3 February 2022): 'Subject to our engagement with the [...] [CMA] and in line with the commitments we [ie Google] have offered, Chrome could then phase out third-party cookies over a three month period, starting in mid-2023 and ending in late 2023'.

<sup>237</sup> See Appendix 2, paragraph 52, for the CMA's summary of respondents' concerns about Google's ability to arbitrarily delay the removal of TPCs (in the context of Section F of the commitments).

- 4.401 For representations on Section K made during the First Consultation, see Appendix 2 at paragraph 121. The CMA did not receive any responses on Section K during the Second Consultation.
- 4.402 The CMA received no material representations during the First Consultation (and none at all during the Second Consultation) in respect of Section L.
- 4.403 Consultation responses made on Section M focused, as outlined below, on the scope of the commitments and their application to Google's corporate group.

#### *Application of service provisions (Section M of the commitments)*

##### *First Consultation responses*

- 4.404 Several responses concerned the definition of 'Google' and 'Group'. Two respondents (two industry associations) took the view that any commitments in this matter should expressly apply to Alphabet Inc. (as the appropriate parent company): see paragraphs 4.32 to 4.33 above. On this basis, one respondent suggested amending Section M so that Alphabet Inc. – rather than Google LLC – would receive service in England and Wales (by its agent) of any proceedings arising out of any commitments accepted by the CMA.<sup>238</sup>

##### *Second Consultation responses*

- 4.405 The CMA received no responses on Section M during the Second Consultation.

##### *CMA assessment*

- 4.406 Section M of the Final Commitments provides that each of Alphabet Inc. and Google LLC would receive service of any commitments-related proceedings.
- 4.407 In combination with the definitions of 'Google' and 'Group' detailed at paragraphs 4.32 to 4.33 above, the CMA considers that changes made (since the Initial Commitments) to ensure that Alphabet Inc. is included within the scope of the commitments<sup>239</sup> improve the coverage of the commitments.

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<sup>238</sup> For the CMA's summary (and assessment) of additional consultation responses on Sections K, L and M of the Initial Commitments, see Appendix 2, paragraphs 121–125. For the CMA's summary (and assessment) of additional consultation responses on other aspects of the Initial Commitments – including the scope of the Initial Commitments and specific Privacy Sandbox Proposals – see Appendix 2, paragraphs 126–132.

<sup>239</sup> For the avoidance of doubt, no changes were made to Section K or Section L of the Initial Commitments.



4.408 On basis of the above, and given that it did not receive any responses on this section in the Second Consultation, the CMA does not consider that further changes are required.

### ***Other responses to the Second Consultation (not relating to interim measures)***

#### ***Overview***

4.409 The CMA received several other responses to the Second Consultation, which did not necessarily relate directly to any specific part(s) of the Modified Commitments. The key issues raised by these submissions are set out below.<sup>240</sup>

#### ***Scope of conduct/market effects covered by the commitments***

##### ***First Consultation responses***

4.410 Details of related submissions that were included in responses to the First Consultation are set out in Appendix 2 to this Decision, paragraphs 127 to 130.

##### ***Second Consultation responses***

4.411 As further detailed below, five respondents submitted that the scope of the commitments and/or the CMA's concerns were too narrow, and may require substantial expansion.

- (a) One respondent (a media company) had wider concerns about the future of the internet, submitting that regulators like the CMA should monitor the effects of (and consider the need to intervene further in) shifts in the operation and control of essential technologies interventions in the future.
- (b) Two respondents (an ad tech provider and an industry association) submitted that the commitments are an improvement but failed to address concerns around market distortion in the ad tech value chain – or the more general concerns about the open internet raised by one respondent.
- (c) One respondent (an industry association) requested that the commitments incorporate proposals, within the European Union's draft Digital Markets Act, for digital gatekeepers like Google to provide publishers with enhanced data on eg advertising auctions, bids, pricing conditions and

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<sup>240</sup> See Appendix 2, paragraphs 126–132, for the CMA's summary (and assessment) of similar responses raised by respondents during the First Consultation in relation to the Initial Commitments.

advertising performance measurement (eg free of charge, high-quality, real-time and continuous access to information on FLoCs, or any other use case).

- (d) One respondent (an ad tech provider) requested that the CMA should not focus so intently on the impact of the Privacy Sandbox Proposals, but instead review critically the entirety of the digital ad marketplace.

4.412 Three respondents suggested that the CMA should undertake a broader review of developments in relation to the functionality of browsers.

- (a) One respondent (a media company) submitted that the CMA should review the development of all new browser functionality for competitive impact, because Google was increasingly developing proposals outside of the Privacy Sandbox Proposals and in fora other than W3C (eg Gnatcatcher was under discussion in the IETF). The respondent considered that Google's aim was to evade regulatory oversight.
- (b) One respondent (an industry association) echoed previous submissions made during the First Consultation, as set out in paragraph 128 of Appendix 2 to this Decision, that the CMA should be equally investigating the effects and motivation behind certain actions by Apple's Safari browser which were similar to Privacy Sandbox.
- (c) One respondent (an industry association) submitted that it is illogical and inconsistent for the commitments to only cover technologies that are alternatives to TPCs, and not alternatives to other interoperable data sources that any proposed Google browser change would remove.

#### *CMA assessment*

4.413 The CMA has assessed the appropriateness of any commitments based on the scope of the CMA's investigation and competition concerns identified during its investigation (as summarised in eg the June Notice). This investigation follows a market study conducted by the CMA which, justifiably, had a much broader scope. The CMA therefore considers that the Final Commitments require no modification to address the above points. If the CMA were to consider that there are competition concerns beyond the scope of its investigation to date, the acceptance of the Final Commitments does not preclude the CMA from opening an investigation in relation to such matters. This is confirmed by section 31B(3) of the Act. Further, the introduction of broader obligations for the wider market, or wider categories of industry player, would appear to be a matter for the UK Government to legislate on –

and/or for the CMA's market investigation powers or the DMU, once it has statutory powers and sufficient resources to act – rather than the investigation under the Act of one case party (ie Google).

### *Suggestions in relation to specific Privacy Sandbox Proposals*

#### *First Consultation responses*

- 4.414 Details of related submissions that were included in responses to the First Consultation are set out in Appendix 2 to this Decision, paragraph 131.

#### *Second Consultation responses*

- 4.415 One respondent (an industry association) submitted that any commitments should place limits on Google introducing the WebID proposal within the FedCM element of the Privacy Sandbox Proposals. This was because this proposal would disintermediate users from websites which they use, and limit the data available to publishers (while increasing the data available to Google).

#### *CMA assessment*

- 4.416 The CMA considers that the concerns outlined above are capable of being addressed by the general non-discrimination commitments set out in Section H.

### *Suggestions in relation to additional specific provisions for any commitments*

#### *First Consultation responses*

- 4.417 Any material suggestions for additional specific provisions within the commitments made during the First Consultation were summarised in the November Notice, albeit not under a specific heading (such as the heading immediately above). Instead, in the November Notice the CMA included summaries of those suggestions under headings which generally related to an appropriate section of the commitments.

#### *Second Consultation responses*

- 4.418 Two respondents (an ad tech provider and an industry association) submitted explicitly that a structural separation of Chrome from Google's advertising activities (ie the divestment of Chrome) is a necessary and appropriate

measure, which was needed in order to tackle effectively Google's data and conflicts of interest across the ad tech value chain.<sup>241</sup>

- 4.419 One respondent (an ad tech provider) submitted that some advertising-focused Privacy Sandbox Proposals would rely on server-side processing. Therefore, in order to support effectively open competition and innovation in B2B advertising solutions, the commitments should enable third parties to access Personal Data which Google's client-side browser would send to Google's server-side Ad Systems.
- 4.420 One respondent (an ad tech provider) suggested that a dispute resolution process should set out for disputes concerning the commitments. This could allow for quicker resolutions than the traditional court system, and/or involve a neutral panel of technical and legal experts.
- 4.421 One respondent (a browser) submitted that any commitments should explicitly discourage or disapprove any approaches that: (i) require centralization in order to provide privacy protection (eg FLEDGE, AMP<sup>242</sup>); (ii) require users to pay for privacy protection; or (iii) could have the effect of damaging (or preventing) other measures aimed at providing privacy protection.

#### *CMA assessment*

- 4.422 The CMA does not consider it necessary or appropriate to include within any commitments any requirement of the sorts outlined above, ie for structural separation or for making data available. At this stage, the CMA considers that the Final Commitments contain appropriate measures to reassure third parties that action will be taken if Google does not comply with the general non-discrimination commitments set out in Section H. These issues can however, if required, be considered further in future, eg during the Standstill Period (as set out in Appendix 2 to this Decision, paragraph 104). The CMA's view is therefore that the commitments need not be modified to address the points outlined above.
- 4.423 The CMA notes the provisions of paragraph 17 of the Final Commitments, which are specifically aimed at helping the CMA and Google to organise their dialogue, and identify and resolve quickly any concerns arising. As reflected in Section F, if any outstanding concerns cannot be resolved with Google, the CMA may continue this investigation and if it were to do so, impose interim

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<sup>241</sup> Another respondent (an industry association), to somewhat similar effect, expressed concerns about conflicts of interest arising from structural conditions on the buy- and sell-sides of the online advertising market.

<sup>242</sup> As set out in Appendix 2 to this Decision, eg paragraph 5, the CMA's view is that 'Accelerated Mobile Pages' or 'AMP' are not part of the Privacy Sandbox Proposals, and therefore not within the scope of this investigation.

measures, if necessary, to avoid harm to competition. In addition, Section M of the Final Commitments specifies the jurisdiction for any disputes arising concerning the commitments. The CMA's view is that the Final Commitments need not be modified in order to accommodate any further specific provisions aimed at resolving disputes.

- 4.424 The CMA notes that no part of the Final Commitments offered by Google, or of this Decision, is intended to set out any substantive views on whether a given use of any Privacy Sandbox Proposal (or, indeed, any ad tech) complies with applicable data protection law. The CMA's view is that the Final Commitments need not be modified in order to accommodate the type of statements outlined above.

*Submissions regarding the CMA's consultation of third parties during the investigation*

*First Consultation responses*

- 4.425 One respondent (a data company) suggested during the First Consultation that the CMA should consider further outreach work before formally accepting any commitments in this investigation.

*Second Consultation responses*

- 4.426 During the Second Consultation, the respondent quoted immediately above repeated its previous submission. That respondent also expressed concern that, given the number of respondents quoted in part of the November Notice, the First Consultation may not have yielded responses from a sufficiently large or representative set of respondents (eg advertisers, publishers and providers of data).
- 4.427 Three respondents (two ad tech provider and an industry association) deemed the period for responses to the Second Consultation too short. Two respondents referred to concurrent holidays in the USA. The third respondent suggested, given its size, a period of at least 30 days.
- 4.428 One respondent (an ad tech provider) was concerned that it was unable to provide any assessments of the effectiveness of the Modified Commitments without more detail as to how proposals such as Trust Tokens, FLoC, FLEDGE, and Privacy Budget would be implemented (since the related Origin Trials had been limited, or not even begun).

### *CMA assessment*

- 4.429 During the course of its investigation, the CMA has interacted with Google and many industry stakeholders, including by means of the First Consultation and Second Consultation. The CMA considers that it has engaged sufficiently with both industry stakeholders, and the submissions and evidence provided by those parties, to be confident in its view that it is appropriate to accept the Final Commitments in order to address the CMA's competition concerns in this case.
- 4.430 The CMA's view is that the period for each consultation was appropriate, and in any event exceeded the relevant statutory minimum period (respondents had four weeks to respond to the First Consultation and three to respond to the Second Consultation)<sup>243</sup> The CMA's view is that a relatively shorter period for the Second Consultation was justified, given the shorter statutory minimum period and the anticipation of a more focused set of responses, ie primarily dealing with modifications since the First Consultation.
- 4.431 The CMA appreciates that if a proposal is not yet fully developed, that circumstance impacts on the extent to which any stakeholder can comment on that proposal. In any event, as set out above at paragraphs 4.193 to 4.262, once the Privacy Sandbox Proposals are at a more advanced stage the CMA will during the Standstill Period consult on whether its competition concerns have been addressed, and can notify any concerns to Google for resolution.

### ***Representations on consequences of accepting commitments for interim measures***

#### ***Overview***

- 4.432 As set out at paragraph 3.10 of the June Notice, the CMA explained that it 'will not' impose interim measures if it were to accept commitments. Interim measures could, however, be considered in the future if one of the statutory conditions in section 31B(4) is fulfilled.<sup>244</sup>

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<sup>243</sup> 11 working days and 6 working days, respectively: see paragraphs 2(3) and 3(3) of Schedule 6A to the Act.

<sup>244</sup> Section 31B(2)(c) of the Act makes provision that the CMA shall not give a direction under section 35 of the Act (interim measures) in relation to the conduct which was the subject of its investigation unless one of the statutory exceptions applies. Under section 31B(4) of the Act, the CMA is not prevented from (among other things) giving a direction where it has reasonable grounds for: (a) believing that there has been a material change of circumstances since the commitments were accepted; (b) suspecting that a person has failed to adhere to one or more of the terms of the commitments; or (c) suspecting that information which led it to accept the commitments was incomplete, false or misleading in a material particular.

- 4.433 The CMA specifically indicated in the November Notice that the CMA would carefully consider representations on a consequence of accepting commitments, ie that it would not be able to impose interim measures.<sup>245</sup>
- 4.434 Five respondents to the Second Consultation (two industry associations, two ad tech providers and a publisher) requested that the CMA should adopt interim measures under section 35 of the Act. The CMA has categorised the representations received and summarises them below.
- 4.435 The CMA has not reached a view on whether the conditions of section 35 of the Act are met. The acceptance of the Final Commitments, addressing the competition concerns which the CMA has identified, renders superfluous the need for the CMA to make a decision on whether to give any interim measures direction.

#### *Possible drivers for interim measures*

##### *First Consultation responses*

- 4.436 The CMA received no responses to the First Consultation in which this issue was specifically addressed.

##### *Second Consultation responses*

- 4.437 One respondent (an industry association) referred to its earlier application for interim measures and supplementary submissions. It suggested that imposing interim measures was the only way to address the issues, that the CMA should now issue an interim measures order, and that it could see no reason for the CMA not to do so.
- 4.438 One respondent (a publishers' association) suggested that the adoption of interim measures would strengthen the CMA's approach, and ensure that the development of the Privacy Sandbox compiles with applicable competition law. The respondent referred to the General Court's judgment in *Google Search (Shopping)*<sup>246</sup> to support its view that Google had enhanced duties as an 'ultra-dominant' business. In its view, Google had 'explicitly failed' to comply with such duties where regulators had previously attempted to impose remedies. The respondent considered that there was therefore a strong case for the CMA to use its interim measures powers, to ensure that each step in the iteration of the Privacy Sandbox Proposals complied with competition law.

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<sup>245</sup> November Notice, paragraph 1.12.

<sup>246</sup> Case T-612/17 *Google LLC and Alphabet Inc. v European Commission*, judgment of 10 November 2021.

- 4.439 One respondent (an ad tech provider) submitted that, given the lapse of time since submission of ‘the complaint’, and harm had ‘continued unimpeded’, the case for interim measures was ‘strong’. It considered that interim measures would better address the CMA’s concerns and provide certainty to the markets. The respondent considered that the CMA should use its ‘ex-ante powers’ to prevent Google from using its dominant position in browsers to impose unfair terms on individuals and on B2B digital markets.

#### *CMA assessment*

- 4.440 The CMA has a discretion as to how it deals with suspected infringements of the Chapter I prohibition and the Chapter II prohibition set out under the Act. The CMA considers that acceptance of the Final Commitments is appropriate for the purposes of addressing the CMA’s competition concerns. The other factors mentioned in the preceding paragraphs concerning drivers for interim measures do not change this assessment.

#### *Possible use of interim measures alongside commitments*

##### *First Consultation responses*

- 4.441 The CMA received no responses to the First Consultation in which this issue was specifically addressed.

##### *Second Consultation responses*

- 4.442 One respondent (an ad tech provider) asked the CMA to use ‘its powers of injunction’ to delay certain changes until after the commitments have been accepted and the DMU established to provide enforcement. The respondent also supported comments made by an industry association of which it is a member.
- 4.443 One respondent (a publisher) submitted that the CMA should issue an interim order linked to Google’s commitments. It suggested that the interim order could be eased stage by stage as Google shows it has met its targets. The respondent agreed with the submissions of an industry association of which it is a member.
- 4.444 One respondent (an industry association) submitted that ‘the Act does not clearly provide for interim measures after commitments’.



4.445 The same respondent also suggested that the CMA should impose an order ‘that can be suspended provided Google complies with its undertakings’.<sup>247</sup> More specifically, the respondent suggested that the CMA could attach the undertakings and conditions to that order, suspending its operation if the conditions in the commitments are, in the CMA’s view, observed by Google. The respondent submitted that if Google were to breach undertakings attached to any order, the CMA would be able to enforce it swiftly.

### *CMA assessment*

4.446 In the medium term, the establishment of the DMU in the UK, along with a code of conduct for firms with strategic market status, could provide a framework for regulatory oversight and scrutiny. However, for the duration of the Final Commitments, the role of monitoring the implementation of the Final Commitments would fall to the CMA.

4.447 The CMA considers that it is clear from the statutory framework that interim measures and commitments covering the same subject matter cannot be in force under the Act at the same time.

4.448 First, the Act does not permit interim measures to be imposed in an investigation once commitments have been accepted (unless the investigation in question is continued under section 31B(4)). Under section 31B(2)(c), if the CMA has accepted commitments under section 31A (and has not released them), ‘the CMA shall not [...] give a direction under section 35’. The CMA recognises that a consequence of accepting commitments under section 31A is that, by virtue of section 31B(2)(c), the CMA is precluded from giving a direction under section 35 (interim measures).

4.449 Second, section 35(5) of the Act provides that if commitments are accepted while interim measures are in force, those interim measures may ‘be replaced’ by the commitments. There is no suggestion that the commitments and the interim measures can coexist. This is reinforced by the fact that a direction for interim measures can only be made while the investigation in question continues,<sup>248</sup> and that the Act precludes the CMA from continuing its investigation once commitments have been accepted.<sup>249</sup>

4.450 Third, if the CMA were to continue this investigation under section 31B(4) of the Act and impose interim measures, section 31B(5) of the Act specifies that

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<sup>247</sup> An industry association also suggested that interim measures should ‘prevent the implementation of the Privacy Sandbox until [other] commitments [...] are agreed’.

<sup>248</sup> Section 35(1) of the Act.

<sup>249</sup> Section 31B(2)(a) of the Act.

any commitments accepted are to be treated as released from the date of the interim measures direction.

- 4.451 This indicates that interim measures and commitments covering the same subject-matter are not intended to be in force under the Act at the same time. This is also apparent when one considers the purposes of interim measures and commitments. Interim measures are intended to be ‘temporary directions’.<sup>250</sup> Section 35(5) of the Act indicates that the purpose of interim measures is, broadly speaking, to prevent significant damage to a particular person or group of persons or protect the public interest, until the CMA makes a decision (as to whether there has been an infringement, at which point, final directions may replace the interim measures) or until the CMA accepts commitments. Commitments, by contrast, are one of the ways in which the CMA can bring an investigation to an end.
- 4.452 In relation to the respondent’s suggestion that the CMA should impose an order (attaching undertakings and/or conditions) that could be suspended until such time as the CMA considered Google to be complying with the terms of the commitments,<sup>251</sup> the CMA considers that once commitments have been accepted by the CMA, using the interim measures powers in this way is not possible under the Act.

### *Public interest - threat to news publishing*

#### *First Consultation responses*

- 4.453 The CMA received no responses to the First Consultation in which this issue was specifically addressed.

#### *Second Consultation responses*

- 4.454 One respondent (an industry association) submitted that the ‘public interest test’ under section 35(2)(b) of the Act was met. It considered that the absence of interim measures meant that publishers were becoming more dependent on Google. In this regard, the respondent submitted that there was a considerable threat to news publishing and the plurality of the news, which was an important issue to the functioning of a democratic society.

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<sup>250</sup> [Procedural Guidance](#), paragraph 8.1.

<sup>251</sup> The submission in question refers to Google complying with its ‘undertakings’. This is presumed to be a reference to Google’s commitments as the submission refers elsewhere to commitments in relation to this point.

### *CMA's assessment*

- 4.455 To the extent that any harm to plurality of the media/democracy results from the competition concerns that the CMA has identified in its investigation, the CMA considers that by addressing those competition concerns through accepting the Final Commitments, any such threat to plurality is also addressed.

### *Possible content of interim measures*

#### *First Consultation responses*

- 4.456 The CMA received no responses to the First Consultation in which this issue was specifically addressed.

#### *Second Consultation responses*

- 4.457 One respondent (an industry association) suggested that interim measures should prohibit Google from making changes to its browser which withdraw or interfere with existing interoperability and functionality. It submitted a draft order setting out (among other things) examples of such changes, and according to which Google would be required not to enforce certain policies.<sup>252</sup>
- 4.458 In addition, the respondent submitted that interim measures should require Google (i) not to implement Gnatcatcher<sup>253</sup> or 'any other IP cloaking mechanism'; (ii) not to implement WebID; (iv) not to deprecate the user-agent string; (v) not to deprecate TPCs; (vi) not to implement Privacy Budget; (vii) not to implement Fenced Frames; and (viii) not to do any equivalent act.
- 4.459 The respondent submitted that any obligation for continuing supply resulting from interim measures could be coupled with an improved system of vetting alternatives for competitive capability and actual effectiveness, in a further revised set of undertakings that test them properly for their competitive effectiveness before they can be implemented.

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<sup>252</sup> The CMA has reviewed the draft order for the purposes of ascertaining whether it includes anything to suggest that it would not be appropriate for the CMA to accept the Final Commitments, and not for the purposes of the CMA deciding whether or not to make any interim measures direction in this investigation.

<sup>253</sup> The respondent also submitted that Gnatcatcher should only be implemented after assessment by the ICO/CMA for competition effects and following a 'showing of non-discrimination'. The respondent suggested that Google needs to be 'restrained' from affecting 'legitimate B2B uses' of IP addresses.

- 4.460 The respondent submitted that Google should have no objection to interim measures providing a power to require continuing interoperability, as Google had already agreed the relevant point of principle.

#### *CMA assessment*

- 4.461 The CMA has considered the subject-matter of the complaints referred to in paragraph 2.2 above, which helped inform the CMA's competition concerns. The CMA considers that acceptance of the Final Commitments is appropriate for the purposes of addressing the CMA's competition concerns. The Final Commitments provide for sufficient regulatory scrutiny and oversight of in relation to the Privacy Sandbox Proposals, the absence of which was at the heart of the concerns described in Chapter 3 above.

#### *Google's announcements and browser changes and their possible reversal*

##### *First Consultation responses*

- 4.462 The CMA received no responses to the First Consultation in which this issue was specifically addressed.

##### *Second Consultation responses*

- 4.463 One respondent (an industry association) suggested that Google's announcements merited restraint by way of an 'order' that could oblige Google to suspend the implementation of the Privacy Sandbox. This respondent submitted that if the CMA were to prohibit Google from making further announcements, such a prohibition should be accompanied by (among other things) a retraction of previous announcements, with equal prominence, in accordance with a communications plan.
- 4.464 One respondent (an ad tech provider) suggested that Google's commitments should return browser functionality to the state it was in as at July 2020.

#### *CMA's assessment*

- 4.465 The CMA considers that acceptance of the Final Commitments is appropriate for the purposes of addressing the CMA's competition concerns. While announcements are not expressly mentioned in paragraph 7 of the Final Commitments, the Final Commitments contain various provisions relating to external communications by Google (notably in paragraphs 10 to 12) and address the CMA's competition concerns.

4.466 With regard to the suggested ‘retraction’ of previous public statements, the CMA notes that commitments under the Act are generally forward-looking, ie are intended to deal with what happens from the date of their acceptance (until their expiry), rather than seeking to turn the clock back. Section 31B(2) of the Act provides that, if the CMA accepts commitments, the CMA cannot make an infringement decision in respect of past conduct within the scope of the investigation. In the absence of (a settlement leading to) an infringement decision, an undertaking may be unlikely to offer to reverse past events as such. In the present case, Google has not offered any commitment of the type suggested in the submissions summarised above.

#### *Initial enforcement orders within the CMA’s merger control regime*

##### *First Consultation responses*

4.467 The CMA received no responses to the First Consultation in which this issue was specifically addressed.

##### *Second Consultation responses*

4.468 One respondent (an industry association) noted that the CMA has used interim measures under its merger control jurisdiction to require reversal of changes. That respondent also noted that there was no clear equivalent, within the commitments, to the Interim Enforcement Orders found within the CMA’s merger control regime.

##### *CMA assessment*

4.469 The CMA notes that ‘initial enforcement orders’ are made under section 72(2) of the Enterprise Act 2002, which is a different statutory scheme. Section 72(3B) of the Enterprise Act 2002 expressly permits the CMA to make an order ‘for the purpose of restoring the position to what it would have been’ had ‘pre-emptive action’ not been taken.

4.470 No such wording appears in section 35 of the Act. The current investigation is being carried out under section 25(4) of the Act. If interim measures were under consideration, section 33(3) of the Act would apply by virtue of section 35(7) of the Act. Under section 33(3) of the Act, ‘a direction [...] may, in particular, include provision – (a) requiring the person concerned to modify the conduct in question; or (b) requiring him to cease that conduct’. This provision does not, therefore, include any express reference to ‘restoring the position’, unlike section 72(2) of the Enterprise Act 2002.

### *Paragraph 17 of the commitments and interim measures*

#### *First Consultation responses*

- 4.471 The CMA received no responses to the First Consultation in which this issue was specifically addressed.

#### *Second Consultation responses*

- 4.472 One respondent (an ad tech provider) suggested that the text of paragraph 17 of the commitments seemed to give Google the power to remove the CMA's access to section 35 of the Act, in certain circumstances.

#### *CMA assessment*

- 4.473 The CMA considers that, where the CMA accepts commitments under section 31A of the Act, the CMA is precluded from giving a direction under section 35, by virtue of section 31B(2)(c). This follows from the wording of the Act, rather than from the wording of the Final Commitments. Under section 31B(2)(c), if the CMA has accepted commitments under section 31A (and has not released them) then 'the CMA shall not [...] give a direction under section 35'.

## 5. The CMA's overall assessment of the Commitments

- 5.1 Google has offered the Final Commitments to the CMA for the purpose of addressing the CMA's competition concerns (as described in Section 3 of this Decision). The Final Commitments are set out in Appendix 1A.
- 5.2 Pursuant to section 31A of the Act, for the purposes of addressing the competition concerns it has identified, the CMA may accept from such person (or persons) concerned as it considers appropriate, commitments to take such action (or refrain from taking such action) as it considers appropriate.
- 5.3 For the reasons set out below, and having regard to the CMA's Procedural Guidance,<sup>254</sup> the CMA has concluded that the regulatory scrutiny, oversight and obligations put in place by the Final Commitments address the competition concerns that the CMA has identified.
- 5.4 As a result of its acceptance of the Final Commitments, the CMA will discontinue its investigation with no decision made on whether the Chapter II prohibition has been infringed.<sup>255</sup>
- 5.5 In reaching the decision to accept the Final Commitments, the CMA has considered the representations made in response to the June Notice and in response to the November Notice, as required by Schedule 6A to the Act and has taken these into account in making this Decision.<sup>256</sup>
- 5.6 The rest of this Chapter 5 provides:
- (a) an overview of the relevant parts of the Procedural Guidance;
  - (b) a summary of the way in which the Final Commitments meet the competition concerns set out in Chapter 3 of this Decision;
  - (c) a more detailed description of the key provisions of the Final Commitments, and the CMA's assessment of them by reference to its competition concerns; and
  - (d) the CMA's assessment of the commitments by reference to the other criteria set out in the Procedural Guidance.

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<sup>254</sup> [Procedural Guidance](#); see further details below.

<sup>255</sup> This is without prejudice to the CMA's ability to take action under section 31B(4) of the Act. For more detail on the powers of the CMA under section 31B(4), see eg paragraphs 4.256–4.262 above.

<sup>256</sup> The CMA has not reached a view on whether the conditions of section 35 of the Act are met.

## The CMA's Procedural Guidance

- 5.7 The Procedural Guidance states that the CMA is likely to consider it appropriate to accept commitments only in cases where: (a) the competition concerns are readily identifiable; (b) the competition concerns are addressed by the commitments offered; and (c) the proposed commitments are capable of being implemented effectively and, if necessary, within a short period of time.<sup>257</sup>
- 5.8 However, the Procedural Guidance states that the CMA will not accept commitments where compliance with such commitments and their effectiveness would be difficult to discern or where the CMA considers that not to complete the relevant aspect of its investigation and make a decision would undermine deterrence.<sup>258</sup>

## Summary of the overall assessment

- 5.9 As set out in Chapter 3 of this Decision, the CMA's competition concerns relate, first, to the likely impact of the Privacy Sandbox Proposals if they are implemented without sufficient regulatory scrutiny and oversight and second, to Google's announcements of the relevant proposals and/or implementing steps prior to issue of the June Notice.
- 5.10 In brief, the CMA has the following concerns in relation to the likely impact of the Privacy Sandbox Proposals, if implemented without sufficient regulatory scrutiny and oversight:
- (a) that by restricting third parties' ability to track users (and associated functionality, including the ability to target and measure the effectiveness of digital advertising) while retaining Google's ability to do so, the Privacy Sandbox Proposals would be likely to distort competition in the supply of ad inventory and ad tech services in the UK;
  - (b) that by transferring key functionalities to Chrome, the Privacy Sandbox Proposals give Google the opportunity to self-preference its own ad inventory and ad tech services, affecting digital advertising market outcomes through Chrome in a way that cannot be scrutinised by third parties; and
  - (c) that the Privacy Sandbox Proposals would be likely to allow Google to exploit its likely dominant position by denying Chrome web users

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<sup>257</sup> [Procedural Guidance](#), paragraph 10.18.

<sup>258</sup> [Procedural Guidance](#), paragraph 10.20.



substantial choice in terms of whether and how their personal data is used for the purpose of targeting and delivering advertising to them.

- 5.11 The extent to which these concerns are actually borne out in the future will depend on the design and implementation of the Privacy Sandbox Proposals, which has not yet been finalised. For example, if the tools developed through the Privacy Sandbox Proposals are demonstrated to be effective substitutes for the functionalities lost through stopping user tracking, this would protect against the first concern. Similarly, the risk of self-preferencing and the need to give users sufficient choice depends on the design of the Privacy Sandbox Proposals. If Google were to remove TPCs without having taken the steps envisaged by the Final Commitments, the CMA could consider this a material change of circumstances since those commitments were accepted, or a breach of those commitments, or both.<sup>259</sup> In this scenario, the CMA could decide to continue its investigation, make an infringement decision or give an interim measures direction.
- 5.12 In addition, the CMA is concerned that the announcements have caused uncertainty in the market as to the specific alternative solutions which will be available to publishers and ad tech providers once TPCs are deprecated.
- 5.13 In relation to Google's announcement of the relevant proposals and/or implementing steps, the CMA considers that the concerns that third parties have expressed to it regarding the impact that the Privacy Sandbox Proposals are likely to have reflected in part:
- (a) the asymmetry of information between Google and third parties regarding the development of the Privacy Sandbox Proposals, including the criteria that Google will use to assess different design options and evidence relating to their effectiveness against these criteria; and
  - (b) a lack of confidence on the part of third parties regarding Google's intentions in developing and implementing the Privacy Sandbox Proposals, given the commercial incentives that Google faces in developing the proposals and the lack of independent scrutiny of those proposals.

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<sup>259</sup> In addition, under section 31E of the Act, where a person from whom the CMA has accepted commitments fails without reasonable excuse to adhere to the commitments, the CMA may apply to the court for an order requiring the default to be made good.

- 5.14 The CMA has decided that the regulatory scrutiny, oversight and obligations put in place by the Final Commitments address these competition concerns. In particular, the commitments:
- (a) **Establish a clear purpose** that will ensure that the Privacy Sandbox Proposals are developed in a way that addresses the competition concerns identified by the CMA during its investigation, by avoiding distortions to competition, whether through restrictions on functionality or self-preferencing, and avoiding the imposition of unfair terms on Chrome's web users;
  - (b) **Establish the criteria that must be taken into account** in designing, implementing and evaluating the Privacy Sandbox Proposals. These include the impact of the Privacy Sandbox Proposals on:
    - (i) privacy outcomes and compliance with data protection principles, as set out in applicable data protection legislation;<sup>260</sup>
    - (ii) competition in digital advertising and in particular the risk of distortion to competition between Google and other market participants;
    - (iii) the ability of publishers to generate revenue from ad inventory; and
    - (iv) user experience and control over the use of their data;
  - (c) **Provide for greater transparency and consultation with third parties over the development of the Privacy Sandbox Proposals**, including through operating a formal process for engaging with Google's third-party stakeholders on a dedicated microsite, reporting regularly to the CMA on how Google has taken into consideration third-party views, providing that Google's key public disclosures will refer to the CMA's role (and the ongoing CMA process) and disclosing publicly the results of tests of the Privacy Sandbox Proposals. This would help to overcome the asymmetry of information between Google and third parties regarding the development of the Privacy Sandbox Proposals;
  - (d) **Provide for the close involvement of the CMA in the development of the Privacy Sandbox Proposals** to ensure that the purpose of the commitments is met, including through: regular meetings and reports; working with the CMA without delay to identify and resolve any competition concerns before the removal of TPCs; and involving the CMA in the evaluation and design of tests of all Privacy Sandbox Proposals

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<sup>260</sup> See the ICO Opinion, as referred to at footnote 9 of this Decision.

amenable to quantitative testing. This ensures that the competition concerns identified by the CMA about the potential impacts of the Privacy Sandbox Proposals are addressed and helps to address the lack of confidence on the part of third parties regarding Google's intentions in developing and implementing the Privacy Sandbox Proposals;

- (e) **Provide for a Standstill Period** of at least 60 days before Google proceeds with the removal of TPCs, giving the CMA the option, if any outstanding concerns cannot be resolved with Google, to continue this investigation and, if necessary, impose any interim measures necessary to avoid harm to competition. Additional provisions address concerns about Google removing certain other functionality or information before removal of TPCs, and the CMA monitoring Google's adherence to any resolutions reached under the commitments. These provisions strengthen the ability of the CMA to ensure its competition concerns are in fact resolved;
- (f) Include **specific commitments by Google not to combine user data** from certain specified sources for targeting or measuring digital advertising on either Google owned and operated ad inventory or ad inventory on websites not owned and operated by Google. A related provision confirms Google's intent to use Privacy Sandbox tools in future as third parties will be able to use them. These provisions address the competition concerns arising from Google's greater ability to track users after the introduction of the Privacy Sandbox Proposals;
- (g) Include **specific commitments by Google not to design any of the Privacy Sandbox Proposals in a way which could self-preference Google**, not to engage in any form of self-preferencing practices when using the Privacy Sandbox technologies and not to share information between Chrome and other parts of Google which could give Google a competitive advantage over third parties. Related provisions confirm that deprecating Chrome functionality will remove such functionality for Google and other market participants alike, and give greater certainty for third parties who are developing alternative technologies to the Privacy Sandbox tools. These provisions address the above concerns relating to the potential for discrimination against Google's rivals;
- (h) Include **robust provisions on reporting and compliance**, which provide for a CMA-approved Monitoring Trustee to be appointed; and
- (i) **Provide for a sufficiently long duration**, ie 6 years from the date of this Decision.

- 5.15 Overall, the CMA's view is that, in combination, the regulatory scrutiny, oversight and obligations put in place by the Final Commitments address the competition concerns that the CMA has identified in relation to the Privacy Sandbox Proposals, and provide a robust basis for the CMA and third parties to influence the future development of Google's Proposals to ensure that the Purpose of the Commitments is achieved.

## **The CMA's assessment of the Final Commitments**

### ***The commitments address the CMA's competition concerns***

- 5.16 This section provides a more detailed description of the key provisions of the Final Commitments, and the CMA's assessment of how they address its competition concerns.

### ***Concern 1: unequal access to the functionality associated with user tracking***

- 5.17 As described in Chapter 3 of this Decision and listed at paragraph 7.a. of the Final Commitments, the CMA's first competition concern is that, in the absence of sufficient regulatory scrutiny and oversight, the Privacy Sandbox Proposals would distort competition in the market for the supply of ad inventory and in the market for the supply of ad tech services, by restricting the functionality associated with user tracking for third parties while retaining this functionality for Google.
- 5.18 As explained in more detail at paragraphs 3.32 to 3.69 above, the CMA has distinguished two components of this concern:
- (a) that the Privacy Sandbox tools will not be effective substitutes for the different forms of functionality provided by TPCs and other information deprecated by the Privacy Sandbox Proposals; and
  - (b) that Google will not be as affected by this as third parties because of its advantageous access to first-party user data.
- 5.19 The CMA considers that the Final Commitments address this competition concern in particular through the following commitments:

### ***Ensuring the effectiveness of the Privacy Sandbox tools***

- 5.20 The CMA considers that the Final Commitments will ensure that, if Google proceeds to removing TPCs, the Privacy Sandbox tools will be effective substitutes for the different forms of functionality provided by TPCs and other

information deprecated by the Privacy Sandbox Proposals. This outcome is itself ensured by various features of the Final Commitments, which are described more fully below.

*Extensive involvement and regulatory oversight by the CMA and the ICO*

- 5.21 The Final Commitments provide for extensive regulatory involvement by the CMA and the ICO in relation to the design, development and implementation as well as in the testing of the Privacy Sandbox Proposals.

*Involvement of the CMA and the ICO in the design and development of the Privacy Sandbox Proposals*

- 5.22 **Section D** of the Final Commitments, which requires Google to undertake certain measures to improve transparency and consultation with third parties, provides for extensive involvement of the CMA with a view to ensuring the effectiveness of the tools being developed by Google. In particular:

- (a) Paragraph 10.d. requires Google to involve the CMA on an ongoing basis in relation to the design, development and implementation of the Privacy Sandbox but also in relation to any related announcements.<sup>261</sup> This means that the CMA will review the Privacy Sandbox Proposals as they are being designed and developed.
- (b) Paragraph 12, which requires Google to publish on a dedicated microsite a process for stakeholder engagement, also specifies that Google will report on that process publicly, as well as to the CMA through the quarterly reports in paragraph 32.a. of the Final Commitments. This means that the CMA will closely follow feedback and engagement from market participants on the development of the Privacy Sandbox Proposals.
- (c) Paragraph 13 requires Google to facilitate the involvement of the CMA in discussions on the Privacy Sandbox Proposals in the W3C or any other fora requested by the CMA. This means that the CMA will have full visibility on discussions happening in the W3C or other fora in relation to the design, development and implementation of the Privacy Sandbox Proposals.

- 5.23 The involvement of the CMA and the ICO is also provided for in **Section E** of the Final Commitments. In Section E of the Final Commitments, Google has

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<sup>261</sup> For more detail on the CMA's involvement in relation to Google's announcements, see paragraphs 5.63–5.65 below.

offered to engage with the CMA in an open, constructive, and continuous dialogue regarding the development and implementation of the Privacy Sandbox Proposals with a view to achieving the Purpose of the Commitments, taking into account the Development and Implementation Criteria.<sup>262</sup>

5.24 In particular:

- (a) Paragraph 17 of the Final Commitments, which sets out how Google and the CMA will organise their dialogue in relation the development and implementation of the Privacy Sandbox proposals, specifies that the CMA will be involved through the following mechanisms:
  - (i) Google proactively informing the CMA of changes to the Privacy Sandbox that are material to ensuring that the Purpose of the Commitments is achieved,<sup>263</sup> and working with the CMA to resolve concerns raised and comments made by the CMA.<sup>264</sup>
  - (ii) Google holding discussions with the CMA on the progress of the Privacy Sandbox Proposals at least monthly until the removal of TPCs and regularly thereafter.<sup>265</sup>
  - (iii) CMA involvement in the testing of Alternative Technologies and of other Privacy Sandbox Proposals at Annex 1 of the Final Commitments that are ‘amenable to Quantitative Testing’;<sup>266</sup> and
  - (iv) CMA involvement in the plans for and testing of user controls.<sup>267</sup>
- (b) Paragraph 18 of the Final Commitments provides that the CMA will involve the ICO to achieve the Purpose of the Commitments as appropriate and subject to the applicable legislation. The CMA considers that the involvement of the CMA and the ICO in the design, development and implementation of the Privacy Sandbox Proposals provides adequate regulatory oversight of the proposals, ensuring that both competition and data protection considerations are taken into account in the development of the Privacy Sandbox Proposals. In its consideration of the proposals,

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<sup>262</sup> Final Commitments, paragraph 15.

<sup>263</sup> Final Commitments, paragraph 17.a.i.

<sup>264</sup> Final Commitments, paragraph 17.a. ii. See also paragraphs 4.167–4.170 of this Decision for more detail in relation to paragraphs 17.a. and paragraph 5.33(a) of this Decision for details in relation to paragraph 17.a.iii in the event Google and the CMA cannot resolve concerns.

<sup>265</sup> Final Commitments, paragraph 17.b.

<sup>266</sup> Final Commitments, paragraph 17.c. For more detail on the CMA’s involvement in testing see paragraphs 4.155–4.157 below and Appendix 4.

<sup>267</sup> Final Commitments, paragraph 17.d.

the CMA will involve the ICO in particular in the assessment of impacts on privacy outcomes and compliance with data protection legislation.

*Involvement of the CMA in the testing of the Alternative Technologies*

- 5.25 The Final Commitments include a number of requirements to ensure that Google involves the CMA in the testing of Alternative Technologies and of all other Privacy Sandbox Proposals amenable to Quantitative Testing.
- 5.26 In particular, paragraph 17.c. of the Final Commitments provides that Google will seek to agree with the CMA parameters and other aspects which are material for the design of any significant tests for evaluating the effectiveness of the Alternative Technologies, and of other Privacy Sandbox Proposals that are amenable to Quantitative Testing, according to the Development and Implementation Criteria. In particular, Google will:
- (a) test the effectiveness of individual Alternative Technologies and of other Privacy Sandbox Proposals that are amenable to Quantitative Testing and will also, before triggering the standstill period, test their effectiveness in combination to fully assess the impact of the Removal of Third-Party Cookies;<sup>268</sup>
  - (b) involve the CMA in the design of such tests of Privacy Sandbox Proposals that are amenable to Quantitative Testing, and share with the CMA the results of all tests carried out and, at the CMA's request, the relevant underlying data and analyses. Google will work with the CMA to enable the CMA to understand and have confidence in the results. Google will take into account reasonable views and suggestions expressed by stakeholders in relation to the testing of the Privacy Sandbox Proposals, in accordance with paragraph 12.<sup>269</sup>
- 5.27 The CMA considers that these provisions will provide clarity, transparency and reassurance<sup>268</sup> to market participants on the effectiveness of these alternatives for the performance of key functions such as targeting, frequency capping and attribution. Moreover, the effectiveness of the Alternative Technologies and other Privacy Sandbox Proposals will be measured not just in terms of functionality for Google, but according to the Development and Implementation Criteria. This will encompass an assessment of the specific proposal's impact on competition, which includes effectiveness for other market participants. The Final Commitments therefore give the CMA the

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<sup>268</sup> Final Commitments, paragraph 17.c.i.

<sup>269</sup> Final Commitments, paragraph 17.c.ii.

ability to influence the design and development of the Privacy Sandbox Proposals to avoid distortions to competition.

*Involvement of the CMA in relation to Monitoring and Compliance of the Final Commitments*

- 5.28 Regular involvement of the CMA is also provided for under **Section I** of the Final Commitments. In particular, regular reports including compliance statements will be provided to the CMA in accordance with Google's reporting and compliance obligations.<sup>270</sup> In addition, Google has committed to taking a number of other steps in this regard, including submitting quarterly monitoring statements to the CMA.<sup>271</sup>

*Increased transparency and third-party involvement*

- 5.29 The effectiveness of the Privacy Sandbox Proposals is also ensured through the commitments in **Section D** and **Section E** of the Final Commitments, which require Google to undertake certain measures to improve transparency through various public disclosures as well as consultation with third parties.
- 5.30 The Final Commitments in Section D ensure that market participants are provided with greater transparency and reassurance about the approach that Google will take in developing the Privacy Sandbox Proposals by helping overcome the asymmetry of information between Google and market participants. For example:
- (a) Paragraph 10 of the Final Commitments requires Google to make a public statement highlighting the Development and Implementation Criteria (as specified in paragraph 8 of the Final Commitments) by which the Privacy Sandbox tools will be evaluated (including impacts on privacy, competition, publishers, advertisers and aspects of user experience).<sup>272</sup> The public statement will also specify that Google intends to design, develop and implement the Privacy Sandbox in line with such Development and Implementation Criteria.<sup>273</sup> This provision ensures that Google clearly communicates how its proposals will be assessed. Paragraph 10.d. also specifies that Google will regularly consult with publishers, advertisers and ad tech providers on the Privacy Sandbox Proposals in relation to the design, development and implementation of

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<sup>270</sup> Final Commitments, paragraph 32.

<sup>271</sup> Final Commitments, paragraph 32.a. For more information on Google's obligations in relation to monitoring and compliance, see Appendix 4 to this Decision.

<sup>272</sup> Final Commitments, paragraph 10.a.

<sup>273</sup> Final Commitments, paragraph 10.c.



the Privacy Sandbox (and related announcements). The aim of this provision is to ensure that Google commits to developing and implementing its proposals with input from publishers, advertisers and ad tech providers together as relevant third parties.

- (b) Paragraph 11 of the Final Commitments requires Google to publicly disclose the timing of key Privacy Sandbox Proposals, including information on timing of trials, and removal of TPCs. Such disclosures aim to enable publishers, advertisers and ad tech providers to influence the Privacy Sandbox and to adjust their business models including by providing sufficient advance notice of the proposals and publishing key information. The CMA considers that such disclosures, at a sufficient level of granularity, will allow market participants to evaluate Google's claims about the effectiveness of the proposals, and assess the likely impact on their businesses. This will provide them with greater confidence when making investment decisions on solutions aimed at working with the Privacy Sandbox Proposals, or considering whether to develop alternatives. Similarly, disclosing key timings will ensure that market participants are provided with adequate notice of future changes to the Privacy Sandbox Proposals so that they are able to plan and make decisions on how best to allocate advertising budgets and provide advertising solutions.
- (c) Paragraph 12 of the Final Commitments requires Google to publish on a dedicated microsite a process for third-party stakeholder engagement in relation to the details of the design, development and implementation of the Privacy Sandbox proposals. Google will report publicly on that process to third parties, as well as to the CMA through the quarterly reports.<sup>274</sup> As part of that process, and in order to better apply the Development and Implementation Criteria in the design, development and implementation of the Privacy Sandbox proposals, Google will take into consideration reasonable views and suggestions expressed to it by publishers, advertisers and ad tech providers. This includes (but is not limited to) those views or suggestions expressed in the W3C or any other fora, in relation to the Privacy Sandbox Proposals, including testing. The CMA considers that this process for third-party stakeholder engagement in relation to the details of the design, development and implementation of the Privacy Sandbox will help third parties to provide regular input, keep regularly informed of developments (including suggestions made and Google's reactions), and also understand which feedback channel applies

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<sup>274</sup> Final Commitments, paragraph 32.a.

to them.

- 5.31 The Final Commitments also provide, in **Section E**, for transparency of the results of tests that are material to evaluating the effectiveness of the Alternative Technologies and of other Privacy Sandbox proposals, in particular, through:
- (a) Paragraph 17.c.ii. which requires Google to take into account reasonable views and suggestions expressed by stakeholders in relation to the design of such tests, in accordance with paragraph 12 of the Final Commitments.
  - (b) Paragraph 17.c.v., which requires Google to publish the results of these tests. Google will also publish a description of the underlying data and methodology used that is sufficiently granular to enable publishers, advertisers and ad tech providers to understand the results and obtain an informed view of the relevance of the test and its outcome for their own businesses.

*Option for the CMA to take action pursuant to section 31B(4) of the Act*

- 5.32 While the design and implementation of the Privacy Sandbox Proposals will occur in the future, their effectiveness in addressing the CMA's competition concerns is also ensured by section 31B(4) of the Act. Where section 31B(4) of the Act applies, the CMA may continue the investigation, make a decision within the meaning of section 31(2) of the Act, or give directions under section 35 (interim measures) of the Act.
- 5.33 This statutory CMA power to continue this investigation under certain circumstances is expressly built into the Final Commitments at a number of junctures:
- (a) At paragraph 17.a.iii which relates to the pre-Standstill Period (before the removal of the TPCs), the Final Commitments state that if Google does not, within 20 Working Days, reach mutual agreement with the CMA or resolve competition concerns raised by the CMA in relation to the Privacy Sandbox Proposals, the CMA may take action pursuant and subject to the provisions of section 31B(4) of the Act.
  - (b) At paragraph 17.c., which relates to testing in the period before the removal of TPCs, the Final Commitments also state that if Google does not, within 20 Working Days, agree to carry out a test according to the CMA's preferred parameters, the CMA could continue its investigation

under section 31B(4) of the Act.<sup>275</sup>

- (c) At paragraph 22, which deals with concerns raised during the Standstill Period, the Final Commitments state that if the CMA has remaining competition concerns such that the Purpose of the Commitments will not be achieved, and Google does not resolve those competition concerns during the Standstill Period, the CMA may take action pursuant and subject to the provisions of section 31B(4) of the Act. The Final Commitments also recognise that the provisions of the Act have primacy, as paragraph 23 specifies that nothing in these Commitments prevents the application of any part of section 31B(4) or other provisions of the Act.

5.34 Based on the wording of section 31B(4) of the Act, the CMA is confident that it will have the power to take further action where necessary. This means that the CMA will have the option to take action under section 31B(4) of the Act to ensure that the effectiveness of the Privacy Sandbox Proposals is preserved before and after the removal of TPCs.

#### *Addressing the CMA's concern regarding Google's data advantage*

5.35 As explained above in paragraph 5.18 above, the second component in relation the CMA's concern of unequal access to the functionality associated with user tracking is that Google will not be as affected by this as third parties because of its advantageous access to first-party user data.

5.36 This concern is addressed through the commitments relating to Google's data advantage and, in particular, paragraphs 25 to 27 of the Final Commitments.

5.37 Paragraphs 25 to 27 of the Final Commitments state that after Chrome ends support TPCs, the Final Commitments require Google not to use any of the Personal Data<sup>276</sup> from:

- (a) a user's Chrome browsing history, including synced Chrome history, in its Ads Systems to track that user for the Targeting or Measurement of digital advertising on either Google owned and operated ad inventory or ad inventory on websites not owned and operated by Google;<sup>277</sup>
- (b) a user's Personal Data from a customer's Google Analytics account in its Ads Systems to track that user for the Targeting or Measurement of digital advertising on either Google owned and operated ad inventory or ad

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<sup>275</sup> Final Commitments, paragraph 17.c.iv.

<sup>276</sup> As defined in Section B of the Final Commitments.

<sup>277</sup> Final Commitments, paragraph 25.

inventory on websites not owned and operated by Google.<sup>278</sup>

- 5.38 Further, the Final Commitments require Google not to track users to Target or Measure digital advertising on ad inventory on websites not owned and operated by Google using either (i) Google First-Party Personal Data or (ii) Personal Data regarding users' activities on websites other than those of the relevant advertiser and publisher.<sup>279</sup>
- 5.39 The CMA considers that these provisions directly address the aspect of the CMA's first competition concern that the Privacy Sandbox Proposals would limit the functionality available to its rivals in the open display market, while leaving Google's ability to offer these functionalities relatively unaffected through the use of data from its own user-facing services in Google's advertising businesses.
- 5.40 Specifically, in relation to third party inventory, these provisions will remove Google's ability to use Personal Data (i) from its user-facing services (including Chrome browsing history), and (ii) from pooling data across unaffiliated advertisers and publishers (including Google Analytics data) to track users to target and measure digital advertising on non-Google inventory, to its advantage when competing with rival ad tech providers to offer digital advertising services to third-party websites.
- 5.41 For the reasons set out in Chapter 4,<sup>280</sup> although paragraphs 25 to 27 of the Final Commitments do not prevent Google from sharing data collected from its user-facing services and Customer Match to target or measure advertising on its owned and operated inventory, the CMA considers that the Final Commitments address the CMA's concerns in relation to the Privacy Sandbox Proposals about Google's use of data. This is, in particular, for the following two reasons:
- (a) the Final Commitments give the CMA the ability to influence the design and development of the Privacy Sandbox Proposals to avoid distortions to competition;<sup>281</sup> and
  - (b) the Final Commitments ensure that, if, before the removal of TPCs, the CMA were to have remaining competition concerns, which were not resolved, the CMA could continue its investigation under section 31B(4) of

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<sup>278</sup> Final Commitments, paragraph 26.

<sup>279</sup> Final Commitments, paragraph 27.

<sup>280</sup> See paragraphs 4.263–4.286 on Section G of the Final Commitments.

<sup>281</sup> The criteria that the CMA and Google will use to assess the effectiveness of Alternative Technologies will give the CMA the opportunity to evaluate whether and the extent to which Google's data advantage would distort competition in digital advertising markets (see Final Commitments, paragraph 8).

the Act and, where necessary, the CMA could impose interim measures under section 35 of the Act to avoid harm to competition. In this context, the CMA could consider other interventions to address the remaining competition concerns, such as imposing separation of certain sources of data used by Google to advertise on its own ad inventory.

### *Conclusion on Concern 1*

5.42 Accordingly, the CMA concludes that these provisions, in combination and when considered together with paragraph 7.a. of the Final Commitments, address the CMA's first competition concern relating to the Privacy Sandbox Proposals. The above provisions ensure that the CMA will be extensively involved in relation to the design, development and implementation of the Privacy Sandbox Proposals, including testing, thus ensuring their effectiveness and addressing concerns that the Privacy Sandbox tools will not be effective substitutes for the different forms of functionality provided by TPCs. In addition, the CMA would be able to rely on section 31B(4) to continue its investigation (and, should it be required, impose interim measures) should it consider, for example, that there had been a material change of circumstances since the commitments were accepted.<sup>282</sup>

### ***Concern 2: self-preferencing Google's own ad tech providers and owned and operated ad inventory***

5.43 As described in Chapter 3 of this Decision and listed at paragraph 7.b. of the Final Commitments, the CMA's second competition concern is that in the absence of sufficient regulatory scrutiny and oversight, the Privacy Sandbox Proposals would allow Google to self-preference its own ad inventory and ad tech services by transferring key functionalities to Chrome, providing Google with the ability to affect digital advertising market outcomes through Chrome in a way that cannot be scrutinised by third parties, and leading to conflicts of interest.

5.44 The CMA considers that this concern is addressed by the Final Commitments and in particular by those set out in **Section H**.

### *Self-preferencing*

5.45 Under paragraph 30 of Section H of the Final Commitments, Google commits to design, develop and implement the Privacy Sandbox Proposals in a manner that is consistent with the Purpose of the Commitments and takes

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<sup>282</sup> For more detail on the powers of the CMA under section 31B(4), see eg paragraphs 4.256–4.262 above.

account of the Development and Implementation Criteria. In addition, Google has also committed to ensure that it will not distort competition by discriminating against rivals in favour of its own advertising products and services.<sup>283</sup>

5.46 More specifically, under paragraph 30, Google has committed:

- (a) not to design and develop the Privacy Sandbox Proposals in a way that will distort competition by self-preferencing Google's advertising products and services. This commitment will limit Google's ability to advantage itself by, for example, designing the on-device auction logic for retargeted ads in a way which advantages bids from advertisers using Google's ad tech services.
- (b) not to implement the Privacy Sandbox in ways that will distort competition by self-preferencing Google's advertising products and services.<sup>284</sup> Under this commitment, Google will not be able to advantage itself through, for example, increased interoperability with the Privacy Sandbox tools or increased device processing power compared to rivals, or by not sending ad requests to its competitors or sending them with some delay and making it more difficult for them to send a bid in time. Further, Google will not be able to use information on users to which it would have privileged access through Chrome after the introduction of the proposals to gain advantage for its advertising products and services. For example, it would not be able to use the input IP addresses to which it would have access through operating Gnatcatcher, the information on user logins to which it would have access through the FedCM proposal, or information on device characteristics through X-Client-Data, to track users.
- (c) not to use competitively sensitive information provided by an ad tech provider or publisher to Chrome for a purpose other than that for which it was provided.<sup>285</sup> This commitment thus removes Google's ability to use a rival's information to its own advantage. The intention of this obligation is to ensure that such information is used by Google only for the purpose for which it is provided, ensuring there is no distortion of competition by Google discriminating against its rivals.

5.47 The final paragraph of paragraph 30 also clarifies that, for the avoidance of doubt, Privacy Sandbox proposals that deprecate Chrome functionality will

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<sup>283</sup> Final Commitments, paragraph 30.

<sup>284</sup> Final Commitments, paragraph 30.b.

<sup>285</sup> Final Commitments, paragraph 30.c.

remove such functionality for Google's own advertising products and services as well as for those of other market participants.

- 5.48 The CMA considers that the commitments provided for under paragraph 30 of the Final Commitments address the CMA's concerns regarding Google's ability to self-preference. The CMA also notes that the commitments in Section H need to be read in the context of the wider commitments, most notably the Implementation and Development Criteria and Section G on Google's use of data. As such, the commitments, as set out above in paragraphs 5.37 to 5.41, give the CMA the ability to influence the design, development and implementation of the Privacy Sandbox Proposals to avoid any distortions to competition. Therefore, if through the process of development, testing and trialling, there is an indication that Google has developed the tools to advantage its own services, the Final Commitments contain a mechanism enabling the CMA to raise these concerns with Google and, if Google does not address the concerns, the CMA could continue its investigation (and, should it be required, impose interim measures).<sup>286</sup>

### *Non-Google Technologies*

- 5.49 At paragraph 31 of the Final Commitments, Google has offered not to change its policies for customers of four specified services (Google Ad Manager, Campaign Manager 360, Display & Video 360 or Search Ads 360) to introduce new provisions restricting customers' use of Non-Google Technologies before the removal of TPCs, absent exceptional circumstances (such circumstances to be discussed with the CMA) or as required by law.
- 5.50 The CMA's view is that paragraph 31 provides greater certainty for third parties who are developing alternative technologies, by ensuring that Google does not introduce restrictions under its Google Ad Manager, Campaign Manager 360, Display & Video 360 or Search Ads 360 customer policies that would limit the use of third parties' alternative technologies in transactions between publishers and advertisers facilitated by Google's ad management platforms, unless exceptional circumstances apply, and without first informing the CMA.<sup>287</sup>
- 5.51 The CMA considers that this provision, in combination with the general principle of non-discrimination contained at paragraph 30, and the ongoing process of assessing the impact and effectiveness of the Privacy Sandbox

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<sup>286</sup> For more detail on the option for the CMA to take action pursuant to section 31B(4) of the Act, see paragraphs 5.32–5.34 above.

<sup>287</sup> See also paragraphs 4.323–4.329 above for the CMA's summary (and assessment) of consultation responses in relation to paragraph 31 of the commitments.

Proposals, addresses the CMA's competition concerns that Google would engage in self-preferencing of its own advertising products and services and owned and operated ad inventory.

### *Conclusion*

- 5.52 Accordingly, for the reasons set out above, the CMA concludes that these provisions, in combination and when considered together with paragraph 7.b. of the Final Commitments, address the CMA's second competition concern relating to Google self-preferencing of its own advertising products and services and owned and operated ad inventory. In addition, if Google were to depart from its commitments under paragraphs 30 and 31, the CMA would be able to rely on section 31B(4) of the Act and could continue its investigation (and, should it be required, impose interim measures), or apply to court for an order under 31E of the Act.<sup>288</sup>

### ***Concern 3: imposition of unfair terms on Chrome web users***

- 5.53 As described in Chapter 3 of this Decision and listed at paragraph 7.c. of the Final Commitments, the CMA is also concerned that, in the absence of sufficient regulatory scrutiny and oversight, Google would be able to exploit its likely dominant position by denying Chrome web users any substantial choice in terms of whether and how their personal data is used for the purpose of targeting and delivering advertising to them.
- 5.54 The CMA considers that the Final Commitments address this competition concern, in particular through the following commitments:
- (a) Paragraph 8.d., which contains part of the Development and Implementation Criteria, requires that account is taken of the impact on user experience and user control when designing, implementing and evaluating the Privacy Sandbox changes. Paragraph 8.d. lists 'impact on user experience, including the relevance of advertising, transparency over how personal data is used for advertising purposes, and user control'. The Development and Implementation Criteria inform whether the Purpose of the Commitments has been achieved.
  - (b) Paragraph 10.a. requires that, as part of Google's public statement, Google will specify that it commits to 'supporting a good user experience in relation to browsing the web and digital advertising'<sup>289</sup> as well as to 'providing users with substantial transparency and control over their data

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<sup>288</sup> For more details on the powers of the CMA under section 31E, see paragraph 1.17 above.

<sup>289</sup> Final Commitments, paragraph 10.a.ii.



as they browse the web'.<sup>290</sup>

- (c) Paragraph 17.d. requires Google to provide, at least once a quarter, updates to the CMA on Google's plans and decisions on user controls in relation to the Privacy Sandbox Proposals, including default options and choice architectures as well as the underlying user research and testing which underpin Google's decisions on user controls. This commitment will enable the CMA to assess the proposed user controls before they are implemented. They will further ensure that Google takes into account any observations the CMA may make so that the Privacy Sandbox Proposals are designed and developed in a way that gives meaningful choice and control to users over the way in which they interact with the Privacy Sandbox Proposals, including whether and how their personal information is shared with publishers, advertisers and ad tech providers.
- (d) Paragraph 18 of the Final Commitments, which provides for the CMA to consult the ICO, will ensure that both competition and data protection considerations are taken into account in the development of the Privacy Sandbox Proposals including on user control related issues.

### *Conclusion*

- 5.55 Accordingly, for the reasons stated above, the CMA concludes that these provisions, in combination and when considered together with paragraph 7.c. of the Final Commitments, address the CMA's third competition concern relating to the imposition of unfair terms on Chrome users. If Google were to depart from the commitments described above which address unfair terms on Chrome users, the CMA would be able to rely on section 31B(4) of the Act and could continue its investigation (and, should it be required, impose interim measures).

### ***Commitments which ensure the overall effectiveness of the Final Commitments***

- 5.56 The Final Commitments contain provisions that ensure the overall effectiveness of the Final Commitments which in turn ensures that all of the CMA's competition concerns are addressed. These include: (i) a clear purpose for the Final Commitments and define the Development and Implementation Criteria against which it can be assessed whether that purpose is met; (ii) obligations of transparency and consultation with third parties; (iii) robust resolution mechanisms; (iv) a standstill period in which the

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<sup>290</sup> Final Commitments, paragraph 10.a.iii.

CMA can assess whether it has any remaining competition concerns, and if so, take appropriate action; (v) reporting and compliance commitments; and (vii) a duration for the Final Commitments that is sufficient to allow for a sustained period in which the CMA can assess further the Privacy Sandbox Proposals and their impact. These are described in more detail below.

5.57 **Section C** of the Final Commitment sets out the Purpose of the Commitments<sup>291</sup> and the Development and Implementation Criteria.<sup>292</sup> The CMA considers that, taken in combination, the following paragraphs of the Final Commitments will ensure that the Privacy Sandbox Proposals are developed in a way that addresses the CMA's competition concerns:

- (a) Paragraph 7 of the Final Commitments sets out the 'Purpose of the Commitments' which is to address the competition concerns identified by the CMA during its investigation. In summary, this purpose is to ensure that the design, development and implementation of the Privacy Sandbox Proposals does not lead to a distortion of competition in digital advertising markets and/or the imposition of unfair terms on Chrome's web users. This paragraph states expressly that the Purpose of the Commitments is to address the CMA's competition concerns.
- (b) Paragraph 8 of the Final Commitments requires Google to design, implement and evaluate the Privacy Sandbox Proposals by taking into account the 'Development and Implementation Criteria'. These will be used to form the basis of an assessment as to whether the Purpose of the Commitments has been met. The CMA considers that they cover the relevant considerations that should be taken into account in developing the Privacy Sandbox Proposals and reflect the fact that the assessment of whether the Purpose of the Commitments has been achieved will inevitably require a balanced consideration of a number of factors, which will require an assessment in the round. Paragraph 8 states that Google will take into account the following Development and Implementation Criteria:
  - (i) impact on privacy outcomes and compliance with data protection principles as set out in the applicable data protection legislation;
  - (ii) impact on competition in digital advertising and in particular the risk of distortion to competition between Google and other market participants;

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<sup>291</sup> Final Commitments, paragraph 7.

<sup>292</sup> Final Commitments, paragraph 8.

- (iii) impact on publishers (including in particular the ability of publishers to generate revenue from advertising inventory) and advertisers (including, in particular, the ability of advertisers to obtain cost-effective advertising);
- (iv) impact on user experience, including the relevance of advertising and transparency over how personal data is used for advertising purposes and user control; and
- (v) technical feasibility, complexity and cost involved in Google designing, developing and implementing the Privacy Sandbox.

5.58 **Section D** of the Final Commitments sets out Google's obligations in relation to transparency and consultation with third parties. This section provides for greater transparency and consultation with third parties over the development of the Privacy Sandbox Proposals, including through operating a formal process for engaging with Google's third-party stakeholders, reporting regularly to the CMA on how it has taken into consideration third-party views, providing that Google's key public disclosures will refer to the CMA's role (and the ongoing CMA process) and disclosing publicly the results of tests of the Privacy Sandbox Proposals. These commitments, which provide for a greater involvement of third parties regarding the development of the Privacy Sandbox Proposals, will contribute to ensuring the effectiveness of the Final Commitments, so that the Purpose of the Commitments – which is to address the competition concerns identified by the CMA during its investigation – is achieved.

5.59 In **Section E** of the Final Commitments, Google has committed to identify and resolve concerns quickly in relation to the development and implementation of the Privacy Sandbox Proposals. By setting out robust resolution mechanisms in the event that the CMA has remaining concerns, the provisions at Section E ensure that the process for the development and implementation of the Privacy Sandbox Proposal achieves the Purpose of the Commitments. In particular:

- (a) Paragraph 17.a. puts in place a mechanism to identify and resolve concerns quickly. Under paragraph 17.a.i. Google will proactively inform the CMA of any changes to the Privacy Sandbox Proposals that are material to ensuring that the Purpose of the Commitments is achieved. In addition, Google will work with the CMA without delay to identify and resolve any competition concerns the CMA may have about the Privacy Sandbox Proposals. Google will inform the CMA of how it has responded

to those concerns.<sup>293</sup> Paragraph 17.a.iii. provides that in the event that such competition concerns are not resolved within 20 Working Days of a notification in writing by the CMA, the CMA can take action under section 31B(4) of the Act. This means that in such circumstances, the CMA can continue its investigation and, where necessary, impose interim measures under section 35 of the Act to avoid harm to competition.

- (b) Paragraph 17.c. also provides a mechanism in relation to testing: it states that if Google and the CMA cannot reach an agreement regarding appropriate testing parameters, the CMA may notify Google of its preferred parameters.<sup>294</sup> If Google does not, within 20 Working Days, agree to carry out a test according to the CMA's preferred parameters, the CMA could continue its investigation under section 31B(4) of the Act.<sup>295</sup> The CMA considers that such provisions provide robust problem-solving mechanisms ensuring that the effectiveness of testing is preserved, with a fall back if Google and the CMA cannot agree regarding testing parameters.

5.60 **Section F** of the Final Commitments sets out a Standstill Period of 60 days (which could be extended by a further 60 days) triggered by giving notice to the CMA of Google's intention to remove TPCs.<sup>296</sup> This period enables the CMA to reflect and consult on Google's final proposals, to ensure that its competition law concerns are addressed, and to notify Google if it had any remaining competition concerns. As previously described, if the CMA's competition concerns were not resolved, the CMA would have the opportunity to decide to continue this investigation, which in turn could lead to it making an infringement decision or give an interim measures direction (see section 31B(4) of the Act).<sup>297</sup>

5.61 **Section I** of the Final Commitments sets out Google's reporting and compliance commitments. The CMA considers that this section puts in place a comprehensive framework for monitoring Google's compliance with the commitments, in the following paragraphs in particular:

- (a) Paragraph 32.a. specifies that Google will provide the CMA with quarterly reports which include a signed Compliance Statement in respect of paragraphs 25 to 27 and 30 to 31 and, with respect to those provisions, paragraph 33 of these Commitments. As part of each quarterly report,

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<sup>293</sup> Final Commitments, paragraph 17.a.ii.

<sup>294</sup> Final Commitments, paragraph, 17.c.iii.

<sup>295</sup> Final Commitments, paragraph, 17.c.iv.

<sup>296</sup> Final Commitments, paragraph 19.

<sup>297</sup> Final Commitments, paragraphs 21–23.

Google will report on progress on the Privacy Sandbox Proposals; updated timing expectations; and substantive explanations of how Google has taken into account observations made by the CMA and by third parties. These reports will also include a summary of the interactions between the CMA and Google pursuant to paragraphs 17 and 21 of the Final Commitments, including in particular a record of any concerns raised or comments made by the CMA and the approach retained for addressing such concerns or comments. This wording ensures that any substantive discussion around concerns resolved during the Standstill Period will be recorded, thus preventing Google from rowing back on any resolutions reached during the Standstill Period. In addition, paragraph 32.a. of the Final Commitments specifies that the compliance statement will be signed by the CEO or an individual with delegated authority on behalf of each company giving the commitments, thus ensuring that compliance is being engaged with at the highest executive level.

- (b) Paragraph 32.b. requires Google to appoint at its own cost in consultation with the CMA (and subject to the ongoing approval of the CMA) a Monitoring Trustee to monitor Google's compliance with the operational aspects of the Final Commitments (ie paragraphs 25 to 27 and 30 to 31), and provide the CMA with quarterly monitoring statements – including a check for circumvention.<sup>298</sup> In addition, as detailed in paragraphs 40 to 42 of Appendix 4, the CMA will be able to assess the Monitoring Trustee's performance, and direct it to carry out specific tasks where appropriate. In circumstances where the CMA has reason to conclude that the Monitoring Trustee is not meeting the requirements of its role, the CMA will be able to request that Google dismiss and replace the Monitoring Trustee following the same process as before. The CMA considers that the appointment of a CMA-approved Monitoring Trustee will ensure a comprehensive and effective basis for measuring Google's compliance with the commitments, ensuring that the CMA can have confidence that its competition concerns are addressed. The Monitoring Trustee's focus on measuring Google's compliance with paragraphs 25 to 27, 30 to 31 and 33 of the Final Commitments ensures appropriate oversight over operational elements of the commitments as it provides more assurance as to Google's compliance on these operational elements relevant to the above paragraphs.

- (c) Paragraph 32.c. and 32.d. require Google to promptly notify the CMA if

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<sup>298</sup> Final Commitments, paragraph 32.b. and Annex 3 to the commitments (titled 'Outline Monitoring Statement'). The definition of 'Monitoring Statement' included in Section B of the Final Commitments mentions that this statement will be prepared by Google or by the Monitoring Trustee, if appointed.

Google becomes aware of any breach of the commitments and promptly take all actions reasonably required, in consultation with the CMA, to remedy a breach.

- (d) Under paragraph 32.e. Google has committed to provide to the CMA any information and documents which the CMA requests for the purposes of enabling the CMA to monitor and review the operation of the Commitments or any provisions of the Commitments or for the purposes of their enforcement. This clause, alongside the anti-circumvention clause in paragraph 33 of the Final Commitments, ensure that Google's compliance with the entirety of the Final Commitments falls within the purview of the monitoring and compliance regime. It also ensures that the CMA will be able to request any data it considers necessary to monitor and review Google's compliance with the commitments. For the reasons stated at paragraphs 4.330 to 4.384 above, the CMA considers that the access to information, documents and data logs granted to the CMA, the Monitoring Trustee and possible independent Technical Experts will ensure independent verification and oversight of Google's compliance with the Final Commitments.

- 5.62 **Section J** sets out the duration of the commitments and provides that the Final Commitments will remain in force for a duration of six years from the date they are accepted by the CMA, unless released at an earlier date in accordance with section 31A(4) of the Act. The CMA considers that such a duration allows for a sustained period in which the CMA can assess further the Privacy Sandbox Proposals and their impact. Throughout that duration, the CMA will assess the extent of Google's compliance with its commitments, and will be able to take action in a number of circumstances (as variously set out in the Final Commitments and/or the Act). In addition, the CMA notes that, while for the duration of the Final Commitments the role of monitoring their implementation would fall to the CMA, in the medium term the establishment of the DMU, along with a code of conduct for firms with strategic market status, could provide a framework for regulatory oversight and scrutiny.

### ***Google's Privacy Sandbox announcements***

- 5.63 As described at paragraphs 3.84 to 3.98 above, the CMA is concerned that Google's announcements relating to the Privacy Sandbox Proposals and/or taking implementing steps, are likely to, individually and/or collectively, amount to an abuse of its likely dominant position in the market for the supply of web browsers in the UK.

- 5.64 While announcements are not expressly mentioned in paragraph 7 of the Final Commitments, Section D of the Final Commitments contains various provisions relating to external communications by Google which address the above concern. In particular:
- (a) Paragraph 3 of the Final Commitments which states that ‘These Commitments provide for scrutiny and oversight by the CMA over implementation of, and announcements relating to, Google’s Privacy Sandbox proposals’.
  - (b) Paragraph 10 of the Final Commitments under which Google commits to not only agreeing the wording of an initial public statement, but also involving the CMA on an ongoing basis in relation to Privacy Sandbox-related announcements. Paragraph 10 specifies the content of such public announcement, requiring Google to reference (in effect) the CMA’s competition concerns and the Development and Implementation Criteria. This provision ensures that Google provides sufficient transparency to market participants by communicating clearly Google’s stated objectives; how its proposals will be assessed; and how it commits to developing and implementing its proposals with input from publishers, advertisers and ad tech providers and with the involvement of the CMA. This means that the CMA will review Google’s announcements before they are published. This also ensures that the CMA’s process under the commitments is referenced in those announcements.
  - (c) Paragraph 12 of the Final Commitments requires Google to publish on a dedicated microsite a process for stakeholder engagement in relation to the details of the design, development and implementation of the Privacy Sandbox Proposals and report on that process publicly, as well as to the CMA through the quarterly reports. Google’s publication will help third parties to provide regular input, keep regularly informed of developments (including suggestions made and Google’s reactions), and also understand which feedback channel applies to them.
  - (d) Paragraph 14 of the Final Commitments requires Google to instruct its staff and agents not to make claims to other market players that contradict these commitments. Google has committed to provide training to its relevant staff and agents to ensure that they are aware of the requirements of the Final Commitments.
  - (e) Paragraph 18 of the Final Commitments which provides for the involvement of the ICO, will also increase confidence regarding Google’s statements and intentions in developing and implementing the Privacy

## Sandbox Proposals.

- (f) Paragraphs 19 to 24 of the Final Commitments, which provide for a Standstill Period of at least 60 days,<sup>299</sup> ensure that Google will not implement the Removal of TPCs before the CMA is satisfied that its competition law concerns have been addressed. These provisions ensure that the CMA can reflect and consult on Google's final proposals, before Google removes TPCs, in order to ensure that the CMA's competition law concerns are addressed. In particular, the aim is to facilitate an assessment of the effectiveness of the Privacy Sandbox tools at a point in time nearer to when Google plans to remove TPCs – drawing on, for example, the results of final tests conducted under the Final Commitments and the CMA's assessment of the other aspects of the Privacy Sandbox Proposals. The Standstill Period will give market participants reassurance that Google's announcement regarding the removal of TPCs is subject to regulatory scrutiny and oversight.

- 5.65 The above commitments regarding Google's public announcements in relation to the Privacy Sandbox Proposals will provide greater transparency to market participants and reduce the asymmetry of information between Google and third parties. The involvement of the CMA and the ICO in relation to such public announcements also provides market participants with reassurance about the content of Google's announcements.

### ***Overall conclusion of the Final Commitments taken together***

- 5.66 Overall, the CMA concludes that the Final Commitments put in place a system of regulatory scrutiny and oversight in relation to the Privacy Sandbox Proposals, contain direct obligations on Google regarding its conduct in relation to these proposals, and are accompanied by a package of practical implementation steps, which in combination address the CMA's competition concerns. The Final Commitments provide a robust basis for the CMA and third parties to influence the future development of Google's Proposals to ensure that the Purpose of the Commitments is achieved. As described above, the Final Commitments also provide appropriate safeguards in the event the CMA considers that one or more of its competition concerns is not addressed.

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<sup>299</sup> For more detail on the Standstill Period set out under the commitments, see paragraphs 4.193–4.262 above.



***The CMA's assessment against the other criteria for accepting commitments set out in the Procedural Guidance***

***The competition concerns are readily identifiable***

5.67 As explained in Chapter 3 of this Decision, Google's conduct has given rise to readily identifiable competition concerns that without sufficient regulatory scrutiny and oversight, the Privacy Sandbox Proposals would:

- (a) distort competition in the market for the supply of ad inventory and in the market for the supply of ad tech services, by restricting the functionality associated with user tracking for third parties while retaining this functionality for Google;<sup>300</sup>
- (b) distort competition by the self-preferencing of Google's own advertising products and services and owned and operated ad inventory;<sup>301</sup> and
- (c) allow Google to exploit its likely dominant position by denying Chrome web users substantial choice in terms of whether and how their personal data is used for the purpose of targeting and delivering advertising to them.<sup>302</sup>

5.68 In addition, the CMA is concerned that the announcements have caused uncertainty in the market as to the specific alternative solutions which will be available to publishers and ad tech providers once TPCs are deprecated. The announcements and actions prior to issue of the June Notice showed (and created the expectation) that Google was determined to proceed with changes in the relevant areas, in ways which advantage its own businesses and limit competition from its rivals.<sup>303</sup>

***The commitments are capable of being implemented effectively and, if necessary, within a short period of time***

5.69 The Final Commitments are capable of being implemented effectively and, if necessary, within a short period of time, as Google has undertaken to act in

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<sup>300</sup> See paragraphs 3.32–3.69 above ('Concern 1: Unequal access to the functionality associated with user tracking and Google's data advantages').

<sup>301</sup> See paragraphs 3.70–3.80 above ('Concern 2: Self-preferencing Google's own ad tech providers and owned and operated ad inventory').

<sup>302</sup> See paragraphs 3.81–3.83 above ('Concern 3: Imposition of unfair terms on Chrome web users').

<sup>303</sup> See paragraphs 3.84–3.98 above ('Assessment of the impact of the Privacy Sandbox announcements'). Since the announcements referred to in those paragraphs, Google has announced that Chrome could 'phase out third-party cookies over a three month period, starting in mid-2023 and ending in late 2023': see Chrome blog, [An updated timeline for Privacy Sandbox milestones](#), 24 June 2021 (accessed on 3 February 2022).

accordance with the Final Commitments as of the date the CMA publishes its decision accepting the commitments.

5.70 In addition, the CMA has also outlined, at Appendix 4, further detail on how certain aspects of the Final Commitments will be implemented, including the role of the Monitoring Trustee, the criteria for the selection of the Monitoring Trustee and the interaction between the Monitoring Trustee and the CMA.

5.71 These measures sit outside of the Final Commitments, so that they can be developed in the light of experience. Nevertheless, their design builds on the CMA's extensive experience in designing and monitoring remedies and enables the necessary measures to be put in place promptly.

*Accepting commitments will not undermine deterrence*

5.72 The CMA considers that accepting commitments in this case would not undermine deterrence for the following reasons:

- (a) By accepting the Final Commitments in this case, just over a year from formal launch, the CMA is acting swiftly and decisively when identifying competition concerns. This seems particularly appropriate in the fast-moving digital sector.
- (b) By accepting commitments at this early stage of the case, the CMA is able to resolve its competition concerns more quickly than an infringement decision would allow. The CMA's action therefore minimises any harm occurring currently and/or prevents any harm likely to occur in near future.
- (c) Commitments are the most appropriate tool available under the Act in order to resolve durably and comprehensively its competition concerns in this case. Accepting the Final Commitments provides opportunities to scrutinise the further development of the Privacy Sandbox Proposals, address any issues before the proposals are finalised and involve the ICO as appropriate. This provides market participants with greater transparency and certainty earlier than could be achieved through continuing with the investigation. Accepting the Final Commitments at this stage ultimately provides flexible, better-informed market outcomes, particularly in the context of a complex and fast developing market, more swiftly than could be achieved through any infringement decision issued (in a few years, potentially).
- (d) The factual context of the case differs from previous/other current CMA Chapter II cases as the claimed purpose of the changes is to enhance privacy. In addition, the case does not concern any example cited in the

Procedural Guidance of conduct that is inherently likely to have a particularly serious exploitative or exclusionary effect.<sup>304</sup>

*Compliance with, and effectiveness of, the commitments would not be difficult to discern*

- 5.73 Compliance with, and the effectiveness of, the Final Commitments will not be difficult to discern in particular the appointment of a Monitoring Trustee.<sup>305</sup>
- 5.74 The compliance and reporting obligations, regular meetings and close involvement of the CMA will ensure that the CMA remains in a position throughout the process to monitor effective compliance by Google and take appropriate enforcement steps if required.
- 5.75 The Final Commitments do not preclude the CMA from resuming enforcement action under section 31B(4) of the Act in the event that during the operation of the commitments, and in particular during the Standstill Period, Google has not resolved any remaining CMA competition concerns relating to the Privacy Sandbox. In addition, the Final Commitments do not preclude the CMA from taking enforcement action in relation to other breaches of competition law and/or related markets which raise competition concerns and harm consumers.

*Other*

- 5.76 Finally, the CMA considers that the Final Commitments would not produce adverse effects (on third parties) which are disproportionate to the aim pursued. The CMA considers that the Final Commitments would lead to a net benefit to the position of (third party) stakeholders.

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<sup>304</sup> See [Procedural Guidance](#), paragraph 10.19 and footnote 97: 'The CMA is very unlikely to accept commitments in cases involving a serious abuse of a dominant position'. Footnote 97 defines such 'serious abuse of a dominant position' as abuses 'which the CMA considers are most likely by their very nature to harm competition. In relation to infringements of the Chapter II prohibition and/or Article 102, this will typically include conduct which is inherently likely to have a particularly serious exploitative or exclusionary effect, such as excessive and predatory pricing'.

<sup>305</sup> For more details see Appendix 4, paragraphs 22–46.

## 6. The Commitments Decision

- 6.1 For the reasons set above, the CMA considers that the regulatory scrutiny, oversight and obligations put in place by the Final Commitments offered by Alphabet Inc., Google UK Limited and Google LLC, as set out in Appendix 1A to this Decision, address the competition concerns it has identified and that is appropriate to accept the Final Commitments.
- 6.2 The Final Commitments accepted by the CMA contain minor modifications to the commitments set out at Appendix 1A to the CMA's November Notice. These modifications add clarity to and aid consistency within the Final Commitments, and have been described in this Decision. The CMA is satisfied that these modifications are not material in any respect, and do not differ in any material respect from those set out at Appendices 1A and 1B to the November Notice, such that no further consultation is required.<sup>306</sup>
- 6.3 Accordingly:
- the CMA has decided to accept the Final Commitments by means of this Decision; and
  - the CMA will discontinue its investigation with effect from the date of this Decision.

Signed:



**Ann Pope**

Senior Responsible Officer and Senior Director, Antitrust

For and on behalf of the Competition and Markets Authority

Date: 11 February 2022

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<sup>306</sup> Paragraph 6 of Schedule 6A to the Act.