

Call for Information

Digital Markets Taskforce

1 July 2020

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Contents

	<i>Page</i>
1. Introduction	3
The impact of digital platforms	4
Ensuring competition, innovation and coherence	6
Approach of the Taskforce	10
2. Questions to be addressed and input sought	12
Scope of a new approach	12
Remedies for addressing harms	16
Designing the procedure of a new pro-competition approach	26
3. Next steps	31
Appendix A – Questions for input and evidence	
Appendix B – Use of information provided to the CMA	

1. Introduction

- 1.1 The CMA, as the UK's principal competition and consumer authority, with a mission to make markets work in the interests of consumers, businesses and the economy, has been asked by the government to lead a Digital Markets Taskforce (the Taskforce), also incorporating expertise from Ofcom and the Information Commissioner's Office (ICO).¹ The Taskforce will provide the government with practical advice to inform its decisions on what intervention, if any, is necessary to protect and promote competition and innovation in digital markets and to address the anti-competitive effects that can arise from the exercise of market power in those markets.² This document seeks views from stakeholders to inform that advice.
- 1.2 Digital innovation plays an enormously valuable and positive role in our economy and our society. It is vital that any action does not have a negative impact on this, but rather drives competition and innovation, enabling disruptors to bring new services to market to the benefit of consumers, ensuring that SMEs have fair access to digital platforms to reach new markets and grow their businesses, as well as empowering consumers.
- 1.3 The Taskforce's advice will build on the Furman Review³ and the findings and recommendations from the CMA's market study into online platforms and digital advertising (see box below).⁴ It will broaden the market study's assessment to platforms not funded by digital advertising (albeit with analysis at a higher level). Decisions on next steps, including what to do with the Taskforce's advice, are for the government.
- 1.4 In developing its advice, the Taskforce will also pay close attention to proposals for the regulation of digital markets being developed in other jurisdictions, including the Digital Services Act proposals put forward by the European Commission.⁵

¹ Ofcom is the UK communications regulator, which has experience of operating ex ante regulatory regimes and dealing with market power of large incumbents. The government has also announced it is minded to appoint Ofcom as the regulator for online harms. The ICO is the UK's independent regulator for data protection and freedom of information. It upholds information rights in the public interest with responsibilities that include promoting and enforcing the General Data Protection Regulation (GDPR) and the Data Protection Act 2018.

² The Terms of Reference can be found [here](#). They define digital platforms as '*online services that intermediate between different groups to buy, sell, share and exchange different goods and services, typically collecting and using vast amounts of data to deliver their services*'.

³ [Unlocking digital competition: Report of the Digital Competition Expert Panel, March 2019](#).

⁴ The final findings of the CMA's [market study into online platforms and digital advertising](#) were published on 1 July 2020.

⁵ The European Commission's proposals for the [Digital Services Act package and the new competition tool](#) were published in June 2020. The European Commission is consulting on these proposals until 8 September 2020.

1.5 The Taskforce will focus on three areas:

- (a) The **scope** of any new approach to promote competition and innovation – specifically the test which might be used to identify firms with Strategic Market Status (SMS) and which online activities might be considered to be within the scope of a digital markets regime.
- (b) The range of potential types of **remedies** that should be available under a new approach - including in what circumstances and to what aim they are applied and whether only in relation to firms with SMS or more widely.
- (c) The options for designing **procedure** – how a new approach could be put into effect.

1.6 This document sets out the context for the Taskforce and the matters we are considering within each of the three areas above. We are keen to hear views on these **by 31 July 2020**, from a wide range of interested parties, including platform operators and customers of digital platforms such as consumers and businesses that rely on digital platforms (like providers of apps and marketplace retailers).

The impact of digital platforms

1.7 Digital platforms have revolutionised our lives with rapid and profound changes for consumers, businesses, the economy and society. For consumers, a world of information is only a click away, as is the ability to connect and interact with friends and family all over the world, to consume music or video content when and wherever, and to buy products online and have them delivered the same day. For businesses, digital platforms have opened up new markets and audiences, provided new revenue streams, and revolutionised business models.

1.8 The value that these services have generated is widely recognised. For example, in 2019 97% of UK adults who use the internet, reported using a search engine in the previous year and 50% of UK adults said that the first place they usually go online is a search engine.⁶ Research published in 2018 demonstrated that consumers place significant financial value on a range of services provided by digital platforms.⁷ Tech Nation⁸ has estimated that the

⁶ Ofcom, [Online Nation](#), 30 May 2019, figures taken from Ofcom's Search Questionnaire 2019.

⁷ Brynjolfsson, Eggers, and Gannamaneni, [Using massive online choice experiments to measure changes in well-being](#), National Bureau of Economic Research, Working Paper 24514, April 2018.

⁸ [Tech Nation](#) is a UK network for tech entrepreneurs.

digital technology sector contributed nearly £184 billion value added to the UK economy in 2017; and the sector is expanding rapidly.⁹

- 1.9 Many of these changes have been driven in part by the ability of these platforms to benefit from network effects and economies of scale and scope, and to use data to improve user services. However, these features can also lead to the accumulation of market power.
- 1.10 The Furman Review identified evidence of considerable concentration in a number of digital markets, with the two leading firms in each of online search, mobile operating systems, and social media having a combined market share of over 90%.¹⁰ Moreover, certain companies individually have strong market positions: the market study has found that Google has had a share of supply in online search of around 90% for over a decade and that Facebook has an audience of over 43 million users in the UK, accounting for 84% of the British online population, as of February 2020.¹¹
- 1.11 These positions can be entrenched, for example due to barriers to entry or through practices designed to exclude competitors.¹² Digital markets can ‘tip’ towards one or a small number of players, giving those platforms considerable market power and influence over their users (both consumers and business users who may rely on the platform as a route to market).
- 1.12 The potential to be the ‘winner’ can lead initially to intense competition, with platforms investing, innovating and developing high-quality services valued by users. However, once there is a winner, the incentives it faces to continue to invest and innovate are much lower. Market power can begin in one ‘core’ market, but then be leveraged into other adjacent or connected markets.¹³ Platforms can also entrench their positions through acquisitions of potential disruptors.

⁹ [Information-age.com](#) article summarising Tech Nation 2018 report.

¹⁰ [Unlocking digital competition: Report from the Digital Competition Expert Panel](#), March 2019, chart 1.B, page 25.

¹¹ CMA, [Online platforms and digital advertising market study final report, July 2020](#), paragraph 3.17 and 3.166.

¹² For example a platform refusing to list a product on its platform that is a rival to the platform’s own product, giving preferential treatment to the platform’s own product vis-à-vis that of rivals or otherwise reducing the functionality or attractiveness of a rival’s product.

¹³ For example, an app store which also sells its own apps will have the ability to promote these over the apps of rivals, giving it an unfair advantage. Being able to prevent platforms with market power from leveraging that power could therefore also be important to preserve competition, innovation and positive consumer outcomes in adjacent markets.

- 1.13 The consequence can be a lack of competitive pressure. This could lead to higher prices and/or to lower-quality, less innovative products and services,¹⁴ meaning users are treated worse than they would be in a well-functioning market. Users can have little choice but to accept the conditions or rules set by the platform. For consumers this could mean the extent of personal data collection; for businesses this could mean the commissions they must pay, or the notice they have of changes to algorithms. There may also be wider societal consequences, for example the ability for disinformation or ‘fake news’ to proliferate.¹⁵
- 1.14 More broadly, across all digital markets, even those which are less concentrated, other features may lead to competition not working effectively for example, behavioural biases, information asymmetries, barriers to switching, externalities and coordination failures.¹⁶

Ensuring competition, innovation and coherence

- 1.15 These challenges have led a number of expert reviews around the world to conclude that existing competition tools are insufficient to address the challenges and speed of change in digital markets, and that there is a need for a forward-looking approach that can act quickly and flexibly to promote competition and ensure digital markets work for all.¹⁷
- 1.16 These reviews have argued that a forward-looking approach could address the ability of the most powerful platforms to exploit users and exclude competitors, by providing more upfront clarity and certainty about what behaviour by platforms towards users is acceptable. This would give business users of platforms greater confidence to innovate and invest, and would help platforms know what they are, and are not, allowed to do. An approach that enables authorities to act quickly has been argued to be desirable given the speed at which changes can take effect in digital markets; for example changes to algorithms that can undermine the business models of platform users.¹⁸ This is in contrast to the comparatively lengthy process of pursuing

¹⁴ Poor quality products and services could take the form of a general worsening of the terms on which a consumer or business uses the platform. For example, [the Bundeskartellamt](#) examined Amazon’s general terms of business and certain practices vis-a-vis sellers on its German marketplace amazon.de securing improvements to these terms for marketplace sellers.

¹⁵ For instance see the [Cairncross Review](#) into the sustainability of high-quality news, February 2019 and the [Online Harms White Paper](#), April 2019.

¹⁶ See, for instance, Ofcom’s paper on [Online market failures and harms](#), October 2019.

¹⁷ This includes e.g. [Stigler Committee on Digital Platforms: Final Report](#), September 2019 ([‘Stigler Report’](#)); Thomas Philippon, ‘The Great Reversal: How American gave up on free markets’ (2019).

¹⁸ Although the CMA has powers to impose interim measures under the Competition Act 1998, the threshold for doing so is high. Reforms to the use of interim measures powers to allow the CMA to make greater use of interim

abuse of dominance cases under traditional *ex post* competition law enforcement.¹⁹

- 1.17 Action to develop a new pro-competition approach is under way in a growing number of jurisdictions around the world. As referenced above, the European Commission is consulting on proposals for an *ex ante* regime.²⁰ Elsewhere, the Australian government has established a dedicated unit within the Australian Consumer and Competition Commission (ACCC) to monitor and report on the state of competition and consumer protection in digital platform markets²¹, and in Japan the Japanese Fair Trade Commission (JFTC) has published draft guidelines for digital platform operators where there could be abuse of a superior bargaining position.²²
- 1.18 In the UK, the Furman Review²³ proposed a pro-competition approach comprising a code of conduct for certain platforms with SMS as well as the use of data mobility, open standards and data openness to unlock competition and create new opportunities for smaller companies and new entrants.

Recommendations of the Digital Competition Expert Panel (the Furman Review)

In Autumn 2018, the then Chancellor of the Exchequer and Secretary of State for Business, Energy and Industrial Strategy (BEIS) appointed Professor Jason Furman to chair an expert panel undertaking a review to consider the potential opportunities and challenges the emerging digital economy may pose for competition and to make recommendations on any changes which may be needed. The panel's report was published in March 2019 and the government accepted all of its strategic recommendations in the Budget in March 2020.²⁴

measures is one of the areas highlighted in the CMA's reform package presented to then Business Secretary, Greg Clark: [Summary of Proposals in letter from Andrew Tyrie to the Secretary of State for BEIS](#), February 2019 ('CMA Reform Proposals').

¹⁹ For example, [the European Commission's case against Google](#) for preferencing its own comparison-shopping services over those of its rivals in its general search results pages was opened in 2010 and is still being appealed.

²⁰ The European Commission's proposals for the [Digital Services Act](#) were published in June 2020. The European Commission is consulting on these proposals until 8 September 2020.

²¹ See [Australian Government: Regulating in a Digital Age](#).

²² See The JFTC: [Guidelines Concerning Abuse of a Superior Bargaining Position in Transactions between Digital Platform Operators and Consumers that Provide Personal Information](#).

²³ [Unlocking digital competition: Report from the Digital Competition Expert Panel](#), March 2019.

²⁴ HM Treasury, [Budget 2020](#), March 2020, paragraph 1.203

The central conclusion of the review was that competition in digital markets should be unlocked through a new Digital Markets Unit (DMU) with powers to set and enforce pro-competitive rules and standards. The review recommended the DMU should have three functions:

- To work with industry and stakeholders to establish a digital platform code of conduct, based on a set of core principles. This code would apply to digital platforms designated as having Strategic Market Status which the review described as having enduring power over a strategic bottleneck market.
- To pursue personal data mobility and systems with open standards where these deliver greater competition and innovation. Personal data mobility means agreeing common standards to give consumers greater control of their personal data. Open standards lie behind the internet itself and can enable innovation to flourish on the basis of a common interoperating core which lets new or smaller firms interact with or use existing networks, rather than having to duplicate them.
- To use data openness as a tool to promote competition, where it determines this is necessary and proportionate to achieve its aims. It concluded that there may be situations where opening up some of the data held by digital businesses and providing access on reasonable terms is the essential and justified step needed to unlock competition.

1.19 The final report of the online platforms and digital advertising market study, published in July 2020²⁵, has reached a similar conclusion for platforms in its scope, setting out the case for a robust *ex ante* approach.

The CMA's online platforms and digital advertising market study

The CMA's online platforms and digital advertising market study assessed whether the markets for digital advertising – and the consumer-facing services that are funded by digital advertising such as search and social media – are working well. This included consideration of whether Google and Facebook

²⁵ CMA, [online platforms and digital advertising market study final report](#), July 2020.

have market power in search and social media respectively and the sources of this market power.

The CMA published the final report in July 2020.²⁶ This concluded that both Google and Facebook would be highly likely to meet any criteria for Strategic Market Status that are consistent with the Furman Review's explanation of the concept. It also recommended that three overarching principles ('fair trading', 'open choices' and 'trust and transparency') could form the basis of a code of conduct. The final report also identified a number of potential interventions to address the sources of Google and Facebook's market power and to promote competition.

- 1.20 Any pro-competition approach will need to interact with existing pro-competitive and consumer measures (for example, competition and consumer law and sectoral regulation) as well as existing and proposed interventions which seek to further wider policy objectives. For instance, the government is taking action to tackle online harms such as cyber bullying, child sexual exploitation and terrorist propaganda.²⁷ The Centre for Data Ethics and Innovation has also recently reviewed online targeting, and the government continues to consider how online advertising is regulated in the UK.
- 1.21 Addressing these broader policy issues is outside the scope of the Taskforce. However, it is clear that some of these problems can be exacerbated by market dynamics and the business models of platforms. For example, the Cairncross Review considered the sustainability of the press and raised concerns that the ability of platforms to impose terms on publishers may threaten publishers' ability to make money from their content, and therefore to provide high-quality news in the public interest.²⁸
- 1.22 The government has been clear that there needs to be a coherent approach to addressing this range of challenges, so as to provide clarity for businesses, investors and consumers. The Taskforce will therefore consider and include in its advice any evidence or considerations that may form a useful contribution to the government's work on these wider policy challenges. However, the remit of the Taskforce is not to seek to solve those wider issues. The government has said it will carefully consider potential interactions between

²⁶ CMA, [online platforms and digital advertising market study final report](#), July 2020.

²⁷ [Online Harms White Paper](#), April 2019.

²⁸ [The Cairncross Review: A sustainable future for journalism](#), February 2019.

these and other wider policy proposals when taking decisions on any new regulatory regime.

Approach of the Taskforce

- 1.23 The Taskforce will deliver its advice to government by the end of 2020. The Taskforce's focus will be on identifying the sorts of remedies that should be part of a new approach, the types of firms these could apply to, and the powers that might be needed to implement them. However, in many areas further work will be required before any such remedies could actually be put in place, including detailed analysis of individual platforms and platform markets.²⁹
- 1.24 The Taskforce will draw on the experience of existing regulatory regimes, and proposals for ex-ante pro-competitive interventions in digital markets being considered in other jurisdictions. It will also take into account views from a wide range of market participants and commentators, both as provided to date in the context of the market study, and through specific stakeholder engagement by the Taskforce. It will seek expert input from a range of organisations as noted in the Terms of Reference. It will also engage with competition authorities in other countries to share knowledge of problems and proposed approaches to tackling them, in light of the global nature of many digital platforms and the desirability of coordination.
- 1.25 The Taskforce will work collaboratively with government. This remains consistent with the independent decision-making of the organisations comprising the Taskforce. The final advice given to the government will be that of the Taskforce (although it will not necessarily represent the views of Ofcom or the ICO). But the wider policy context will not stand still while the Taskforce works. It is essential that the Taskforce understands these broader issues and takes account of them in its advice.
- 1.26 The Taskforce's advice will also be grounded in an understanding of the current and plausible future digital and technological landscape to ensure any new pro-competition approach stands the test of time.
- 1.27 The market study offers an account of competition challenges arising in search, social media and digital advertising markets, and potential solutions to them. The work of the Taskforce will build on the market study's findings, in

²⁹ As this is not a market study, the Taskforce does not have compulsory information-gathering powers, and is providing its advice in around six months (whereas a market study has twelve months).

particular by considering how these issues may apply to other platform markets. The Taskforce does not expect to undertake detailed analysis across the full range of digital markets. Instead it will focus on those markets where concerns have been most commonly raised in other reports or jurisdictions. These will include online marketplaces and app stores.

- 1.28 Alongside this Call for Information we are writing to the platforms and users we consider most likely to have evidence to help inform our analysis and advice, including those who have publicly raised concerns. We are also writing to organisations able to reach business users of these platforms which have not yet publicly raised concerns, but which nonetheless may have valuable evidence. We recognise some consultees may be uncomfortable about presenting evidence of concerns, so we envisage private meetings with such parties where necessary and appropriate. We take very seriously the confidentiality of information provided to us and the protections in Part 9 of the Enterprise Act 2002.

2. Questions to be addressed and input sought

- 2.1 The remit of the Taskforce is to consider the practical application of the pro-competitive measures set out by the Furman Review. There are broadly three aspects to a potential new pro-competition approach to digital markets that we will consider – its potential scope; the tools and remedies it could have; and the procedures it could follow. All of these matters are interlinked.

Scope of a new approach

- 2.2 Any new approach will need to be able to, as far as practicable, stand the test of time and, as the Furman Review noted, evolve as new markets and challenges materialise. To inform this, we will further our assessment of the underlying features of digital markets and the business models of digital platforms, building on the market study. We will also consider what the future developments might be in technology, business growth and market structure. To the extent we are able, we will also consider changes to market structures and consumer behaviour as a result of Covid-19 and the impact of any such changes on digital markets.³⁰
- 2.3 In light of the above, this aspect of our work will consider two things: First, we will consider the appropriate definition of Strategic Market Status (SMS); and second, we will consider the scope of any new pro-competition approach more widely, in terms of the activities it should cover.

Strategic Market Status

- 2.4 The Furman Review described how, in order to promote competition, specific measures may need to be applied to firms with SMS. The Taskforce will consider what SMS should mean and the criteria and evidence to be used to determine it.
- 2.5 The Furman Review did not explicitly define SMS. However, it did describe SMS as a position of enduring market power over a strategic bottleneck or gateway market, where a firm controls others' market access and where there are many dependent users on either side.³¹ The Furman Review indicated

³⁰ For example, some initial evidence suggests that online marketplaces may have become more important to some businesses as a route to market, as lockdown restrictions have led more consumers to search and shop for products online. For example, [Amazon has announced](#) that its net sales increased 26% to \$75.5 billion in the first quarter of 2020, compared with \$59.7 billion in the first quarter of 2019, and net sales are forecast to grow between 18% and 28% compared with second quarter 2019.

³¹ [Unlocking digital competition: Report from the Digital Competition Expert Panel](#), March 2019, paragraphs 2.10, 2.25-2.27 and 3.69.

that the ‘significant market power’ test in telecoms regulation may be a good starting point for assessing this, and that aspects of market power such as economic dependence, relative market power and access to markets may be of particular relevance when defining SMS.³²

- 2.6 The market study built on the Furman Review’s work and stated that it envisaged the SMS designation criteria would include firms that have obtained gatekeeper positions and have enduring market power. It described the evidence it considered likely to be relevant to this assessment for platforms funded by digital advertising and concluded that it is highly likely that both Google and Facebook would meet any criteria for SMS that are consistent with the Furman Review’s explanation of the concept.³³
- 2.7 In providing its advice the Taskforce will build on the existing work of the Furman Review and the market study to consider what specific criteria could apply to assess all types of digital platforms. It will also draw on other pre-existing work and reports³⁴ and it will learn from current and proposed regulatory regimes, both in the UK and internationally.³⁵ In particular the Taskforce will keep abreast of the proposals announced by the European Commission as part of the Digital Services Act for *ex ante* rules covering large online platforms acting as gatekeepers.³⁶
- 2.8 Additionally, the Taskforce will also advise on the implications of a firm being designated as having SMS. For example, the Taskforce will advise on whether the implications should be confined to the application of a code of conduct or whether it should also be a trigger to determine which platforms could fall in scope of other appropriate remedies.
- 2.9 The Taskforce also welcomes views on the recommendations of the market study that although SMS would apply to the corporate group as a whole, it would only have implications for the subset of a firm’s activities directly linked to the source of the SMS (i.e. those markets in which the firm has market power and on the basis of which the SMS designation is made, and those

³² [Unlocking digital competition: Report from the Digital Competition Expert Panel](#), March 2019, paragraph 2.117

³³ CMA, [online platforms and digital advertising market study final report](#), July 2020, paragraphs 7.57-7.59

³⁴ For example, the [Stigler Report](#).

³⁵ Particularly notable proposals have been made in Australia, Germany and by the Benelux group of competition authorities. See [Australian Government Response and Implementation Roadmap for the Digital Platforms Inquiry](#), December 2019, [Publication of the draft 10th amendment to the German Competition Act](#), January 2020 (in German only) and [Joint memorandum of the Belgian, Dutch and Luxembourg competition authorities on challenges faced by competition authorities in a digital world](#), 2 October 2019.

³⁶ European Commission proposals for the [Digital Services Act](#), June 2020.

markets into which that market power can be leveraged, for example through the use of data and/or consumer attention).³⁷

- 2.10 Finally, the Taskforce will also advise on procedural considerations in relation to SMS designation. These are set out later in this document.

Scope of pro-competition regime

- 2.11 One of the challenges the Furman Review identified in introducing a pro-competition regime was defining its scope in terms of the activities covered. As the Furman Review noted, “digital markets cover a potentially broad and expanding set of areas”.³⁸
- 2.12 The Taskforce will consider different approaches to defining the scope of a new pro-competition regime for digital markets. This would set out where the interventions available within the regime could be implemented, both where SMS could be considered (and the remedies specific to SMS firms) but also where remedies to address wider competition issues (such as information asymmetries) could be applied (the possibility of such remedies is discussed further below).
- 2.13 Although the Furman Review did not precisely identify a scope for a pro-competition regime it did suggest a solution whereby³⁹:
- (a) The regime would be given a broad underlying scope in primary legislation based on economic features. This would be along the lines of identifying digital markets where SMS may materialise due to characteristics including significant direct or indirect network effects, limited offsetting effects of multi-homing and differentiation, and significant sources of non-contestability; and
 - (b) Every three to five years the regime would conduct a statutory review of the markets identified.
- 2.14 The Taskforce will consider the appropriateness of this method for identifying scope as well as alternative possibilities.

³⁷ CMA, [online platforms and digital advertising market study final report](#), July 2020, paragraphs 7.65-7.66.

³⁸ [Unlocking digital competition: Report from the Digital Competition Expert Panel](#), March 2019, paragraph 2.114.

³⁹ [Unlocking digital competition: Report from the Digital Competition Expert Panel](#), March 2019, paragraph 2.115.

Questions for input and evidence – scope

1. What are the appropriate criteria to use when assessing whether a firm has Strategic Market Status (SMS) and why? In particular:
 - The Furman Review refers to ‘significant market power,’ ‘strategic bottleneck,’ ‘gateway,’ ‘relative market power’ and ‘economic dependence’:
 - How should these terms be interpreted?
 - How do they relate to each other?
 - What role, if any, should each concept play in the SMS criteria?
 - Which, if any, existing or proposed legal and regulatory regimes, such as the significant market power regime in telecoms,⁴⁰ could be used as a starting point for these criteria?
 - What evidence could be used when assessing whether the criteria have been met?
2. What implications should follow when a firm is designated as having SMS? For example:
 - Should a SMS designation enable remedies beyond a code of conduct to be deployed?
 - Should SMS status apply to the corporate group as a whole?
 - Should the implications of SMS status be confined to a subset of a firm’s activities (in line with the market study’s recommendation regarding core and adjacent markets)?
3. What should be the scope of a new pro-competition approach, in terms of the activities covered? In particular:
 - What are the criteria that should define which activities fall within the remit of this regime?

⁴⁰ See Ofcom, [Significant Market Power](#), February 2016. We are also interested in views on the proposals made by Australia, Germany and the Benelux countries or the proposals made by the European Commission.

- Views on the solution outlined by the Furman Review (paragraph 2.13) are welcome.
4. What future developments in digital technology or markets are most relevant for the Taskforce's work? Can you provide evidence as to the possible implications of the COVID-19 pandemic for digital markets both in the short and long term?

Remedies for addressing harms

- 2.15 The second aspect of any new approach is the types of remedies that would be available to ensure competitive markets and promote innovation.⁴¹ These may differ according to the nature of the problem, although in some instances the same type of remedy could be used to meet multiple different aims.
- 2.16 Some types of remedies could be designed to apply only to firms with SMS. Remedies here could be applied with the following aims:
- (a) where SMS exists, managing its potential negative effects on platform users – remedies with this intention could include the code of conduct and merger rules;
 - (b) where SMS exists, addressing its sources to promote competition – possible types of remedies here could include requiring an SMS platform to enable interoperability, or requiring it to provide access to data it holds, as well as structural interventions.
- 2.17 Other types of remedies could be applied to firms more widely, including those which have not been found to have SMS. These types of remedies could be applied to tackle problems in digital markets which may lead to competition not working as effectively, for example to address behavioural biases, information asymmetries, barriers to switching or coordination failures. Remedies with this aim could include looking at the role of defaults, ensuring users are provided with clear information, data portability and wider interoperability remedies across markets.

⁴¹ In considering the types of remedies which could be available as part of the regime we will build on the recommendations made in chapters 7 and 8 of the [final report of the CMA's market study into online platforms and digital advertising](#), published on 1 July 2020.

- 2.18 The majority of the Taskforce's work will be in advising on the types of remedies which should be available to manage the effects where a firm has SMS and to promote competition in these markets. However, we will also seek to identify, at a high level, the areas where remedies may need to be available to address competition problems which relate to platforms more widely, including those which may not have SMS. These could then be explored further in future work.

Managing the effects of SMS

Code of conduct

- 2.19 A major component of the Taskforce's work will be considering how a pro-competitive code of conduct for firms with SMS could work in practice. This would build on the case for a pro-competitive code of conduct as proposed by the Furman Review and explored further by the market study as described in the box below. Final decisions on implementing a code of conduct are for the government, as legislation would be required.
- 2.20 The market study final report proposed that such a code of conduct would be used primarily to manage the effects of market power (although certain rules may also prevent market power from accumulating in adjacent markets). The Taskforce will not be re-examining proposals or analysis undertaken by the market study for those firms in its scope. Instead, it will look more widely at other digital markets.

Proposals for a code of conduct for digital advertising-funded platforms

The market study final report argued that an enforceable code of conduct would help address a number of concerns identified in digital advertising markets and consumer-facing services such as search and social media that are funded by digital advertising.

Structure of the Code

The market study proposed that the code should take the form of high-level principles rather than detailed and prescriptive rules. In particular, it concluded that overly prescriptive rules would soon become redundant or fail to anticipate important new developments, given the complex and rapidly changing nature of the markets within scope and the issues identified. It recommended that the code should comprise:

- A **statement of scope**, setting out the core markets within which the platform is found to have SMS and the key relationships covered by the code.
- Three **high-level objectives** (fair trading, open choices, trust and transparency). The market study suggested these are likely to be relevant across both SMS platforms within scope.
- **Principles** within each objective, providing greater specificity as to the behaviour allowed or prevented by the code. Some of these may differ between SMS platforms.
- **Guidance**, setting out in more detail the potential application of the code to the specific SMS platform. The guidance would provide much more detail on practical application of the principles to the markets within which the SMS platform would operate. While not formally part of the code, an initial draft of the guidance would be published alongside the code, and it would be updated by the digital markets unit as the market evolves.
- **Enforcement powers** enabling the digital markets unit to force SMS firms to comply with the code, including the ability to order conduct and issue financial penalties for non-compliance with orders and, where appropriate, for non-compliance with the code.

Content of the Code

The market study suggested that the key provisions of the code could be summarised in terms of three overarching objectives:

- **Fair trading** – requiring the SMS platform to trade on fair and reasonable terms for services where they are an unavoidable trading partner as a result of their gateway market position. The fair trading objective is intended to address concerns around the potential for exploitative behaviour on the part of the SMS platform.
- **Open choices** – requiring the SMS platform to allow users to choose freely between elements of the platform's services and those offered by competitors. The open choice principle is intended to address the potential for exclusionary behaviour on the part of the SMS platform.

- **Trust and transparency** – ensuring that SMS platforms provide sufficient information to users, including both consumers and businesses which transact with the platform, so that they understand how the platform operates and are able to make informed decisions.

- 2.21 The Taskforce will take as a starting point the approach proposed in the market study final report for Google and Facebook, and consider how such a code could be implemented in other digital markets. In particular, we will consider whether the objectives of ‘Fair trading’, ‘Open choices’ and ‘Trust and transparency’ proposed in the market study are appropriate more widely in light of any potential harms we identify in other digital markets.
- 2.22 The market study has proposed a bespoke code for each firm in relation to the core market in which they are designated as having SMS. We will consider this proposal further for firms in other markets, for example online marketplaces and app stores. We will aim to develop ideas of what the more detailed content of such a code or codes could be, at a high level, although this will need to be assessed in much greater detail if such an approach is taken forward. We will consider enforcement of a potential code (including the process for investigating suspected breaches and the question of sanctions), as part of the design of a pro-competition approach (discussed further below).
- 2.23 A number of other policy challenges associated with digital platforms have had codes of conduct proposed as solutions, albeit of a different nature and purpose. These include the codes proposed in the Cairncross Review into the sustainability of high-quality journalism and the Online Harms White Paper. The Taskforce recognises the value in a coherent regulatory approach for digital platforms and their users. Solving these policy challenges is outside the scope of this Taskforce. However, the government has said it is likely that a pro-competitive code will address many of issues in scope of the Cairncross Review’s proposed codes of conduct. The Taskforce will have due regard to how any of its considerations or proposals relate to those policy challenges, and will include within its advice any evidence or considerations relevant to the government’s work on wider policy challenges.

Merger control for SMS firms

- 2.24 There are widely-held concerns about historic under-enforcement of digital mergers in the UK and around the world.⁴² Taking on board the findings and recommendations of recent expert reports on this topic, including the Furman Review and the Lear Report in the UK, the CMA continues incrementally to develop its approach to digital merger cases. This can be seen in the forward-looking approach taken in recent UK cases such as *Google/Looker*, *PayPal/iZettle* and *Experian/Clearscore*, where the CMA considered issues such as developing market dynamics, potential competition and non-horizontal theories of harm.⁴³
- 2.25 We are currently updating the CMA's Merger Assessment Guidelines to reflect the latest research and experience. We have received helpful input in response to our 'Call for Information' on digital mergers and we expect to publish a revised draft of the guidelines for external consultation later this year.⁴⁴
- 2.26 Although we consider that the UK merger control regime is overall fit for purpose, we are considering the need for legislative changes to ensure that we have the right tools to prevent harm to consumers arising from mergers in digital markets.
- 2.27 Building on the Furman Review recommendations, and our experience of operating the mergers regime in the UK, we are considering whether there is a policy justification for the introduction of a separate merger regime for digital companies designated as having SMS. Under-enforcement of mergers in such markets (and vertically-related and adjacent markets) may result in significant consumer detriment. It may therefore be appropriate for acquisitions by SMS firms to be subject to a heightened level of scrutiny under a separate merger control regime.
- 2.28 Our current thinking is that any special regime would have its own jurisdictional and substantive tests. SMS firms could be required to notify all transactions to the CMA, subject to certain limited exemptions. Competition concerns could be assessed under the 'substantial lessening of competition' test, but the increased risks of consumer harm may justify the use of a more

⁴² Report of the Digital Competition Expert Panel, [Unlocking digital competition](#), March 2019; Lear, [Ex-post Assessment of Merger Control Decisions in Digital Markets](#), June 2019 (Lear Report); Cr  mer et al., [Competition policy for the digital era](#), April 2019; Stigler Center for the Study of the Economy and the State, [Report of the Committee for the Study of Digital Platforms](#), May 2019.

⁴³ See [Google/Looker](#), [PayPal/iZettle](#) and [Experian/Clearscore](#) case pages.

⁴⁴ The updates to the [Merger Assessment Guidelines](#) will be broader than digital mergers, covering all relevant developments since their last revision in 2010. The call for information is available [here](#).

cautious standard of proof. The regime could also accommodate a separate assessment of non-competition concerns such as data protection.

- 2.29 The Taskforce will continue to develop thinking on a special merger regime for SMS firms and welcomes input on this potential measure.

Remedies to address the sources of SMS

- 2.30 Alongside a code of conduct, the market study final report proposed that a range of other remedies could be required to address the sources of market power leading to SMS in the digital advertising market. These included remedies to promote competition in search markets, interventions to increase interoperability between social media platforms, and separation remedies to address conflicts of interest in the open display advertising market. In search, the study proposed that this could require a combination of increased data access and also measures that would enable search engines other than Google to have more opportunities to access users, by reducing the scope of default agreements.⁴⁵
- 2.31 The Taskforce will consider such a pro-competition approach for other digital platforms. In particular, the Taskforce will consider whether there should be additional powers to address the sources of market power of firms with SMS, to help entrants seeking to develop new and innovative businesses to either compete with or complement the services provided by these firms. This could include requirements on larger firms to provide access to data or to interoperate with new entrants or firms seeking to develop new services in adjacent markets, where there are demonstrable benefits for consumers. Consideration of any remedy that involves the processing of personal data will take account of the requirements and safeguards for the protection of personal data and data subject rights that are provided for in the General Data Protection Regulation (GDPR) and Data Protection Act 2018.
- 2.32 The Taskforce does not expect, in the time available, to develop detailed proposals of the type set out in the market study final report. The Taskforce will seek to understand in what circumstances these kind of interventions could be required and the tools and wider considerations relevant in their implementation.

⁴⁵ Following [the Commission's Google/Android decision](#), Google introduced a new choice screen on Android devices shipped into the EEA which were preinstalled with Google Search.

- 2.33 The market study indicated the potential benefits of structural remedies in digital advertising markets.⁴⁶ There are a range of such remedies, including full ownership separation (or ‘divestiture’); operational separation (where there is management separation or firewalls between different businesses under common ownership); or restrictions targeted at conflicts of interest, where intermediary firms are not allowed to act on both sides of a single transaction. The Taskforce will also consider whether and under what circumstances remedies such as these should be available as part of the regime.

Interventions to address competition problems which may also relate to platforms that do not have SMS

- 2.34 The Taskforce welcomes views on whether as part of the pro-competition regime, remedies may be required to deal with wider competition problems in digital markets. Examples could include behavioural biases, information asymmetries, barriers to switching or coordination failures. These problems may require remedies which apply more widely, including to those firms who have not been found to have SMS.
- 2.35 We will consider the case for remedies that could apply to individual firms and also the case for industry-wide obligations to ensure that market outcomes are aligned with the interests of consumers and foster long-term competition and innovation. We will, of course, also consider the degree to which existing legislation, such as GDPR, can act to address concerns.
- 2.36 However, in considering interventions in the market we are conscious of the need to ensure that such interventions are proportionate and would not themselves have adverse impacts on the diversity of services available in a market, innovation, market entry and the ability of smaller firms to grow. In this section we provide a couple of examples where such remedies may be required however we are interested in considering others.

Pre-emptive action in relation to ‘tipping’

- 2.37 The Taskforce will consider whether any new approach should enable pre-emptive action – for instance in markets where the characteristics are such that there is a risk of the market ‘tipping’ in future. We have interpreted ‘tipping’ as the accumulation and entrenchment of market power, by one or a small number of players, who effectively ‘win’ the market, resulting in more

⁴⁶ CMA, [online platforms and digital advertising market study final report](#), July 2020, paragraphs 7.116-7.120

limited competition and lesser incentives to innovate and invest in improving products and services.

- 2.38 The Taskforce welcomes views on whether there is a role for pre-emptive action where there is a risk of a market tipping. Any role would need delicately to balance the strong incentives the aim of ‘winning’ a market creates for investment and innovation and the benefits that can accrue for consumers from ‘tipped’ markets, with the possible long-term consequence for competition and innovation once this goal has been achieved. It is also important to recognise that pre-emptive action may be more likely to lead to unintended consequences and/or undue burdens on business.

To ensure the terms of which users engage with platforms are clear and fair

- 2.39 Effective competition often requires active, informed customers, but customer engagement may be rendered less effective in some digital markets due to features such as information asymmetries, barriers to switching and behavioural biases. In relation to platforms, customers exist on both sides of the market. For example in the case of online marketplaces, on one side of the platform individual consumers act as customers buying products, but on the other side businesses (such as third-party sellers) also act as customers, essentially buying a spot and listings in the marketplace.
- 2.40 Business users of platforms (e.g. third-party sellers or providers of apps) may not be aware of changes that affect them. This may allow the platform to make rapid and unpredictable changes to the way it promotes their services, uses data, or to the terms and conditions, with limited advance notice or opportunity for businesses to challenge this conduct.⁴⁷ The Taskforce is interested in what remedies, if any, could be available to address this.
- 2.41 In relation to consumer users, natural behavioural biases (which may be exploited by platforms) or other features may mean that consumers tend to single home with a particular platform.⁴⁸ The design of services may lead consumers to make choices which favour the platform, for example through the use of defaults. They may not understand the value of their data, or control how it is collected and used, which may mean that they do not share in its full value. The market study recommended remedies to give consumers more control over their data (set out in the box below). The Taskforce is also

⁴⁷ The [Platform to Business Regulation](#) (which comes into force in the UK in July 2020) aims to address these issues through greater transparency and the creation of a complaints-handling mechanism. The Taskforce will consider the merits of the Platform to Business Regulation requirements being brought within the scope of a new pro-competitive approach.

⁴⁸ For example, the costs of learning new systems.

interested in whether remedies should be available to address such problems in digital markets more widely and what types of interventions might be most effective. The Taskforce will work closely with the ICO in considering such remedies.

Interventions to give consumers more control over their data

The market study found that consumers are often being offered limited or no effective choice over how data about them is collected and used for personalised advertising.⁴⁹ To address this, the final report proposed two measures aimed at facilitating informed choice and greater control:

- **The choice requirement remedy:** requiring platforms to give consumers the choice not to share their data for personalised advertising.
- **Fairness by Design duty:** a duty to take steps to ensure that platforms are maximising users' awareness and their ability to make informed choices about the use of their personal data. This duty would form part of the Trust and Transparency Principle under the code. SMS platforms would also be required to demonstrate compliance with this duty through active monitoring of user knowledge and levels of engagement; and to take appropriate steps to improve these metrics through trialling and testing alternative approaches.⁵⁰

While the market study identified concerns about the ability of consumers to control their data when interacting with a broad range of market participants, it concluded that, in the first instance, the remedies should apply only to platforms with SMS.⁵¹ Although non-SMS platforms would not initially be subject to these remedies, the market study acknowledged that this could be reviewed once the impact of these remedies could be assessed.⁵²

⁴⁹ CMA, [online platforms and digital advertising market study final report](#), July 2020, paragraph 4.145

⁵⁰ CMA, [online platforms and digital advertising market study final report](#), July 2020, paragraphs 8.123 – 8.127

⁵¹ CMA, [online platforms and digital advertising market study final report](#), July 2020, paragraph 8.79. Having carefully considered responses and the evidence submitted in the market study, as well as the most effective way to implement the remedies, the market study concluded this was the most appropriate and proportionate approach.

⁵² CMA, [online platforms and digital advertising market study final report](#), July 2020, paragraph 8.82. All platforms would still need to comply with the requirements of the GDPR, including the fairness and transparency provisions and the requirements for data protection by design.

Co-ordination failures

- 2.42 The Taskforce is also interested in whether remedies may be required to address possible coordination failures which could prevent the market developing or operating in a way which produces effective competition and positive consumer outcomes. For instance, there may be potential to enhance competition through the development of open or common standards and increased interoperability across all firms in certain markets.
- 2.43 The market study considered the benefits (and potential drawbacks) of increased interoperability in social media to help overcome network effects for new entrants and challenger social media platforms.⁵³ We plan to explore this issue in the context of other platform markets and welcome evidence on this issue. For example, the lack of interoperability between apps on different app stores could mean that there is a tendency to develop apps for only the likely platform ‘winners’, which may contribute to consumer ‘lock-in’ to incumbent platforms. However, a requirement for open standards and interoperability could have a negative impact on incentives to innovate, which may ultimately harm consumers. The Taskforce wishes to explore these trade-offs and will consider what measures, if any, may be needed to address these issues.

Questions for input and evidence – remedies

5. What are the anti-competitive effects that can arise from the exercise of market power by digital platforms, in particular those platforms not considered by the market study?
6. In relation to the code of conduct:
 - Would a code structure like that proposed by the market study incorporating high-level objectives, principles and supporting guidance work well across other digital markets?
 - To what extent would the proposals for a code of conduct put forward by the market study, based on the objectives of ‘Fair trading’, ‘Open choices’ and ‘Trust and transparency’, be able to tackle these effects? How, if at all, would they need to differ and why?

⁵³ CMA, [online platforms and digital advertising market study final report](#), July 2020, paragraphs 3.226 – 3.235

7. Should there be heightened scrutiny of acquisitions by SMS firms through a separate merger control regime? What should be the jurisdictional and substantive components of such a regime?
8. What remedies are required to address the sources of market power held by digital platforms?
 - What are the most beneficial uses to which remedies involving data access and data interoperability could be put in digital markets? How do we ensure these remedies can effectively promote competition whilst respecting data protection and privacy rights?
 - Should remedies such as structural intervention be available as part of a new pro-competition approach? Under what circumstances should they be considered?
9. Are tools required to tackle competition problems which relate to a wider group of platforms, including those that have not been found to have SMS?
 - Should a pro-competition regime enable pre-emptive action (for example where there is a risk of the market tipping)?
 - What measures, if any, are needed to address information asymmetries and imbalances of power between businesses (such as third-party sellers on marketplaces and providers of apps) and platforms?
 - What measures, if any, are needed to enable consumers to exert more control over use of their data?
 - What role (if any) is there for open or common standards or interoperability to promote competition and innovation across digital markets? In which markets or types of markets? What form should these take?

Designing the procedure of a new pro-competition approach

2.44 Finally, the Taskforce will need to consider the design and operation of any new approach. This will include:

- (a) the key characteristics that will need to be taken into account in making decisions about design and operation of any new approach;

- (b) the procedural framework (including timeframes, evidential thresholds and rights of parties including rights of appeal) required for each stage or function of the approach;
- (c) the powers needed to perform those functions effectively;
- (d) how any new approach will interact with existing and proposed UK regulatory regimes; and
- (e) how any new approach will operate in a global context, including where international cooperation will be most needed and how it can be achieved.

2.45 The market study final report has already begun to consider some of these questions, and the Taskforce will incorporate this initial thinking.

Powers and procedures needed in relation to the code of conduct

The market study put forward initial proposals on the powers and procedures that would be needed to enforce the code of conduct.⁵⁴ It set out that the code would be directly enforceable by a digital markets unit and that this unit would have the power to suspend, block and reverse decisions of SMS firms, and order conduct in order to achieve compliance with the code. These powers would follow an investigation into a breach of the code that balances reasonable rights of defence against the need for prompt decisions. In order for the digital markets unit's orders to be effective, they would need to be backed up by the ability to impose financial penalties for non-compliance.

The market study proposed that to achieve the objectives of the code, it is likely that the digital markets unit would need appropriate powers including the ability to:

- compel information from SMS firms and other market participants;
- carry out own-initiative investigations and investigations stemming from complaints;
- put in place rapid interim measures pending the outcome of an investigation, for example to suspend or reverse the implementation of a

⁵⁴ CMA, [online platforms and digital advertising market study final report](#), July 2020, paragraph 7.94 – 7.101

potentially harmful decision by an SMS firm, backed up by financial penalties for non-compliance;

- publish reports on its work and the industry more generally, balancing the need for transparency against industry players' interests in protecting their confidential information;
- appoint a monitoring trustee to monitor and oversee compliance by an SMS firm; and
- co-ordinate and share information with UK regulators such as CMA, ICO and Ofcom, and with overseas authorities with similar objectives provided the digital markets unit is satisfied that confidential information will be treated appropriately.

The market study proposed there would be a right of appeal on judicial review grounds by the SMS firm or other materially affected person against decisions of the digital markets unit. It also set out that the unit would need express jurisdiction to investigate the supply of services to UK consumers, and to investigate those who supply them – including the power to require the production of information from, and to impose orders on, firms not physically present in the jurisdiction.

2.46 *Key characteristics.* Any new approach will need to allow any future regulator or regulators to take swift action to address harm where it may arise. Given the fast pace of change in digital markets, it will also need flexibility to respond to new technologies and new forms of potential detriment as they arise. This speed and flexibility will need to be balanced against the need to provide sufficient clarity and legal certainty (particularly for platforms which may come within the scope of the new approach) and fair opportunities for platforms and businesses to be consulted on and challenge decisions. This is important both to respect platforms' legitimate rights of due process, and to guard against any risk of deterring investment or stifling innovation that may follow where companies are unable adequately to forecast legal risks.

2.47 *Procedural framework.* To achieve this balance, the Taskforce will consider a number of detailed design questions for the procedural framework under which any new approach would operate.

2.48 One part of this will be considering what elements of any approach should be specified in any legislation, and what should be left to the discretion of a future

regulator or regulators. This will involve weighing up the benefits of greater specificity in any potential legislation (greater certainty for platforms and other businesses about the remit and operation of any new approach, and a stronger mandate for any future regulator or regulators, with consequent reduction in the risk of lengthy appeals) against providing greater scope for any regulators to respond flexibly as the circumstances develop, and for platforms and other businesses to exercise rights of appeal and due process. Another part is determining the different procedural requirements for each proposed function under the approach, including the timeframes and frequency of review, level of investigation, sources of information, evidential thresholds, and opportunities for consultation and appeal. These questions will apply for each potential function performed by any regulator or regulators, including designating firms as having SMS, determining the content of any code of conduct, imposing any other remedies deemed necessary, monitoring and enforcing compliance (including investigating complaints) and reviewing both the SMS designation and any remedies imposed.

- 2.49 There are strong interdependencies between these different elements. For example, the process and evidentiary threshold for determining that a firm has SMS will be driven by the consequences that flow from such a determination. The more onerous those consequences, the higher the evidentiary threshold and the greater the extent of consultation ought to be. If instead a separate process is required to impose certain actions, the intensity of the SMS designation process may be legitimately lessened.
- 2.50 *Powers.* Having considered these design questions, the Taskforce will consider what powers are needed in order to carry out the identified functions effectively. This will build on the work of the market study with respect to the powers needed to enforce a code of conduct,⁵⁵ and is likely to include (inter alia) powers with respect to: monitoring firms and market developments, gathering information to investigate potential concerns, requiring action to address concerns (both on an interim and a lasting basis), and penalising non-compliance with such requirements.
- 2.51 *Interaction with existing and proposed UK regimes.* Both to ensure effective market outcomes and to produce a coherent regulatory landscape for government and industry alike, it will be important to ensure that any new approach works in harmony with existing and proposed regulatory regimes. The Taskforce will therefore consider how the proposed new approach could interact with the CMA's existing remit, as well as existing remits of sector

⁵⁵ CMA, [online platforms and digital advertising market study final report](#), Chapter 7

regulators and other cross-economy regulators, including the ICO. It will also consider interactions with regulation proposed under future regimes, including requirements under the Platform to Business Regulation⁵⁶ and the new Online Harms regime⁵⁷. It will provide advice on how to avoid unintended overlaps or conflict, as well as on where cooperation or coordination mechanisms may enhance outcomes.

- 2.52 *Wider international context.* Finally, the Taskforce will consider the international context of any new approach introduced in the UK. The largest digital platforms serving UK consumers are multinational companies, operating across multiple jurisdictions and headquartered overseas. In assessing the full range of functions and tools that would be required under a new approach, the Taskforce will therefore also consider where international cooperation will be most important. The CMA will continue the extensive programme of international engagement which it has been undertaking, both as a result of the market study and as part of its wider digital markets strategy, to build consensus where desirable. But the Taskforce will also identify where action by the government could most effectively contribute to this effort.

Questions for input and evidence – designing procedure and structure

10. Are the proposed key characteristics of speed, flexibility, clarity and legal certainty the right ones for a new approach to deliver effective outcomes?
11. What factors should the Taskforce consider when assessing the detailed design of the procedural framework – both for designating firms and for imposing a code of conduct and any other remedies – including timeframes and frequency of review, evidentiary thresholds, rights of appeal etc.?
12. What are the key areas of interaction between any new pro-competitive approach and existing and proposed regulatory regimes (such as online harms, data protection and privacy); and how can we best ensure complementarity (both at the initial design and implementation stage, and in the longer term)?

⁵⁶ European Commission, [Platform to Business Regulation](#), November 2019.

⁵⁷ [Online Harms White Paper](#), April 2019.

3. Next steps

- 3.1 The Taskforce is required to give its advice to government by the end of 2020.
- 3.2 To respond to this Call for Information, please email your submission by 31 July 2020 to:
- Email: digitaltaskforce@cma.gov.uk
- 3.3 In providing responses, please say whether you are an individual or a business, or if you represent consumer or business interests. Please provide your name, email address, postal address and telephone number and indicate whether you would be happy for us to follow-up with you.
- 3.4 Please note that we are unable to provide advice on individual complaints. Our website provides links to sources of advice, information and support.
- 3.5 We intend to publish on our website responses from businesses and other organisations. In providing responses, please:
- (a) provide a brief summary of the interest or organisation that you represent, where appropriate;
 - (b) consider whether you are providing any material that you consider to be confidential and explain why this is the case; and
 - (c) provide both confidential version and a non-confidential version for publication of your response.
- 3.6 Appendix B sets out how the CMA may use information provided to it during the course of this work.
- 3.7 It is possible that enforcement action using either our consumer or competition powers could be launched during or following this work. Therefore, the information provided to us will help assess whether digital platforms are complying with the relevant consumer and competition law and determine whether enforcement action is appropriate. If we take enforcement action, please note that information provided may potentially be used in evidence.

Appendix A – Questions for input and evidence

Scope of a new approach

1. What are the appropriate criteria to use when assessing whether a firm has Strategic Market Status (SMS) and why? In particular:
 - The Furman Review refers to ‘significant market power,’ ‘strategic bottleneck,’ ‘gateway,’ ‘relative market power’ and ‘economic dependence’:
 - How should these terms be interpreted?
 - How do they relate to each other?
 - What role, if any, should each concept play in the SMS criteria?
 - Which, if any, existing or proposed legal and regulatory regimes, such as the significant market power regime in telecoms,⁵⁸ could be used as a starting point for these criteria?
 - What evidence could be used when assessing whether the criteria have been met?
2. What implications should follow when a firm is designated as having SMS? For example:
 - Should a SMS designation enable remedies beyond a code of conduct to be deployed?
 - Should SMS status apply to the corporate group as a whole?
 - Should the implications of SMS status be confined to a subset of a firm’s activities (in line with the market study’s recommendation regarding core and adjacent markets)?
3. What should be the scope of a new pro-competition approach, in terms of the activities covered? In particular:
 - What are the criteria that should define which activities fall within the remit of this regime?

⁵⁸ See Ofcom, [Significant Market Power](#), February 2016. We are also interested in views on the proposals made by Australia, Germany and the Benelux countries or the proposals made by the European Commission.

- Views on the solution outlined by the Furman Review (paragraph 2.13) are welcome.
4. What future developments in digital technology or markets are most relevant for the Taskforce's work? Can you provide evidence as to the possible implications of the COVID-19 pandemic for digital markets both in the short and long term?

Remedies for addressing harm

5. What are the anti-competitive effects that can arise from the exercise of market power by digital platforms, in particular those platforms not considered by the market study?
6. In relation to the code of conduct:
 - Would a code structure like that proposed by the market study incorporating high-level objectives, principles and supporting guidance work well across other digital markets?
 - To what extent would the proposals for a code of conduct put forward by the market study, based on the objectives of 'Fair trading', 'Open choices' and 'Trust and transparency', be able to tackle these effects? How, if at all, would they need to differ and why?
7. Should there be heightened scrutiny of acquisitions by SMS firms through a separate merger control regime? What should be the jurisdictional and substantive components of such a regime?
8. What remedies are required to address the sources of market power held by digital platforms?
 - What are the most beneficial uses to which remedies involving data access and data interoperability could be put in digital markets? How do we ensure these remedies can effectively promote competition whilst respecting data protection and privacy rights?
 - Should remedies such as structural intervention be available as part of a new pro-competition approach? Under what circumstances should they be considered?
9. Are tools required to tackle competition problems which relate to a wider group of platforms, including those that have not been found to have SMS?

- Should a pro-competition regime enable pre-emptive action (for example where there is a risk of the market tipping)?
- What measures, if any, are needed to address information asymmetries and imbalances of power between businesses (such as third-party sellers on marketplaces and providers of apps) and platforms?
- What measures, if any, are needed to enable consumers to exert more control over use of their data?
- What role (if any) is there for open or common standards or interoperability to promote competition and innovation across digital markets? In which markets or types of markets? What form should these take?

Procedure and structure of a new pro-competition approach

10. Are the proposed key characteristics of speed, flexibility, clarity and legal certainty the right ones for a new approach to deliver effective outcomes?
11. What factors should the Taskforce consider when assessing the detailed design of the procedural framework – both for designating firms and for imposing a code of conduct and any other remedies – including timeframes and frequency of review, evidentiary thresholds, rights of appeal etc.?
12. What are the key areas of interaction between any new pro-competitive approach and existing and proposed regulatory regimes (such as online harms, data protection and privacy); and how can we best ensure complementarity (both at the initial design and implementation stage, and in the longer term)?

Appendix B – Use of information provided to the CMA

1. This note sets out how the CMA may use information provided to it during the course of the work of the Digital Markets Taskforce. In particular, please note that we may choose to refer to comments or evidence that you provide in a published report or publish non-confidential information on the CMA's website. This may include identifying the contributor.
2. The information you provide will help us better understand how well online platforms outside of the scope of our market study are working for consumers, and for fairly competing businesses, and to inform our advice to the government on how any new pro-competition approach to digital markets could work.

Why is the CMA asking for information?

3. Your information will inform our advice to the government.

What will the CMA do with the information I provide?

4. The CMA may disclose any information provided by you for the purposes set out in section 7, section 170 and sections 240 to 243 of the Enterprise Act 2002, where it considers such disclosure to be appropriate. In particular, for the purpose of facilitating our work, the CMA may choose to put information provided by you to third parties, such as other government departments, enforcement authorities, regulators and other parties providing information to the CMA. We may share your information with another enforcement authority or with another regulator for them to consider whether any action is necessary, or to assist them in carrying out their functions. We may use information you provide to take enforcement action using our competition or consumer powers or in further mergers or markets work.
5. In all situations, we may only publish or share specified information in specific circumstances set out in legislation (principally Part 9 of the Enterprise Act 2002). In particular, prior to publication or any such disclosure, we must have regard to (among other considerations) the need for excluding, so far as is practicable:
 - (a) Any information relating to the private affairs of an individual where we think such disclosure might significantly harm the individual's interests; or

- (b) Any commercial information which, if published or shared, we think might significantly harm the legitimate business interests of the undertaking to which it relates.
6. We will redact, summarise or aggregate information in published reports where this is appropriate to ensure transparency whilst protecting legitimate consumer or business interests.
 7. If you wish to submit information either in writing or verbally that you consider to be confidential, this should be indicated to us clearly at the time it is provided and an explanation given as to why you consider it to be confidential. In the event that the CMA proposes to include any sensitive commercial or personal information in a document that will be published it will, to the extent practicable, contact the relevant persons prior to publication to give them the opportunity to explain why disclosure would cause significant harm and to request excision (or aggregation or generalisation) of any such information.
 8. The CMA is also bound by the Freedom of Information Act 2000 (the FoIA). Under the FoIA, where a person makes a request in accordance with the requirements of the FoIA, the CMA may have to disclose whether it holds the information sought and may be under a duty to disclose it, unless an exemption applies. If you consider that any information you provide may be exempt from such disclosure you should say so and explain why.
 9. Any personal data you provide to us will be handled in accordance with our obligations under the Data Protection Act 2018 and GDPR. Any personal data provided to us will be processed for the purposes of the Taskforce's work under section 7 and 170 of the Enterprise Act 2002 and where appropriate the follow on action described above. For more information about how the CMA processes personal data, your rights in relation to that personal data (including how to complain), how to contact us, details of the CMA's Data Protection Officer, and how long we retain personal data, see our Privacy Notice.
 10. Further details of the CMA's approach can be found in [Transparency and Disclosure: Statement of the CMA's Policy and Approach \(CMA6\)](#).