

ORACLE CORPORATION

**SUBMISSION TO THE AUSTRALIAN COMPETITION & CONSUMER
COMMISSION'S DIGITAL ADVERTISING SERVICES INQUIRY**

13 MAY 2020

Thank you very much for providing an opportunity to Oracle Corporation (**Oracle**) to make this submission to the Australian Competition & Consumer Commission's (**ACCC**) Digital Advertising Services Inquiry (**Adtech Inquiry**).

1. **Opening comments**

- 1.1 We have provided evidence in this submission of the anticompetitive behaviour of Google in the supply of open display adtech services, largely considered from the perspective of advertisers. As we demonstrate, Google restricts advertisers from using non-Google adtech providers, either by directly prohibiting the use of such providers or by restricting access to data, which forecloses competition in important ways. Google also goes to great lengths to inhibit transparency in relation to the provision of adtech services by the extensive actions that it takes to impose limits on the ability of advertisers to independently assess the effectiveness of their advertising, including on Google's owned and operated websites, and determine attribution.

The consequences of Google's actions in limiting the availability of other adtech services and limiting transparency are:

- (a) an ever increasing volume of advertising traffic uses Google AdX and other Google adtech products;**
- (b) Google is able to sell low quality Google owned and operated ad inventory at a premium; and**
- (c) Google is able to degrade publishers' premium inventory so that it is sold at lower prices than would be obtained in a competitive market.**

As a consequence of Google's actions, advertisers pay more than they should, and publishers receive less than they should, which has negative economy wide implications. Regulatory intervention is required from the ACCC to address these market failures.

- 1.2 Generally, Google portrays privacy concerns as a basis for its restrictions and exclusions, but this is simply an excuse to disguise the anticompetitive reasons for its actions.
- 1.3 Google's anticompetitive conduct impacts all advertisers that use any of Google's adtech services products, which Oracle believes includes most advertisers in Australia. Google's conduct therefore has an impact across all sectors of Australia's economy. Advertisers pay more for advertising than they should because Google prevents advertisers from using preferred adtech providers and advertisers are also prevented from accessing the data they need to optimise their advertising expenditure. This significant cost is passed on to consumers in the form of higher prices. Just how high this cost is for advertisers – and therefore for consumers – may be demonstrated in the context of start-up businesses in the direct to consumer sector, on which we have provided further information in this submission. Consumers also suffer because Google's actions inhibit the growth of other existing adtech providers, and the emergence of new providers, which has a chilling impact on innovation and therefore competition in the provision of adtech services. Again, this has economy wide implications.
- 1.4 Publishers are of course also impacted, as they receive less from advertising revenue than they would in a competitive marketplace. A study of programmatic advertising was recently completed by The Incorporated Society of British Advertisers Ltd (**ISBA**), in association with the Association of Online Publishers, and carried out by PwC.¹ This study was the first of its type completed anywhere in the world. It found that approximately 50% of the money advertisers spend on advertising with online publishers is paid to adtech providers (and ad agencies) and is not received by online publishers. In fact, 15% of the ad spend cannot be attributed *at all*. Not only does the study show the significant "wastage" of value through the adtech supply chain, but also the difficulty in obtaining information required to determine which adtech providers receive payments and the amounts of those payments. It took nine months to obtain the necessary data to complete the study. Although this study was

¹ <https://www.marketingweek.com/programmatic-advertising-supply-chain-brands/>

undertaken in the UK, there seems little doubt that the same outcomes would be found if an equivalent study was undertaken in Australia. The fact that publishers receive less from advertising revenue than they should means that the ability of those publishers to innovate is limited, indeed, in some cases their very ability to carry on business is impeded. A further consequence is that media companies that provide public interest journalism cannot do so to the same extent. Consumers again suffer as a result of these detrimental impacts.

- 1.5 Google's ability to engage in its anticompetitive practices arises because of the importance of consumer data in the provision of adtech services. Google has an insurmountable data advantage, which it has gained through breaches of sections 45 and 46 of the Competition & Consumer Act 2010 (Cth) (**CCA**). Google's dominant position across a range of digital services means that Google is able to impose unfair data collection and combination terms on consumers through its Privacy Policy and Terms of Service. Consumers have little choice but to agree to these terms. As it is able to impose these unfair terms on consumers, Google collects vast quantities of consumer data through Android OS and its consumer facing services. Google also collects consumer data through its adtech services as, through these services, Google collects data about how consumers interact with ads, which is data about a consumer's interests and preferences. Until the ACCC takes regulatory action to address these underlying breaches of the CCA, any action that the ACCC takes on the specific issues that Oracle raises in this submission will be of little long term benefit. This is because Google has entrenched its market position through the creation of a data moat and this provides Google with the ability to continue to engage in anticompetitive practices.

PART A: BACKGROUND

2. Focus of Oracle's submission

- 2.1 The ACCC's Issues Paper for the Adtech Inquiry raises a number of questions in respect of which it has sought submissions. Feedback has been sought from a broad range of stakeholders, including companies who buy digital display advertising, advertising and media agencies, ad hosts or publishers and providers of digital advertising technology services (**adtech services**). Oracle provides this submission in its capacity as an interested stakeholder who does not fall neatly into one particular category. Oracle is a global technology company, with approximately 136,000 employees (including in Australia) and over 430,000 customers in more than 170 countries. Oracle brings a unique perspective to the Adtech Inquiry in this response, as it is both an advertiser and a provider of adtech services.
- 2.2 In this submission we have referred to only one adtech services market, but Oracle does not provide a view on whether there is only one market or multiple markets for adtech services. Oracle notes that the ACCC's Issues Paper does not state whether the ACCC has made a determination as to whether there is one, or multiple, markets. As a matter of economic analysis, for example, there may be a market for publisher adtech services and separately a market for advertiser adtech services. Oracle's analysis, as set out in this submission, remains unchanged whether there are one or multiple markets.
- 2.3 By way of brief overview of Oracle's adtech services, and to demonstrate our expertise to contribute to the Adtech Inquiry, Oracle Data Cloud (**ODC**) is part of Oracle and provides adtech services to advertisers (which term also incorporates marketers, brands and media agencies that engage in the purchase of inventory in digital advertising), publishers and adtech intermediaries. These adtech services allow ODC's clients to assess and manage data. The primary services that ODC provides may be categorised as follows:
- (a) *Data management platform (DMP) services:* ODC provides audience management for clients' first party data via a DMP, a third party data marketplace for data brands and a curated audience data offering.
 - (b) *Ad verification measurement platform:* ODC provides campaign analytics services related to viewability (that is, did the consumer have an opportunity to view the ad), invalid traffic detection (that is, the detection of ad fraud) and brand safety (which considers whether the ad appeared with appropriate content).
 - (c) *Contextual targeting platform:* ODC provides context-based ad targeting services as well as brand safety features to help advertisers target and/or avoid certain web properties and content and to ensure accurate attribution of digital advertising.

- 2.4 In providing this response, Oracle has focussed primarily on the position of advertisers and adtech providers. The Adtech Inquiry is focussed on display advertising, not search advertising, and this submission is similarly focussed on display advertising. In considering display advertising, Oracle discusses only the open display advertising market, not the separate market for advertising on closed publisher websites using the publisher's own vertically integrated adtech services, such as Facebook, LinkedIn or similar.
- 2.5 As in the case of Oracle's submissions to the ACCC's Digital Platforms Inquiry, and other submissions that Oracle has made to the ACCC over the past 2 years, Oracle wishes to focus primarily on the activities of one digital platform, Google, and the way that Google's actions in the adtech services market have had, and continue to have, a detrimental impact on competition. In short, as a result of the actions of Google, the adtech services market in Australia is not competitive, efficient, transparent or effective (and the same may be said of the global market). This has significant negative consequences for Australian business and Australian consumers.
3. **The primary reason for Google's dominance in the adtech services market**

Google is able to engage in anticompetitive practices in the adtech services market because of the vast quantities of consumer data that Google has acquired in breach of the CCA.

- 3.1 In its Issues Paper, the ACCC raised questions in relation to market power and the identity of the main competitors in the supply of adtech services. Oracle has no doubt that the ACCC will find that Google is, by a significant margin, the dominant adtech provider in Australia, whether one is looking at publisher ad servers, supply-side platforms and ad exchanges, ad networks, demand-side platforms or advertiser ad servers.²

Market power arises from the collection of consumer data

- 3.2 Consumer data plays a crucial role in the provision of adtech services. As explained in other submissions that Oracle has made to the ACCC, Google has acquired its dominant position in the adtech services market because it has collected, in breach of the CCA, vast quantities of consumer data.
- 3.3 The intensely personal renderings of an individual's online and offline life that are able to be created by Google are (a) made up of data from every active user input into a Google service (in the form of, for example, a query on Google Search, watch history on YouTube, or directions requests on Google Maps); (b) combined with details regarding virtually every internet-connected user's private browsing activities on the desktop and mobile internet (whether through browsers or apps, including Google and third-party apps on Android and on other mobile OS); and (c) for those Australian consumers with an Android mobile device, precise details about everywhere that individual has been, how they got there, and what they were doing there, given the constant stream of granular location data that Google also gathers. This information is combined across services, across devices, and over time, giving Google a deep historical and highly specific picture of nearly every internet-connected individual's behaviour and interests. As Google's then-CEO said in 2010, "*We know where you are. We know where you've been. We can more or less know what you're thinking about.*"³
- 3.4 Google's unrivalled data position creates network effects in the form of a feedback loop in the adtech services market. The more robust an adtech provider's consumer data pool is, the better the provider's ad targeting becomes, and the more advertisers are driven to that provider's adtech services. The more advertisers join a given adtech services platform, the more publishers are incentivised to source ads from that adtech services platform. And the more advertisers and publishers who interact with a given adtech services platform, the more consumer data the adtech provider collects and the better-targeted the ads are to particular consumers. This means more consumers will engage with ads, generating more consumer data that Google collects. As Google Vice President Jonathan Rosenberg has said:

² See question 5 from the Issues Paper.

³ Eric Schmidt, *Google CEO: "We Know Where You Are. We Know Where You've Been. We Can More or Less Know What You're Thinking About,"* BUSINESS INSIDER (Oct. 4, 2010), <https://read.bi/2unSd5l>.

*"more users more information, more information more users, more advertisers more users, more users more advertisers, it's a beautiful thing, lather, rinse, repeat."*⁴

Data is collected in breach of the CCA

- 3.5 The ACCC concluded in the Digital Platforms Inquiry⁵ that the consent processes for personal information collection practices that digital platforms, including Google, impose leverage the bargaining power that those platforms have and deepen information asymmetries between the platforms and consumers, preventing consumers from providing meaningful consent to the collection, use and disclosure of their personal information. In other words, the ACCC found that Australian consumers who use Google's services do not freely consent to Google's intrusive Privacy Policy, as it has been expanded and extended over time. Users of Google's services are unable to avoid Google's Privacy Policy. Google's substantial degree of market power in key online markets and the omnipresence of its "services" (which is broadly defined in its Privacy Policy to include not only consumer facing services such as Google search but Android OS, personalised ads and products that are integrated into third party apps and sites such as Google's omnipresent cookies) on the desktop and mobile internet renders it exceedingly difficult for individual Australian consumers to participate in the digital economy without accepting Google's Privacy Policy.
- 3.6 The "data moat" that Google has created forecloses competition as it constitutes an enormous and insurmountable barrier to entry, expansion and effective competition in the adtech services market for competitors to Google. Google, by imposing its Terms of Service and Privacy Policy on Australian consumers, has substantially lessened competition in the adtech services market in breach of both section 45 and section 46.

Google's dominance allows it to engage in other anticompetitive behaviour

- 3.7 Google's dominant position in the adtech services market has, in turn, allowed it to engage in many of the different types of anticompetitive conduct that are outlined in this submission. Although there are actions that the ACCC could take to address the specific anticompetitive conduct outlined in this submission, and in other submissions that will be made to the Adtech Inquiry, the broader issues of Google's breaches of the CCA in collecting consumer data would remain and would inevitably lead to Google breaching the CCA in other respects. Therefore, it is of fundamental importance that the ACCC should take action to address the underlying breaches by Google of the CCA in its consumer data collection and combination practices.

4. Background: A "data pipeline" is critical for effective digital advertising campaigns

- 4.1 We have set out in this section 4 more detail on why a constant flow of data is critical from an advertiser's perspective. An advertiser's digital advertising campaign has 4 distinct phases:
- (a) *Targeting*: The primary purpose of advertising is for advertisers to seek to grow their potential customer base, by targeting consumers who are most likely to generate sales. Digital advertising enables the targeting of consumers in a very direct way that is not possible in the case of more traditional advertising, such as in hard copy newspapers or magazines and on billboards. Therefore, at the commencement of a digital advertising campaign, an advertiser needs to determine who it will target its advertising to so that it reaches the optimal target audience and what data it will use for this targeting.
 - (b) *Bidding*: An advertiser needs to determine what price to bid for the purchase of digital inventory, and what inventory to bid for, to ensure that it is not paying too much for its advertising and also to ensure that it is, in fact, bidding for the right inventory to reach its target audience.
 - (c) *Measurement*: An advertiser needs to determine the value that it obtains from its advertising campaign, that is, how many consumers actually saw (and if relevant heard) the advertisement

⁴ Nathan Newman, *What EU Should Focus On In Google Antitrust Investigation*, Law360 (18 November 2014), <https://www.law360.com/articles/597040/what-eu-should-focus-on-in-google-antitrust-investigation>

⁵ See page 374 of the Final Report.

in a brand safe environment. This allows the advertiser to compare ad quality across publishers and determine which publishers it wishes to continue to purchase inventory from.

(d) *Attribution*: Where advertising converts to a sale, an advertiser needs to know what ad or ads contributed to that sale so that the advertiser can optimise future advertising budget allocations.

- 4.2 Advertisers need a significant amount of information in each of these different phases – this information needs to be quickly and continuously provided, in a consistent form, to ensure that the advertiser is able to assess the data and adjust its advertising campaign for optimal effectiveness.
- 4.3 In the targeting phase of a digital advertising campaign, an advertiser needs to make a decision as to whether it wishes to use its own data, which will mean it will only specifically target its own customers, or whether it should also seek to directly target other consumers, to achieve the aim of expanding its current customer base. Adtech providers are able to provide data that meets specific criteria to assist advertisers to target consumers beyond their own customers and to otherwise enhance their own data. For example, third party data may be used to further segment an advertiser’s own data (that is, to determine a subset of the advertiser’s own customers who meet particular additional criteria) or to create look-alike audiences, that is, other potential customers that appear to share similar characteristics as the advertiser’s own customers and who therefore may also be interested in the advertiser’s goods and services. Of course, the costs of acquiring data differ between different adtech providers and an advertiser will need to determine the value of acquiring different data sets, typically by ultimately measuring whether the use of a data set increases its conversion rate (ie, the number of consumers who purchase its goods or services as a consequence of viewing its advertising).
- 4.4 In the second phase of a campaign, an advertiser needs to determine what advertising inventory it should purchase and the price it should pay for advertising on different sites. To assist it in determining this, an advertiser (amongst other things) will take into consideration the “on-target” rate. The on-target rate refers to the number of impressions (that is, the number of times the ad will appear on the screen of a person) for consumers who have the targeted demographic features, divided by the overall number of impressions for the relevant publisher. For example, a low price for inventory might seem attractive, but if the on-target rate is also very low for the relevant inventory, that low price will translate to a high on-target price.
- 4.5 In assessing what advertising it will purchase, advertisers also need to ensure that they do not show their ad to the same user too many times. This requires the application of “frequency capping”. Frequency capping imposes a maximum limit on the number of times an ad will be made available on a particular browser during a particular period. Without frequency capping, there is again a risk that an advertiser will pay too much for its advertising, as its advertising will be targeted at particular individuals too many times.
- 4.6 The typical metrics that an advertiser would wish to measure to determine the value of online advertising are:
- (a) “*viewability*” (that is, did a potential customer actually see and if relevant hear the ad);
 - (b) ad fraud (where a view or click is not generated by a person but from invalid traffic); and
 - (c) brand safety (ensuring that the advertisement did not appear next to inappropriate content).

Viewability may be calculated in a number of ways – this includes for example, assessing whether the ad was heard, how long it appeared on the screen of the relevant consumer and what else was competing for the consumer’s attention when the ad appeared. In ideal circumstances, advertisers are able to combine ad spend data and ad quality data to automatically calculate the value adjusted cost of that advertising.

- 4.7 Attribution, the final phase of an advertising campaign, is also important. This is the ultimate test of the effectiveness of an ad – which ad was it that actually convinced the consumer to purchase the advertiser’s goods or services. Unless an advertiser is able to measure attribution, ultimately it does not know whether its advertising spend has been effective and where best to target its advertising for the remainder of a campaign and for future campaigns. Given that this is difficult to determine, there are numerous different models that have been developed to determine attribution, with different adtech providers offering products based on different data sources and attribution methodologies.

4.8 Without the provision of a continuous flow of the data required in each different phase, an advertiser is more likely to make misdirected and therefore inefficient decisions in its advertising campaigns. That inefficiency will lead to higher costs (that is, more would be paid by the advertiser for advertising than is optimal), with such costs ultimately passed back to the advertiser's customers in the form of higher prices for its goods or services.

5. **Background: The importance of adtech providers to advertisers**

Demand Side Platforms

5.1 The analysis in this section 5 demonstrates that, from the perspective of advertisers, in addition to data and analytics services providers (which Oracle discusses in greater detail later in this submission), demand side platforms (**DSPs**) and advertiser ad servers are key adtech providers.

5.2 The ACCC noted in its Issues Paper that DSPs assist purchasers to purchase ad inventory as effectively and cheaply as possible and that DSPs use "various data" to provide ad targeting services. This underplays the importance of DSPs. A DSP is able to assist an advertiser to obtain the best services, and optimise its ad campaigns, across each of the 4 phases of an ad campaign as follows:

- (a) DSPs enable advertisers to target their ad campaigns by selecting appropriate audience segments, and also enhancing their own first party data, by acquiring additional data from a variety of different providers.
- (b) DSPs will bid on available inventory for the advertiser.
- (c) DSPs provide advertisers with the choice of numerous vendors who are able to independently measure ad quality, that is, viewability and the like.
- (d) And finally DSPs are able to provide a wide range of choice to advertisers of different attribution partners. Those attribution services providers provide services based on different data sources and different attribution methodologies, allowing the advertiser to pick the service most suitable to that particular provider.

5.3 Therefore, DSPs have the ability to promote competition. DSPs offer to their advertiser customers a range of different services which are able to be delivered by different providers. Those different providers compete on any given DSP to gain advertisers as customers, meaning those providers will work to ensure that they offer innovative products at competitive prices to attract those advertiser customers.

Advertiser ad servers

5.4 The ACCC's Issues Paper states that advertiser ad servers are servers used by advertisers to manage and track all ad campaign information in one location. This again understates the importance of advertiser ad servers. Once an ad slot has been purchased, an advertiser ad server will deliver the ad creative to the intended slot. An advertiser ad server is also able to deliver the advertiser's analytics vendors' codes. Those codes then provide to the DSP monitoring information about each ad impression (that is each time the ad is shown to a consumer). Advertiser ad servers are accordingly able to aggregate information on ad campaigns across all publishers to enable the advertiser, in real time, to gain insights into the performance of its ads across all publisher websites. Advertiser ad servers are therefore of key importance as these provide advertisers with a consolidated view of both advertising spend and the returns from that advertising spend.

6. **Privacy is not sacrificed in a competitive adtech services market**

6.1 Google uses privacy as an excuse to justify restricting access to relevant data and precluding other adtech providers from providing services to advertisers. However, as discussed in this section, non-Google adtech providers are able to provide their services in compliance with the Privacy Act 1988 (Cth) (**Privacy Act**).

The use of third party cookies and other technology

6.2 Advertisers, and the adtech providers that work with advertisers, seek to track consumer behaviour across the internet. At the current time, advertisers and adtech services rely on pixels, tags and/or

third party cookies for this purpose (noting that not all services require the same technology, for example, verification services do not require third party cookies).

- 6.3 Cookies are able to recognize a user's browser and record that browser's behaviour. Publishers use first party or single domain cookies on their own sites. First party cookies are used for functions such as remembering the user's log-in information and keeping track of items in the user's cart on that website. However, those cookies do not track browser behaviour on other sites.⁶ Cross-domain or third party cookies may, with the consent of the publisher of the relevant site, also be left by ad servers in a user's browser when a particular site is visited by a particular device. Third party cookies are able to be used to track the relevant device across the internet. It is not the user but the *device* that it actually tracked.

What is "personal information" that is regulated under Australia's Privacy Act?

- 6.4 The Privacy Act defines personal information in section 6 as follows (emphasis added):

means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

(a) whether the information or opinion is true or not; and

(b) whether the information or opinion is recorded in a material form or not.

- 6.5 This definition makes clear that information may have a different character depending on who holds it. Information may, in the hands of one entity, be able to be linked with an individual and therefore will be personal information. However the same information held by another entity which cannot, in a practical sense, reasonably link it with the relevant individual will not be personal information.⁷

Compliance with the Privacy Act in providing adtech services

- 6.6 When Google collects information by third party cookies (as well as by pixels and tags), it combines that information with all of the other information that it collects about the relevant individual. Therefore, in Google's hands, this information clearly is personal information and Google must comply with the Privacy Act in relation to its collection and management. We have previously provided analysis to the ACCC as to why, in Oracle's view, Google breaches the Privacy Act in its personal information collection and management practices.
- 6.7 In the case of the third party cookies used by adtech providers other than Google, while these link information to a browser, this is on an anonymous basis (ie there is no link to an individual). This means, in the case of non-Google adtech providers, one of two options will apply. If the information continues to be held on an anonymous basis the Privacy Act will not regulate that information. If the adtech provider is able to link the cookie information with an individual, based on other information the provider holds, that adtech provider will need to comply with the Privacy Act in relation to that information. There is no evidence to suggest that other adtech providers do not comply with the Privacy Act when this is required.
- 6.8 "Cookie syncing" is a practice undertaken by adtech providers. As different adtech providers use their own IDs for their third party cookies, and store information that they collect with those IDs, cookie syncing has been developed to allow providers to recognise users identified by the IDs of other providers. When cookie syncing between different adtech providers occurs, as is necessary to allow the adtech services market to operate, it only allows for the matching of IDs, it does not allow sharing of information. This assists in ensuring that personal information is not collected or exchanged and therefore there is no question of non-compliance with the Privacy Act. This is not a perfect system as the large number of providers (and users of the internet) means that it is estimated that only approximately 60% of data is correctly matched at the current time. Nonetheless it demonstrates that processes are put in place by non-Google adtech providers to ensure compliance with privacy requirements.

⁶ See David Bisson, *What's the difference between first and third party cookies?*, Graham Cluley (June 8, 2017), <https://www.grahamcluley.com/whats-difference-first-third-party-cookies/>.

⁷ See also the discussion of the interpretation of "personal information" in paragraphs B.85 to B.94 of the APP Guidelines issued by the Office of the Australian Information Commissioner available here: <https://www.oaic.gov.au/assets/privacy/app-guidelines/app-guidelines-july-2019.pdf>

Information collected by data brokers

6.9 Data brokers collect and use information that may be personal information. Data brokers are able to ensure that the manner in which this information is collected and used for targeting advertising is compliant with Australia's Privacy Act. Often data brokers that operate internationally go beyond compliance only with local privacy regulation. For example, in addition to adherence to the Privacy Act, ODC incorporates its privacy practices in Australia from the European Union's General Data Protection Regulation (**GDPR**). The GDPR creates the floor for Australian consumers who interact with Oracle's ad products. Oracle provides consumers clear notice, the ability to assess exactly what is being collected, and multiple ways for consumers to opt out of third party sharing or selling, and object to use of information about them. The practices of ODC, and other non-Google data brokers, ensure compliance with privacy regulation and should be contrasted with the practices of Google. Google collects information from across the web, linking devices, accounts, and browsing habits. Consumers are largely unaware of the extent of the data collection and, if they rely on Google for disclosure, would never be told of the extent of collection.

7. Background: Google's advertiser side adtech services

7.1 It is useful to set out briefly in this section a description of Google's advertiser side adtech services, which are referred to later in this submission.

7.2 Google's advertiser-side ad server is called **Campaign Manager**.⁸ It is able to be used for both Google websites and other websites, as well as mobile apps.

7.3 Google provides three DSPs aimed at different uses:

- (a) **Google Ads** is Google's non-premium DSP.⁹ Google Ads facilitates the purchase of search ads on the Google Search Network of websites and apps powered by Google search and display ad inventory on third-party websites and apps partnered with Google (the **Google Display Network**).¹⁰
- (b) **Search Ads 360** is Google's premium¹¹ search DSP. It can be used to purchase search advertising both on Google and non-Google platforms. As this service relates only to search advertising, it will not be discussed further in this submission.
- (c) Google also offers a premium display DSP, **Display & Video 360 (DV360)**, which enables advertisers to buy inventory from millions of publishers.

7.4 Google's DMP is the **Google Ads Data Hub (ADH)**.¹² ADH "allows advertisers, agencies, and third-party vendors to input their data into BigQuery and join it with event level ad campaign data."¹³ ADH provides ad data analytics services in addition to data management, particularly in performance measurement. Google Analytics is Google's analytics services provider, which uses data from ADH. Google is itself a DMP for its own services, which is separate and in addition to ADH.

7.5 And, finally, **Google AdX**, which is the trafficking system that connects advertisers seeking to purchase inventory with publishers seeking to sell that inventory, is part of **Google Ad Manager**.

⁸ Prior to the 24 July 2018 rebrand, this was known as DoubleClick Campaign Manager. Google has indicated that the change was primarily in name only. Garrett Sloane, *Google to Retire DoubleClick and AdWords Names in a Rebranding of Its Ad Business*, AD AGE (27 June 2018), <http://bit.ly/2mfquiE>.

⁹ Prior to the 24 July 2018 rebrand, this was known as AdWords for Google Display Network.

¹⁰ *AdWords: Display Ads*, GOOGLE, https://adwords.google.com/home/how-it-works/display-ads/#?modal_active=none (last visited 16 April 2020).

¹¹ In relation to particular adtech platforms maintained by Google, premium adtech platforms are products marketed towards sophisticated customers engaging in large volume inventory transactions. These cost more than non-premium adtech products and offer many more options, requiring skilled operators. Premium inventory is highly desirable, high-quality inventory due to its reach (number of and desirability of consumers viewing an ad) and frequency of views. Premium inventory is sold for higher prices than non-premium inventory.

¹² Kelly Liyakasa, *Google's 'DMP-Like' Measurement System Gains Steam*, AD EXCHANGER (10 October 2017), <http://bit.ly/2JjiaYe> (describing ADH as "DMP-like").

¹³ *Ads Data Hub: Introduction*, GOOGLE DEVELOPERS, <http://bit.ly/2NIQIX8> (last updated 24 April 2018).

PART B: GOOGLE'S UNILATERAL ANTICOMPETITIVE CONDUCT THAT BLOCKS OTHER PROVIDERS AND SIGNIFICANTLY LIMITS TRANSPARENCY

8. Direct blocking of non-Google adtech providers

Google's direct foreclosing of other adtech providers, without valid justification is anticompetitive in two respects:

- (a) This action directly pushes advertisers to use Google's adtech services to the exclusion of others.
- (b) This action limits the flow of data that advertisers need to run efficient and effective advertising campaigns, therefore limiting transparency.

8.1 This section outlines action that Google has taken to directly foreclose other adtech providers from providing their services to advertisers. Each of the arrangements set out in this section is currently in place and to assist the ACCC to confirm their currency we have referenced the relevant publicly available information that Google has made available that demonstrates these arrangements are in place.

Access by competing DSPs to YouTube inventory – First Example

8.2 The first example that is considered is the action that Google took in 2015 to withdraw YouTube from Google AdX (which as mentioned above is now part of Google Ad Manager). This meant that, from 2015, Google excluded advertisers from using a DSP other than a Google DSP (currently Google Ads and DV360) to access YouTube. This is shown here¹⁴:

Focusing investments to improve buying on YouTube

Posted: Thursday, August 6, 2015

At YouTube, over the past few years we've heard from clients that they want to access our marquee formats, such as TrueView, through programmatic channels. We've been investing to make that happen and recently made TrueView ads, which represent 85% of YouTube in-stream ads, available programmatically in DoubleClick Bid Manager (DBM). Clients have been pleased with the performance: those buying TrueView this way are already seeing higher engagement and view-through rates than with other video ad formats.

To continue improving the YouTube advertising experience for as many of our clients as possible, we'll be focusing our future development efforts on the formats and channels used by most of our partners. To enable that, as of the end of the year, we'll no longer support the small amount of YouTube buying happening on the DoubleClick Ad Exchange.

With this change, we'll be able to invest even more in creating the best and most effective YouTube advertising and buying experiences possible, continuing our efforts in TrueView and offerings like Google Preferred. Video advertising and programmatic buying are growing rapidly and being focused in our investments will help us drive them forward at an even faster rate.

Posted by Neal Mohan
VP, Display & Video Advertising, Google

¹⁴ <https://doubleclick-advertisers.googleblog.com/2015/08/focusing-investments-to-improve-youtube-buying.html>

- 8.3 Before this change was made, DoubleClick Ad Exchange (as it was then called) was the only remaining channel for non-Google DSPs to access YouTube inventory. The above blog post makes the comment that Google would be focussing its future development efforts on “the formats and channels used by most of our partners”. In other words, Google made clear that it was prioritising direct deals and upfront deals over programmatic deals in its development efforts. However, given that programmatic selling remained available on DV360, it is doubtful that a significant amount of engineering effort would really have been required by Google to maintain programmatic selling on YouTube.
- 8.4 As we explain, the implementation of this prohibition incentivised advertisers to use only the Google DSPs:
- (a) YouTube is typically seen as a “must have” publisher site by advertisers. This is because it offers one of the few ways to show video ads to the growing number of consumers who watch little or no traditional television. To purchase that inventory, the advertiser must use a Google DSP. The only decision the advertiser is required to make is whether it also uses *additional* DSPs to bid for other inventory or only uses a Google DSP for everything.
 - (b) To use a Google DSP and one or more non-Google DSPs would typically be suboptimal for an advertiser. It would make it difficult to undertake frequency capping as the different DSPs would not “talk” to each other to determine when a cap had been reached. It would also mean that the advertiser would need to allocate different budgets and consider different systems for the measurement of the effectiveness of its advertising (given that non-Google DSPs do not provide for the same measurement metrics as Google provides, a point we return to later in this submission). Finally, of course, because the advertiser would be splitting its advertising spend between different DSPs, this would reduce its bargaining power on pricing, likely leading to higher costs.
- 8.5 Although Google’s rationale for imposing this prohibition has changed over time, Google has most recently justified its position on the following basis:¹⁵
- (a) Only some YouTube inventory was available to other DSPs as at the time the prohibition was put in place, and use of other DSPs to bid for inventory at that time was “low”, meaning that the prohibition had little impact. This also meant that the technical resources required by Google to make that inventory available through Google’s AdX were not justified.
 - (b) DSPs that compete with Google have “thrived” since the prohibition took effect. Google has stated that competing DSPs such as The Trade Desk, Xandr, Amazon and Criteo are all highly regarded by advertisers.
 - (c) Restricting third party access to Google’s inventory is the best way to maintain the privacy of user information and prevent it being leaked to potentially malicious actors as third party DSPs could build profiles of users based on their viewing history.
 - (d) The prohibition is a way to ensure that ads on YouTube are of a consistently high quality, as widespread third party ad serving on YouTube could increase latency and make it harder for Google to scan for inappropriate ads.
- 8.6 Looking at each of these justifications put forward by Google in turn:
- (a) Although it may be the case that only some YouTube inventory was available to other DSPs prior to the prohibition coming into effect, this cannot be a justification for further extending the prohibition. Further, so far as Oracle is aware, no financial data has been provided to support the statement of Google that use of other DSPs to bid for inventory at the time the prohibition took effect was “low”, and we would encourage the ACCC to seek that data. In any event, Oracle’s view is that, if the ACCC was to investigate this issue, advertisers would express the view that their preference would be to use the DSP that the advertiser itself determined was appropriate to bid for inventory on YouTube, rather than being forced to use a Google DSP. In

¹⁵ See Google’s response to the CMA’s Interim Report from its market study of “Online platforms and digital advertising” (available here: https://assets.publishing.service.gov.uk/media/5e8c8290d3bf7f1fb7b91c2c/200212_Google_response_to_interim_report.pdf) at paragraphs 36 and 37.

addition, as noted in paragraph 8.3, given that programmatic selling remained available on DV360, it is doubtful that a significant amount of technical effort would really have been required by Google to maintain programmatic selling on YouTube.

- (b) Oracle disputes the claim that non-Google DSPs have “thrived”. We expect that the ACCC’s analysis of market shares in Australia will clearly show that this is not the case.
- (c) Google’s third reason, that is, protecting privacy, starts from an underlying assumption that each non-Google DSP would, first, breach the Privacy Act by seeking to collect personal information in circumstances where it is not reasonably necessary for its functions or activities (a breach of Australian Privacy Principle 3) and then would not take reasonable steps to prevent unauthorised access (a breach of Australian Privacy Principle 11.1), resulting in malicious actors accessing that information. Although they may not be thriving, other DSPs such as The Trade Desk are well regarded, as Google has itself pointed out. It is difficult to see on what basis Google has concluded that third party DSPs would breach the law to such an extent as would justify the complete prohibition Google has decided to impose. Google should not arbitrarily determine that it will take on the role of a privacy regulator to ensure that third parties are in compliance with privacy laws. In addition, if this truly reflected Google’s reasoning, to assist in maintaining the privacy of user information and preventing it being leaked to potentially malicious actors would also require that Google itself did not continue to collect the relevant information. But Google of course does continue to collect it.
- (d) As for the final justification, it is simply incorrect that Google could not address issues of latency and the exclusion of inappropriate ads by other means. In particular:
 - (i) Google has the capabilities to scan for inappropriate ads, at scale, via Google AdX. It does this for other publisher websites. There is no reason it could not implement this for YouTube as well.
 - (ii) If Google adopted standard processes to filter ads, which it could do by using Google AdX to filter out ads on YouTube without excluding non-Google DSPs, this would result in fewer problems with bad actors. This is because a competitive ecosystem of independent ad servers, brand safety, viewability and fraud detection vendors, using open standards, on YouTube would improve feedback provided in relation to advertising on YouTube and therefore improve the quality of that advertising.
 - (iii) YouTube’s lack of transparency and feedback make advertising on YouTube riskier, for example, as evidenced by the fact that in 2017 major brands including Verizon and Walmart pulled their ads after they were found to be appearing next to videos promoting extremist views and hate speech.¹⁶ In 2019 brands such as Nestle stopped buying ads on YouTube after their ads appeared on children’s videos where paedophiles had infiltrated the comments sections.¹⁷ There is no evidence to suggest that other leading publications have the same brand safety issues as YouTube. Restricting the use of third party adtech services is a reason for this – advertisers have no ability to provide independent feedback because advertisers are unable to use independent DSPs.
 - (iv) In relation specifically to latency, other publishers use open standards that allow the use of accredited measurement tools and allow open access to DSPs without raising latency as an issue.

8.7 If viewed objectively, the only rationale for the exclusion that would make sense is that Google made this change with the intention of driving usage by advertisers of its own DSPs, Google Ads and DV360. In this context, Oracle recommends that the ACCC uses its compulsory information gathering powers to require the larger Australian advertising agencies to provide copies of the Display and Video Incentive Program agreements that either those agencies, or their parent companies, or both, have entered into with Google. We believe these will demonstrate that Google has used its market power to pressure advertising agencies to use DV360. Under those agreements, larger agencies have committed to large

¹⁶ <https://www.theguardian.com/technology/2017/mar/25/google-youtube-advertising-extremist-content-att-verizon>

¹⁷ <https://www.nytimes.com/2019/02/20/technology/youtube-pedophiles.html>

YouTube buys in exchange for favourable rates, with DV360 spend generally (even if not on YouTube) counting towards agency commitments. The pressure from needing to meet the levels of spend required under these agreements to achieve Google's offered discounts (and also to avoid the need to reimburse discounts provided by Google in respect of prior periods), together with the prohibition on using other DSPs for YouTube, has ensured that large agencies have reallocated significant spend to DV360 even where this has been unsuitable for their advertiser clients.

Third party data providers – Second Example

- 8.8 Under Google's general advertising policies it is not possible for an advertiser to use data about consumers which that advertiser has purchased from third parties who have independently collected that data to create audiences for ad targeting on YouTube (as well as, though not as relevant in the context of the ACCC's Adtech Inquiry, Google search and Gmail).
- 8.9 Google's current policy is extracted below (highlighting added):¹⁸

First-party data

First-party data is information that you collect from your customers, site visitors and app users during their interactions with your products and services. To be considered first-party data, information must be collected from your own sites, apps or physical shops, or in other situations where people have directly interacted with your products and services.

Third-party data

Third-party data is user information that you purchase or otherwise obtain from other sources.

First-party and third-party data use policies

The following is allowed:

- ✓ *Using first-party data to create audiences for ads targeting.*
- ✓ *Using third-party data to segment your first-party audiences. For example, this would include using third-party data to determine when your remarketing tag can add visitors to your remarketing list.*

...

The following is not allowed:

- ✗ *Using third-party data to create audiences for ads targeting.*
- ✗ *Placing your remarketing tags on sites or apps not owned and operated by you, or allowing other sites to put their remarketing tags on your site or app, in order to create remarketing lists.*
- ...
- ✗ *Sharing user data between unaffiliated advertisers or businesses. This includes sharing your remarketing lists with, and accessing remarketing lists from, unaffiliated advertisers.*
- ...
- ✗ *Using data from one managed client to create a remarketing list for an otherwise unaffiliated client.*
- ...
- ✗ *Sharing lists within managed accounts unless users will recognise clear brand affiliation between the remarketing list owner and the advertiser it is shared with.*

¹⁸ See <https://support.google.com/adspolicy/answer/6242605>

- 8.10 As can be seen from the above, the only circumstances in which “third party data” which is not Google data may be used is to segment an advertiser’s own data, which is a very limited use. It is also worth noting that Google audience data is “*user information that you purchase or otherwise obtain from other sources,*” and therefore should be considered third-party data by the definition Google provided. Yet, Google audience data is allowed, but all other third-party data sources are not allowed.
- 8.11 It appears that Google seeks to justify this restriction on the basis that it was put in place out of privacy concerns. As explained earlier, it is however possible for advertisers to use the services of data brokers in a manner that is compliant with the Privacy Act. Such a comprehensive restriction is both unnecessary and an inappropriate way in which to address any privacy concerns. If ensuring compliance with privacy laws was truly the reason for Google’s action, it would be expected that Google itself would not use data brokers or offer data for targeting advertising. But this is not the case. Instead, advertisers on YouTube (and Google search and Gmail) are required to use Google’s data (or in limited cases, other third party data sources determined by Google) to enhance their own data.
- 8.12 Google DV360 allows audience segments to be purchased from specifically nominated outside data providers, but this service is not available to Google Ads customers. As demonstrated below advertisers are not able to negotiate rates for that data:¹⁹

Costs for using third-party data

The use of any third-party list (for either targeting or excluding users) requires that an advertiser pay the CPM fee for using the data segment in addition to the media cost CPM for the individual impression. For more information, see [Costs for using third-party audience lists](#).



Did you know...

Display & Video 360 offers free [demographic](#) (age and gender), [affinity segment](#), and [in-market audience](#) targeting.

(Note: These features aren’t available for network users of Display & Video 360.)

- 8.13 We have shown below how costs are calculated by Google when third-party audience lists are used.²⁰ This demonstrates not only that the pricing is “take it or leave it” ie, the individual advertiser has no ability to negotiate the pricing, but also that Google defaults to the most expensive pricing. This is counter-intuitive. It would be expected that Google, to act in the best interests of its advertiser client, should allow for the least expensive option to be selected. That is what other DSPs would do in order to provide a competitive service. But this does not occur. Of course, ensuring that the highest price is paid when third party data is used assists Google’s own products – as shown on the screen shot on the previous page, Google points out to advertisers that Google does not separately charge for the use of its data (though the cost of that use is built into the prices Google charges for its adtech products in a non-transparent way).

¹⁹ <https://support.google.com/displayvideo/answer/6212219?hl=en>

²⁰ <https://support.google.com/displayvideo/answer/3022829?>

Costs for using third-party audience lists

When line items target multiple audience lists provided by third-party data providers, the cost of using the third-party audience lists is based on how the lists are combined.

Cost for including lists

If you target people who appear on any list out of two or more lists (that is, if you target two or more lists joined together with an "OR" relationship), one of the providers will be randomly selected and you will pay only for the most expensive list matched for that specific provider, regardless of how many data providers' lists you are targeting.

When first-party and third-party audience lists are used in an OR relationship, you won't be charged for visitors that appear on both lists. Display & Video 360 will defer to the first-party list in this case and not bill for those impressions.

[Show me an example](#)



Cost for including ANDed lists

If you target people who appear on two or more lists (that is, if you target two or more lists joined together with an AND relationship), you will pay each data provider for the most expensive list of theirs this line item targeted.

[Show me an example](#)



Cost for excluding lists

If you target people by excluding two or more audience segment lists (that is, if you exclude two or more lists joined together with a NOT (A OR B) relationship), you will pay each data provider for the cost for the most expensive list.

This is the same method for determining cost as when targeting visitors who appear on two or more lists.

[Show me an example](#)



If you are using a combination of any of the above audience targeting settings, each rule still applies, but in the end, you will only pay the maximum of each rule per data provider, not the summation.

- 8.14 Neither Google Ads nor DV360 allows data provided by Google to be used in competing platforms.²¹
- 8.15 When Google data is used, no information is provided to advertisers as to the sources of that data or its accuracy.²² We have extracted a screen shot of what Google tells advertisers about the sources of its data. You will see it uses generic statements such as "groups of people with specific interests, intents, and demographic information, *as estimated by Google*" (emphasis added). No information is provided as to Google's "estimation" processes or the data used for those processes.

²¹ It is impossible in a practical sense for any such data to be extracted from Google's platforms.

²² <https://support.google.com/google-ads/answer/2497941?hl=en>

How audience targeting works

For Display campaigns, audiences are groups of people with specific interests, intents, and demographic information, as estimated by Google. When adding an audience to a campaign or ad group, you can select from a wide range of categories—such as fans of sport and travel, people shopping for cars, or specific people that have visited your website or app. Google Ads will show ads to people who are likely in the selected categories.

The data used to generate audiences (for example, page visit history, past Google searches), may be used to improve the bidding and targeting of your audience campaigns.

- 8.16 There is no transparency for advertisers, from either a price or quality metric. In other words, although advertisers know that Google does collect vast quantities of data on consumers, and that the data Google holds is of considerable value, because of this lack of transparency, advertisers have no way of knowing *what* data Google actually makes available to a particular advertiser and therefore are unable to determine if it is of value and will assist the advertiser with its advertising campaign. This leaves advertisers in a position of not knowing what they are paying for and if the cost offered by Google accurately reflects benefits to the advertiser. The advertiser must rely exclusively on Google providing the best data at the best value without having any way to verify this.
- 8.17 This contrasts with the approach adopted by non-Google data brokers, such as ODC. ODC makes publicly available the details of its data sources, together with an explanation of the data collection methodology.²³ ODC also provides for additional support to be given to customers in interpreting this information. Furthermore, ODC's pricing model allows for its customers to have full transparency in what data sets are used for ad campaigns. ODC can also directly engage with its advertising partners to create custom pricing models, ensuring that both advertiser and data management tool have a clear understanding of expectations and product offerings.
- 8.18 In summary, the restrictions Google places on the use of third party data mean that Google suppresses competition with its own ad targeting services by forbidding advertisers to work with non-Google DMPs and data brokers for targeting any advertising campaign on YouTube (except in limited circumstances where it ensures that the most expensive price is paid by an advertiser who uses those third party services). As in the case of the restriction on the use of non-Google DSPs for YouTube inventory, there is no valid privacy reason for the restriction. The restriction has a negative impact on advertisers, who are unable to select the DMPs or data brokers of their choice, to enable them to obtain data from a variety of sources at a competitive price, to enhance their own data to maximise their opportunities to generate a return from advertising. When Google provides data to an advertiser, that advertiser has no way of determining the source of the data or what data is used – so although Google's data has significant value an advertiser cannot determine if it has access to all data that it would wish to access for its targeting purposes. Google's actions have a negative impact on competition because Google limits transparency in relation to the services that Google itself provides by not providing information on the sources of the data that it uses to any particular advertiser. And, finally, it also goes without saying that this has a negative impact on other DMPs and data brokers that offer this adtech service. An argument from Google that this is required on privacy grounds, that is, because only it and the third party providers that DV360 uses can be trusted to comply with privacy legislation, should not be accepted.

²³ See: <http://www.oracle.com/us/solutions/cloud/data-directory-2810741.pdf>

9. **Current restrictions on data access when using Google’s adtech products or purchasing Google’s publisher inventory**

Google’s restrictions on data access, without valid excuse, as applies to Google’s direct foreclosing of other adtech providers discussed in section 8, are anticompetitive in two respects:

- (a) This action directly pushes advertisers to use Google’s adtech services to the exclusion of others.
- (b) This action limits the flow of data that advertisers need to run efficient and effective advertising campaigns therefore limiting transparency.

9.1 When the restrictions set out in this section are considered in aggregate it is very clear that the effect of the restrictions is to push advertisers to use Google’s adtech services but also that advertisers who advertise on Google’s sites (particularly YouTube), or use Google’s adtech services, have a limited ability to access raw data to verify whether they are targeting the right audiences, to measure the effectiveness of their ads or to determine appropriate attribution. As in the case of the restrictions outlined in section 8, each of the arrangements set out in this section 9 is currently in place and to assist the ACCC to confirm their currency we have referenced the relevant publicly available information that Google has made available that demonstrates these arrangements are in place. The imposition of these restrictions means there is a lack of transparency. Advertisers cannot determine the right prices to pay for advertising on different publisher’s sites, or even how much to acquire, which is very inefficient for advertisers. Consumers ultimately pay the price for this through higher prices payable for the goods and services offered by advertisers. This has an economy wide impact.

Further detail on how advertising value is measured

9.2 As briefly mentioned at paragraph 4.6, advertisers typically measure the value they obtain from digital advertising by measuring the following:

- (a) *Viewability*: This refers to whether the ad was able to be seen or whether, for example, it was blocked on the relevant page or only partially displayed on that page. The period during which an ad was heard, or seen, and what other content was on the relevant page are all able to be measured to determine viewability. Adtech providers who are able to track viewability include DoubleVerify, Integral Ad Science (also known as IAS) and Oracle Moat.
- (b) *Ad fraud*: Ad fraud is a significant issue for digital advertising and refers to circumstances where a digital ad is not viewed, or a click on an ad is not made, by a human. Instead this typically occurs through a bot – referred to as Invalid Traffic (**IVT**). In 2019, a study by White Ops and the Association of National Advertisers (**ANA**) projected that loss to fraud is 14% of video ad spend, which is down from 22% in 2017, as determined by an earlier study by White Ops and ANA.²⁴ This amounts to US\$5.8 billion globally. The White Ops/ANA study cited the reason for the reduction in losses as being that “For the first time, the majority of fraud attempts are getting stymied before they are paid for, by DSPs and SSPs filtering fraudulent bid requests, by clawbacks, or by other preventative measures. Absent those measures, losses to fraud would have grown to at least \$14 billion annually.”²⁵ Another reason for decreased fraud as a percentage of spend is the continual rise in the adoption of ads.txt – which is an Interactive Advertising Bureau (**IAB**) led initiative designed to eliminate domain spoofing and illegitimate inventory arbitrage.²⁶ Therefore, even though the decrease in ad fraud is an improvement, this has largely arisen from measures being taken to combat it, not because attempts are decreasing. This in turn means that advertisers need to continually take steps to combat ad fraud. Also, it is worth noting that digital ad spending increased from 2017 to 2019 by approximately 25%, so ad fraud in absolute dollars has not changed significantly. It is therefore clear that ad fraud

²⁴ Study is available here: <https://www.ana.net/miccontent/show/id/rr-2019-bot-baseline>

²⁵ See page 8 of the study.

²⁶ <https://clearcode.cc/blog/adtech-trends-2019/>

continues to be a significant problem and cost. As in the case of viewability, adtech providers who are able to measure ad fraud include DoubleVerify, IAS and Oracle Moat.

- (c) *Brand safety*: This, again, is important to advertisers. Advertisers do not want their ads to appear next to content which they consider to be unsafe. Adtech providers who are able to measure brand safety include DoubleVerify, Grapeshot (owned by Oracle), Peer39 and IAS.

- 9.3 When an advertiser's ad server delivers an ad to a page, it is typically able to include code to provide the monitoring information necessary to determine the value of the ad, by determining the metrics outlined above.

Prohibition on tracking tools used by independent DMPs across the Google Display Network – Third Example

- 9.4 From early 2015, Google has prohibited advertisers from placing tracking tools used by “standalone” DMPs —those not integrated with a demand-side platform such as Google’s—on ads that appeared on the millions of websites and apps that use Google’s dominant publisher-side adtech products (that is, those forming part of the Google Display Network).²⁷ See the following screen shot:²⁸

- **Fourth-party calls**: All ads may only include tracking elements from certified third-party servers or research vendors already approved by Google. No fourth-party calls are permitted, except tracking elements associated with certified third-party servers or research vendors expressly authorized by Google, calls to Google hosted and approved code libraries, jQuerys to Google and Amazon storage, and jQuerys solely for the purpose of creative rendering. We require the use of the AJAX post() method; the AJAX get() method is not allowed. For more information, see [Guidance for complying with the Identifying Users Policy](#). All tags may only be associated with a single advertiser. Multiple advertisers cannot be represented through a single tag. The maximum amount of fourth-party calls permitted within a third party tag varies by the type of vendor(s) being used (1 certified ad server or Rich Media vendor, 3 research products and 1 Online Behavioral Advertising Option Icon).

- 9.5 "Fourth-party calls" represent any standalone DMP integrated with a third-party ad server, and no such DMPs are listed by Google as approved vendors, making it clear that standalone DMPs are not permitted on the Google Display Network. Google justified this change at the time it was implemented on the basis of data leakage, that is, that such DMPs could collect information in relation to devices that accessed the relevant website and then target those users on other sites and also that, if many different DMPs placed tracking tools on sites, this could slow down web browsers. The former argument could quite easily have been addressed by contractual terms imposed by Google rather than by imposing such a broad restriction. Google's second reason perhaps is theoretically correct, but is misleading as it does not provide sufficient reason for this restriction. DMP server calls could potentially increase latency, however in most cases, this latency is very insignificant and not noticed by viewers of the relevant site. Further, in the rare circumstances where the latency is actually significant, publishers should decide the amount of latency tolerable to their readers, not Google.
- 9.6 The impact of the introduction of this broad restriction was significant. Having independent DMPs tracking advertising provides for a level of independence in assessing the effectiveness of that advertising. This also assists in ensuring that frequency capping is not exceeded. Therefore the actions of Google, to address a problem which could have been more effectively addressed by other means, created inefficiencies for advertisers by denying them access to an appropriate source of independent information.

Wide ranging restriction on independent advertiser ad servers and monitoring tools on YouTube – Fourth Example

- 9.7 Up until May 2019, non-Google advertiser ad servers could be used on YouTube. However, from that time, all non-Google advertiser ad servers used on YouTube must use a Google controlled application programming interface (API) to serve ads (and the same applies to the Google Display Network). Google's policies provide, in part: ²⁹

²⁷ <https://digiday.com/media/google-dmp-rules/>

²⁸ <https://support.google.com/3pascertification/answer/94230?hl=en>

²⁹ For YouTube: <https://developers.google.com/third-party-ads/youtube-vendors>. For Google Display Network see: <https://support.google.com/adspolicy/answer/94230?hl=en>.

Third-party ad serving (3PAS) on YouTube reservation:

As of May 15, 2019, support for YouTube 3PAS (VAST) is available through a new API-based framework that ingests and serves advertisers' creatives via Google's systems. Innovid, Sizmek, Extreme Reach, Adform, and Flashtalking are currently integrated with the framework.

To leverage this solution, third party providers need to be integrated with Ads Data Hub, which handles performance measurement.

- 9.8 From May 2018, non-Google providers of fraud and viewability measurement tools have also only been able to access YouTube using a similar private API process and pursuant to separate contractual terms that are not made public.³⁰

Third-party ad tracking (3PAT) on YouTube (auction and reservation):

As of May 21, 2018, YouTube reservation and auction campaign measurement is available through: comScore, DoubleVerify, IAS, MOAT, Nielsen, Kantar, and Dynata, as well as those third party providers currently integrated with Ads Data Hub.

- 9.9 The restrictions referred to in paragraphs 9.7 and 9.8 mean that, at the current time, no non-Google verification adtech services vendor has access to raw data from YouTube.³¹ Google's advertiser ad server is Google Campaign Manager. It has no API that would enable ad interaction data to be continuously exported to other adtech providers. Not only did these restrictions limit choice for advertisers, but these also limited the type of feedback that advertisers could receive.
- 9.10 The impact of these changes is that, as at the present time, no third parties at all are able to independently access the type of data that is necessary to independently measure the effectiveness of an ad campaign on YouTube. This can be demonstrated by comparing the process when video ads appear on other websites with the process that applies on YouTube. For video ads appearing on a non-YouTube page, tags may be used to independently collect raw data, which is then able to be analysed and information provided to the relevant advertiser. For YouTube, an independent verification services provider cannot deploy their own tags. Instead Google, which it must be remembered is also the publisher in the case of YouTube, provides aggregated measurement data (via ADH), which is all the information that an independent verification services provider is able to access. That adtech provider has no way of determining whether or not that publisher provided information is accurate. Further, the data that is provided is limited to specific metrics, that is, whether the ad was served, whether the ad appeared on the screen, how much of the ad appeared on the screen, for how long the ad appeared on the screen and, for video ads, whether the ad played, for how long it played and whether the sound was on. An adtech provider is therefore not able to access other metrics. These restrictions are specified in the contracts that have been entered into between Google and each authorised independent verification services provider, and therefore are not publicly available. The ACCC will be able to verify this by seeking copies of those contracts under its compulsory information gathering powers.
- 9.11 Although such contracts are not public, public evidence that these restrictions exist is demonstrated by recent media reports in relation to the adtech provider OpenSlate. OpenSlate recently made public that it could not reach agreement with Google on terms that would allow it to participate in Google's new, updated version of YouTube's ad measurement program. As a consequence, it has not been included in that program.³²
- 9.12 In addition, Google has never provided the page URLs on which an ad appears for YouTube.³³ This is a significant issue for brand safety – an advertiser would not know whether its ad appeared next to a cat video or a video showing false cures for coronavirus. Google does provide ways for advertisers to show ads on specific channels or pages of YouTube. First, an advertiser may reach an agreement directly with a YouTube content provider to provide advertising on that creator's video. However, of course, this is

³⁰ For YouTube: <https://developers.google.com/third-party-ads/youtube-vendors>. For Google Display Network see: <https://support.google.com/adspolicy/answer/94230?hl=en>.

³¹ For YouTube: <https://developers.google.com/third-party-ads/youtube-vendors>. For Google Display Network see: <https://support.google.com/adspolicy/answer/94230?hl=en>.

³² <https://www.wsj.com/articles/youtube-spars-with-auditor-over-transparency-of-advertising-risks-11587340250>

³³ This page documents reporting metrics available for YouTube ad campaigns: <https://support.google.com/google-ads/answer/2375431?hl=en>. Page URL is not on the list.

not scalable and is not a practical way for an advertiser to purchase all of its advertising on YouTube. Secondly, it is possible to purchase ad inventory via “YouTube Preferred Lineups”³⁴ which ensures that your advertising only appears on videos that are reviewed first by machine classifiers, then verified by humans for compliance with Google’s “advertiser-friendly content guidelines”. Of course, this is at an additional cost. Finally, it is possible for advertisers to block their ads from showing on inappropriate videos either via blacklisting keywords or contextual targeting, however this third option is an imprecise science as it is simply not possible given the continuous changes to the content on YouTube – over 500 hours of video content is uploaded each minute on YouTube.³⁵

- 9.13 YouTube is, as mentioned previously, often seen as “must have” inventory for an ad campaign. Therefore, these restrictions have a significant impact on advertisers – there is one major platform on which an advertiser’s ads are displayed where the effectiveness of the advertising simply cannot be measured and so advertisers cannot, independently of information provided by the publisher of the website, assess whether it should be buying that advertising.
- 9.14 Google has again argued that privacy compliance issues require it to impose these restrictions. However, this type of blanket restriction on third party providers is unnecessary to address such issues as it is possible for the relevant third party adtech providers to access and use the raw data in compliance with Australia’s Privacy Act.

Proposed Chrome ban on adtech cookies – Fifth Example

- 9.15 The Chrome browser facilitates a very large share of user web traffic on both desktop and mobile devices—and is dominant on those that run non-Apple OS, such as Windows OS and Android OS.³⁶ The Chrome browser currently supports the use of adtech cookies (that is, third party cookies used by adtech providers other than Google) to a similar degree as Google’s own ubiquitous third party cookies. However, Google is proposing changes to its Chrome browser, to be implemented by 2022, that will exclude completely the use of adtech cookies. This will effectively mean that non-Google digital IDs will no longer be able to be used. In other words, advertisers will be unable to use non-Google adtech services to independently perform key functions like targeting, conversion tracking and frequency capping in Chrome.
- 9.16 Google has proposed, as an alternative, to condition access to user data on the Chrome browser through the use of Google’s own closed APIs.³⁷ Those closed APIs would provide behavioural and interest tracking as well as attribution and frequency capping. By using closed APIs for functions that are currently open, Google will take a further step to preventing adtech providers (and therefore advertisers) from accessing the raw data that is necessary to run a successful advertising campaign and ensure an even greater reliance on Google’s own adtech products. Third party adtech providers will therefore be further foreclosed as they will be unable to have equivalent access to ad-relevant data as Google, preventing their ability to compete by offering effective ad-targeting and analytics products on their merits in competition with Google.
- 9.17 Google will do this *without in any way diminishing its own access to the same data*. To the contrary, the proposed changes to Chrome would cement Google as a key gatekeeper for adtech data by

³⁴ <https://www.youtube.com/google-preferred/content-controls/>

³⁵ <https://www.statista.com/statistics/259477/hours-of-video-uploaded-to-youtube-every-minute/>

³⁶ With respect to all browsers, one provider of market data suggests that the Chrome browser is used by 64% of global users on desktop (computers and laptops) and mobile devices. See Global market share held by internet browsers 2012-2019, by month, Statista, <https://www.statista.com/statistics/268254/market-share-of-internet-browsers-worldwide-since-2009/> (last visited April 7, 2020). With respect to browsers that are non-OS-specific and therefore may be viewed as market substitutes for each other in the market for non-OS specific browsers—principally, browsers other than Safari, which is currently limited to function only on Apple’s OS—Google’s market share is certainly much higher. This likely applies to browsers that operate on mobile devices or desktops, which may themselves be separate markets. The European Commission considered this point with respect to mobile web browsers in its July 2018 Android decision, concluding that “non OS-specific mobile web browsers constitute a separate relevant product market.” European Commission Decision, 2018 O.J. 80. (https://ec.europa.eu/competition/antitrust/cases/dec_docs/40099/40099_9993_3.pdf) (paragraph 367).

³⁷ Ben Galbraith & Justin Schuh, *Improving privacy and security on the web*, Chromium Blog (May 7, 2019), <https://blog.chromium.org/2019/05/improving-privacy-and-security-on-web.html>; Justin Schuh, *Building a more private web*, The Keyword (Aug. 22, 2019), <https://www.blog.google/products/chrome/building-a-more-private-web/>.

concentrating control over this data with Google. Google's proposed Chrome changes would therefore be yet another means through which Google is able to strengthen its increasing grip on the adtech services market.

- 9.18 Following the announcement by Google of the proposed Chrome changes, former AppNexus CEO Brian O'Kelley remarked: "[I]f I'm an advertiser or publisher, I see [the Chrome changes] as one more sign that I should really be on the Google ad tech stack. ... If Google continues to dominate ad tech, analytics, and measurement, control (and restrict ad tech access to) the largest video publisher, and own the dominant browser ... I don't see how 3rd party ad tech survives. I'm not sure that bodes well for content creators on the internet, for independent journalism, for less-wealthy consumers that can't afford subscriptions. Ads are the lifeblood of the internet, and I think we need a diverse ecosystem of ethical ad tech innovators to ensure that content remains accessible for everyone."³⁸

Concluding comments on independent verification services

- 9.19 In short, independent verification and measurement is vital to assess and analyse the context of the content on which an ad is shown, the quality of the user experience and whether or not a person has seen the ad, rather than a bot. Without independent verification services, Google, as both a publisher and adtech provider, in effect gets to rate its own performance – this creates a clear conflict of interest. Independent verification services are an important tool to ensure transparency. But these services are not independent where they cannot independently access raw data.

Restrictions on independent determination of attribution – Sixth example

- 9.20 Google makes it equally difficult for advertisers to independently assess attribution and to utilise appropriate attribution models.
- 9.21 First, in assessing attribution, an adtech provider needs to know all of the ads that have been seen by a user, and where that user has seen those ads. Therefore it is in advertisers' interests for all adtech providers to know what ads each user has seen and where.
- 9.22 An ad tech provider can only determine what ads a user has seen and where if it can aggregate all of the data from an advertising campaign. Campaign Manager allows aggregated ad interaction data to be taken from its console in only 2 ways. These are:
- (a) via the DCM/DFA reporting and trafficking API.³⁹ This API automates report generation and some trafficking functions available in the Campaign Manager console; and
 - (b) via Campaign Manager Data Transfer 2.0.⁴⁰ This provides for a manual data export.
- 9.23 Neither of these options for data to be taken from the Campaign Manager console provides the continuous data feed that is critical for advertisers to undertake advertising campaigns, as outlined earlier in this submission, including for the purposes of determining attribution.
- 9.24 The consequence of the above is that Campaign Manager is the only advertiser ad server that is able to attribute credit across YouTube.
- 9.25 From 2018, Google blocked the ability of adtech providers to access the raw data that is required for the application of customised attribution models. This occurred as, from that time, Google commenced restricting access to its consumer IDs⁴¹. User IDs are not provided for YouTube inventory, (of less relevance to Australia) for EU users or for bid data by Google AdX. User IDs are scheduled to be fully redacted globally by 31 March 2021 (delayed due to COVID-19 from the originally scheduled timing of the third quarter in calendar year 2020). Access to those consumer IDs had allowed advertisers to work with independent data management platforms to develop better targeting criteria and to work with

³⁸ Brian O'Kelley, *How Will Ad-Tech Companies Combat Google's Upcoming Chrome Privacy Protections*, Quora (May 8, 2019), <https://www.quora.com/How-will-ad-tech-companies-combat-Google's-upcoming-Chrome-privacy-protections/answer/Brian-OKelley?share=58f1e2f4>.

³⁹

<https://console.cloud.google.com/marketplace/details/google/dfareporting.googleapis.com?filter=category%3Aadvertising&id=dc4c7bfa-1d3c-4b5d-8f6a-8ef8c9d1f31a>

⁴⁰ <https://developers.google.com/doubleclick-advertisers/dtv2/reference/file-format>

⁴¹ <https://support.google.com/dcm/answer/9006418?hl=en>

analytics firms to evaluate whether a given advertiser actually obtained the ad placements or clicks for which it paid. Without these consumer IDs third party adtech providers simply have no way of determining where the ad has been shown and how many times an ad has been shown on the same device. This makes it impossible to use the data to determine attribution.

- 9.26 As a consequence of this, an advertiser faces a stark choice. In order to use data from across its advertising campaign to measure attribution, it will need to either use only a non-Google ad server (which given the other restrictions imposed by Google is not generally a viable option) or rely solely on Google's full set of adtech products, particularly ADH and Google Analytics, which continue to have access to Google's consumer IDs.
- 9.27 Therefore, this restriction on the availability of information, like the other restrictions imposed by Google, has a negative impact on competition in 2 ways. First, by excluding other adtech providers and secondly by negatively impacting transparency. In Campaign Manager, the default attribution model is a "last touch" model⁴², that is, the last ad impression before the purchase of an advertiser's product or service occurs is considered 100% responsible for that conversion. When this attribution model is used, it typically reports a high return on ad investment, with a high number of conversions arising from only one ad interaction.⁴³ It is simply not credible to attribute conversion from one interaction with an ad. Oracle strongly encourages the ACCC to test this by seeking data from advertisers and Google in relation to attribution reports.
- 9.28 Again, Google has used privacy as an excuse for not providing its consumer IDs. And, again, this excuse does not bear close scrutiny. The provision of a consumer ID is not of itself personal information. Other adtech services competitors of Google such as Xandr, The Trade Desk, Live Ramp and MediaMath are able to continue to provide their user IDs in compliance with privacy laws.

10. Interoperability

- 10.1 In the context of data use by advertisers, a final comment should be made about interoperability. In order for advertisers to ensure that they are able to use the adtech services that are most appropriate to them, advertisers rely on services offered by providers to be interoperable. For example, if an advertiser uses different analytics tools to measure viewability on different publisher websites, it would expect that the data collected would be able to be compared, irrespective of the tool used. For example, this is possible when The Trade Desk's services are used and Oracle would be happy to provide a desktop demonstration of how this operates if required by the ACCC.
- 10.2 Google impedes interoperability in many ways. DV360 provides different ad performance metrics for YouTube videos and non-YouTube videos.⁴⁴ This makes it impossible for advertisers to compare the performance of video ads across different publisher websites. For example, for YouTube, DV360 measures YouTube video views as the number of times a viewer watches the advertiser's video for 30 seconds, or engages with that video, whatever comes first. For non-YouTube videos, the metric is the number of times a video has been played to the end. In addition, the performance of YouTube video ads and non-YouTube video ads must be evaluated on different screens, which cannot be combined.
- 10.3 For the Google Display Network, independent ad measurement is not completely blocked. However, different reports are provided for Google placements and non-Google placements.⁴⁵ Again, this makes it very difficult for advertisers to determine the value of their advertising across all publishers as these disjointed reports cannot be used in algorithmic optimisation. This therefore is yet another disincentive to use an ad server other than Google's ad server because an advertiser would not be able to obtain a consistent set of metrics on how its ad performed when served through both ad servers. To take another example, the use of both ad servers may result in inefficiencies in terms of buying the same audience twice. Given the size of the Google Display Network (Google Display Network sites reach over

⁴² See: <https://support.google.com/dcm/answer/6173066?hl=en> (the actual name given by Google to this attribution model is "Floodlight").

⁴³ As evidenced in the example that Oracle has separately provided to the ACCC.

⁴⁴ See : <https://support.google.com/displayvideo/table/3187025?hl=en>. This may be demonstrated by filtering for "TrueView" which provides the set of metrics measuring YouTube ads (because TrueView is a YouTube-exclusive ad format) and comparing this with a filter for "Video" which provides the set of metrics measuring non-YouTube video ads.

⁴⁵ Oracle is happy to provide a separate briefing to demonstrate this.

90% of internet users worldwide) and Google's data advantage, it is likely that faced with these difficulties an advertiser would choose to use only Google's ad server, not a non-Google ad server.

11. **Specific example of excessively high costs payable by advertisers**

- 11.1 Based on US information, total advertising spending for a typical US based direct to consumer (DTC) start-up is significant. For example, in 2018, the founder of Social Capital (a technology venture capital company), Chamath Palihapitiya, estimated that venture capital funded consumer tech companies are spending up to 40% of every dollar raised on online advertising.⁴⁶ This spending is continuing to increase. According to a new report from advertising intelligence firm MediaRadar, DTC brands' ad spend for "digital increased 22% year-over-year, from US\$115 million in Q3 2018 to US\$140 million in Q3 2019".⁴⁷
- 11.2 These figures should be compared with the position in the not too distant past. A marketing budget survey in 2014 showed startups at that time were spending only 10% of revenue on marketing. Within that, only 18% was spent on search and social advertising and 6% on digital display advertising.⁴⁸
- 11.3 Although this data relates to the United States, Oracle's view is that the same outcomes would be found in the Australian market. The significant costs that are payable for digital advertising are likely to continue to increase in the future based on the recent trends demonstrated above. Ultimately, these unnecessarily high costs are paid by consumers.

12. **Anticompetitive acquisitions and chilling impact on emergence of innovative competitors**

Google's acquisitions that have assisted in creating its dominant position in the market for adtech services

- 12.1 In the Final Report from its ground breaking Digital Platforms Inquiry, the ACCC concluded that the acquisitions Google has made over time have served to entrench Google's market power in search and search advertising. However, many of the acquisitions that the ACCC highlighted in the Final Report were acquisitions of companies that provided adtech services – including the acquisitions of Admeld, AdMob and DoubleClick. Those acquisitions served to entrench Google's market power in the adtech services market.
- 12.2 In its submissions to the ACCC's Digital Platforms Inquiry, Oracle commented extensively on the acquisitions that Google has made in the past that have entrenched its dominance in both digital services provided to consumers and in the adtech services market. For example, in its submission to the ACCC's Preliminary Report, Oracle provided information on Google's acquisition of AdMob. Google's AdMob acquisition in 2009 is noteworthy as this eliminated Google's primary competitor for targeted mobile app-based advertising (noting AdMob competed with Google's AdSense at the time). Therefore Oracle believes that the ACCC has sufficient information to reach conclusions on this issue.

Lack of investment chills innovation

- 12.3 In addition to the negative impacts that Google's acquisitions have had on the adtech services market, the ACCC should also consider the chilling impact on innovation of Google's anticompetitive conduct. The enormous revenues earned by Google from its adtech services would typically incentivise venture capital funding for adtech start-ups. Instead that funding has fallen precipitously over a long period of time.⁴⁹ Venture capital would typically fund innovation in a sector and therefore this lack of investment

⁴⁶ <https://mobiledevmemo.com/facebook-google-alternative-start-up-user-acquisition/>

⁴⁷ <https://www.adweek.com/retail/advertising-spending-increase-dtc-direct-to-consumer-brands/>

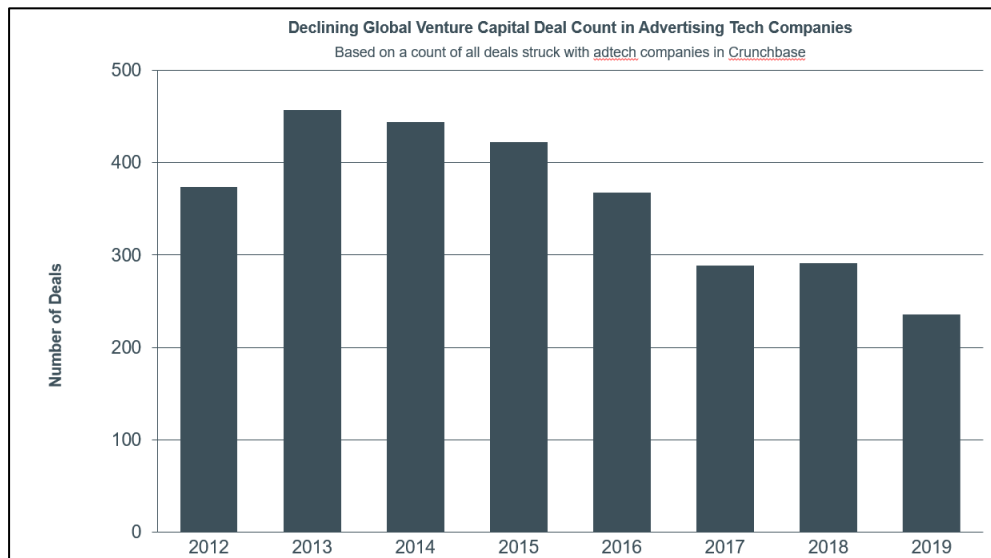
⁴⁸

<https://static1.squarespace.com/static/51d25286e4b0ab0e18156945/t/55a82696e4b03c912a9fcde1/1437083304675/SeriesC+Startup+Marketing+Budget+Survey.pdf><https://static1.squarespace.com/static/51d25286e4b0ab0e18156945/t/55a82696e4b03c912a9fcde1/1437083304675/SeriesC+Startup+Marketing+Budget+Survey.pdf>

⁴⁹ See, for example, Jason Rowley, *Advertising giants leave little room for adtech startups, and VCs are noticing*, Tech Crunch (June 13, 2017), <https://tcrn.ch/2uhvfg9>; Madhumita Murgia, *Adtech Funding Drops in Face of Facebook-Google Duopoly*, Financial Times (Jan. 3, 2017), <https://on.ft.com/2mf3hNE>; Claire Ballentine, *Google-Facebook Dominance Hurts Ad Tech Firms, Speeding Consolidation*, New York Times (Aug. 12, 2018), <https://nyti.ms/2MDMoYj>.

could be expected to mean a lack of innovation in the adtech services sector, which itself is a consumer detriment.

- 12.4 The following table, based on data from Crunchbase⁵⁰, demonstrates the decline in venture capital investment in adtech transactions globally over time:



13. Breaches of the Competition & Consumer Act

Google's anticompetitive actions in the adtech services market breach sections 45 and 46 of the CCA.

- 13.1 Oracle's view is that the actions of Google as outlined in this submission breach sections 45 and 46 of the CCA. The actions of Google block competitors providing services to advertisers, and push advertisers towards Google's adtech services, either by directly restricting the provision of non-Google services or by restricting access to data in a way that has the same effect. These same actions have significantly limited transparency in the adtech services market. Google is left as the only adtech provider that is able to provide information on how ad campaigns perform, notwithstanding the conflicts of interest this creates.
- 13.2 Ultimately, the consequences of Google's actions in limiting the accessibility of other adtech services and limiting transparency are:
- (a) an ever increasing volume of advertising traffic uses Google AdX and other Google adtech products;
 - (b) Google is able to sell low quality Google owned and operated ad inventory at a premium; and
 - (c) Google is able to degrade publishers' premium inventory.
- 13.3 The actions of Google in limiting transparency also have the, presumably unintended, consequence of making it more difficult for action to be taken to combat ad fraud – other adtech providers do not have sufficient information to enable them to determine in all cases when this fraud is occurring.
- 13.4 Consumers have been significantly disadvantaged by Google's breaches of sections 45 and 46 of the CCA. Advertisers pay more for digital advertising campaigns than they should, with those costs passed on to consumers, and the lack of innovation arising from Google's dominance also harms consumers as it stifles competition. Although publishers are not the focus of this submission, they are also clearly negatively impacted by Google's actions, including for example from the use of Google's "last touch"

⁵⁰ <https://www.crunchbase.com/>

attribution model, which again has a negative impact for consumers as publishers, particularly high quality traditional media companies, are unable to generate sufficient advertising revenue to continue to grow and innovate. The recent ISBA study referred to in the introductory section of this submission demonstrates that only approximately 50% of payments made for online advertising actually reach the publisher and at least 15% of the advertising expenditure is lost in the adtech services supply chain.⁵¹ Regulatory intervention is clearly required to restore competition in the adtech services market.

Section 45

13.5 In relation to section 45 of the CCA:

- (a) The contracts that Google enters into with advertisers who directly use its adtech services, the contracts it enters into with other adtech providers to allow those providers to provide services to advertisers and the contracts it enters into with advertising agencies are all relevant contracts for the purposes of section 45 of the CCA.
- (b) The prohibitions and restrictions that Google imposes under those contracts, as outlined in this submission, foreclose competition, including by directly prohibiting other adtech providers providing services, by restricting the utility of adtech services provided by third parties through for example prohibiting access to raw data, by ensuring the market is not transparent as assessments of the efficacy of an advertising campaign, including the value obtained from Google's own publisher inventory, cannot be made and (in the case of advertising agencies) ensuring that it is uneconomic for those agencies to use other adtech providers.
- (c) By forcing these contractual terms on advertisers, adtech providers and advertising agencies, Google's actions have had the purpose and/or effect of substantially lessening competition in the adtech services market in breach of section 45.

Section 46

13.6 Section 46 prohibits a corporation with a substantial degree of market power engaging in conduct that has the purpose or effect of substantially lessening competition either in that market or in another market in which that corporation or a related corporation supplies goods or services.

13.7 Again, the information provided in this submission makes very clear how Google has breached section 46:

- (a) Oracle's assessment is that Google has a substantial degree of power in the adtech services market and our expectation is that the ACCC will, in the course of undertaking its Adtech Inquiry, find that this is the case. It has that market power as a result of the vast quantities of data it collects (and combines) in relation to consumers.
- (b) Directly as a result of its market power in the adtech services market, Google is able to impose the contractual restrictions, and take the anticompetitive action, outlined in this submission. This forecloses competition, including by directly prohibiting other adtech providers from providing those services, by restricting the utility of those services provided by third parties through for example prohibiting access to raw data, by ensuring the market is not transparent as assessments of the efficacy of an advertising campaign, including the value of Google's own publisher inventory, cannot be made and (in the case of advertising agencies) ensuring that it is uneconomic for those agencies to use other adtech providers.
- (c) Google's actions, as outlined in this submission, have had the purpose and/or effect of substantially lessening competition in the adtech services market in breach of section 46 of the CCA.

⁵¹ <https://www.marketingweek.com/programmatic-advertising-supply-chain-brands/>

14. **Reasons for Google’s dominance and why, ultimately, action taken by the ACCC should address this**

Oracle recommends that the ACCC take action in relation to the underlying CCA breaches that allow Google to continue to act in an anticompetitive manner in adtech services markets.

- 14.1 Oracle strongly believes enforcement action against Google is required under sections 45 and 46 of the CCA to protect consumers against Google's pervasive and invasive data collection and combination practices and to reinstate fair competition in online advertising and particularly in the market for adtech services. As set out in Oracle’s previous submissions, and referenced earlier, leaving aside the competition law breaches detailed in this submission, Google engages in the collection and combination of consumer data in a way that forecloses rival providers of adtech services, in breach of sections 45 and 46 of the CCA.
- 14.2 As a result of Google’s substantial market power in a number of markets Google is able to collect vast amounts of data about Australians and to combine it into superprofiles providing Google with intimate and detailed profiles of the lives, interests and whereabouts of Australians. Those superprofiles allow Google to engage in unrivalled ad targeting. Google's data collection and combination practices, enabled by its Privacy Policy and Terms of Service, create a *data moat* that constitutes a substantial and insurmountable barrier to entry and competition that other providers of adtech services are unable to overcome because they do not have access to the same volume and diversity of data and cannot provide the level of targeting of ads that Google is able to provide. Consumers effectively have no choice but to agree to Google’s unfair data collection practices because, to do otherwise, would virtually exclude a consumer from using the internet. It is the data moat that Google has created, and the consequential barrier to entry and competition, that enables Google to engage in the other anticompetitive practices that are outlined in this submission.
- 14.3 Therefore the ACCC should focus its enforcement action on the underlying issue that creates the ability for Google to engage in anticompetitive activities in the adtech services market.

15. **Concluding comment**

- 15.1 Thank you again for providing this opportunity to Oracle to provide a submission to the ACCC’s Adtech Inquiry. Oracle believes that the Adtech Inquiry, like the ACCC’s Digital Platforms Inquiry, provides a significant opportunity to shine a light on the anticompetitive practices of Google. These practices, as they impact all advertisers, have a negative impact on all sectors of the Australian economy, to the detriment of all Australians.
- 15.2 Oracle would be happy to provide any further information that is requested by the ACCC in relation to any of the matters that we have addressed in this submission.