Summary issues list: MOW concerns with Google's first quarterly report

31 May 2022

Systematic Issues

Issue	Commitments reference	Substantive concern	Next steps to resolve issue
Burden of proof	Google must show compliance with the agreed commitments obligations.	The commitments were agreed to address competition concerns. There was a prima facie case of significant competitive harm. The duty is on Google to show compliance. It is also sensible to approach quarterly reporting in this way, to avoid storing up a problem for the standstill review.	Google must put forward information showing an absence of competition concerns, to be judged against the agreed Development and Implementation Criteria (Commitments, paragraph 12: Google has agreed to consider views so as **to *improve* application of DAIC principles**)
Application of Development and Implementation Criteria (DIACs): Report provides no information on competitive constraints and equivalence of data streams	The DAICs refer to balances between privacy, competition and feasibility (para 8). Under these principles, Google is required to "design, implement and evaluate the Privacy Sandbox proposals by taking into account": (a) Impact on privacy outcomes and compliance with data protection principles as set out in the Applicable Data Protection Legislation (b) Impact on competition in digital advertising, especially the risk of distortion of competition	The report states that Google is "In the process of publishing a blog post" regarding functional and effectiveness testing. This is unacceptable. The report is supposed to implement the DAICs. There is no information on the report on: - **Privacy outcomes** and **how they relate to data protection legislation** (8a) - The impact on **competition** and **risks of distortion** in favour of Google (8b) - The impact on **publisher revenue** and **advertiser cost-effectiveness** (8c) - The impact on **user experience** and **Personal Data** use (8d). Instead, the report provides information only on **feasibility** (8e), and relatively little even of that.	Google to provide a specific breakdown of each Principle (8a-e) and how each of the developing technologies implements the Principles with specific reference to each Principle. This avoids storing up a problem for the standstill, by front-loading the competition analysis, and will allow competing products to develop in line with this developing position. Google to explain how future dynamic innovation *other than through its proposed APIs* will continue after the removal of alternative technologies: what competition **<u>other than</u> that using Google's APIs as tied to Chrome** will be possible?

	between Google and others (c) Impact on publishers including revenue generation and impact on advertisers including cost-effectiveness (d) Impact on user experience, including relevance, transparency over Personal Data use, and user control, and (e) Technical feasibility, complexity and cost involved in Google designing, developing and implementing the Privacy Sandbox	It is understandable that not all aspects of the principles would be balanced at this time, but there should be *some* mention of the Principles and how they are balanced to allow competitors to develop competing products. It is necessary to know by what standards these would comply. Instead of this information, there is excessive reliance in the report on Origin Trials, and even a snide remark that these are not well understood. Even if this were true, that would be a failing of Google in its duties under the commitments (i.e., the obligation to provide transparency and to consider views). In any event, the OTs are understood perfectly: they are simply considered to be inadequate. Google has agreed to engage on objections of this sort and the last thing Google should be doing under the Commitments is blaming inadequacies in its communication on the rivals affected by it. The concern about the OTs is that an OT **based on Google APIs,** as opposed to commentary on equivalence of inputs under the proposals, cannot itself provide information on competition from alternative designs. An OT can only ever give static information **about that particular OT**. What is needed to comply with the DAICs is how future, unforeseen innovation remains possible despite the PS, **including pathways that do not use the Google-defined API specifications and therefore do not appear in OTs.** If there is a misunderstanding about OTs, it is Google's in	Google to be reminded that this cannot, by definition, be shown in relation to an Origin Trial of a set, or sets, of APIs (the APIs themselves being the metric of innovation and competition). Google to be reminded that API design as between rival ad tech suppliers (including Google) is competitively sensitive (e.g., effectiveness of advertising from a range of suppliers; impact on rivals and closeness of competition). The report is remarkable in not noting this as it is signed off by a Compliance Manager. The Report appears instead to have assumed that information exchanges relating to the competitive impact of proposed monopoly API designs do not raise concerns, without support for this unorthodox position. Google should implement a firewall between Chrome and Google Ads on this point and should verify this to the Monitoring Trustee.

		repeatedly not addressing this point (although considering the conflict of interest Google faces on this point, perhaps this is no misunderstanding at all). As these **alternatives to Google's APIs** are currently served by the existing data flows and technologies (3PCs, UA String etc), then competitive equivalence determinations must also encompass **alternatives to Google's APIs.**	
Announcements and timeline	Paragraph 11 requires "Disclosures … to enable publishers, advertisers and ad tech providers to **influence** the Privacy Sandbox and to adjust their business models, including by providing sufficient advance notice of the proposals and publishing key information." This includes updates as to timing changes. There is to be a microsite to feature this information **in addition to** the quarterly reports (para 12). "Details of the design, development and implementation of PS proposals and report on that process" must be public.	**The report discloses far more detail than Google provided publicly on the microsite.** There are many material points about project status and timing which were not disclosed. What Google says on **announcements** (p.19) is demonstrably short of what is needed in paras 11 and 12 (**material timing disclosures**). The report says "we work with the CMA", but the obligation is to publish material timing with equivalent prominence. The resulting dripfeed of incomplete information is a serious competitive harm as noted in the Decision to Accept Commitments (especially at 1.7, 3.6, 3.100). The Decision notes thematic concerns about: - **The impression that Google will continue with the project regardless of feedback** - **Asymmetry of information** about Proposals The Compliance Report shows a serious asymmetry of information (many details not disclosed on the website). Nor does it speak to	**The microsite should contain all material timing information.** Microsite should cover full suite with definitive timings, including the long-term project status (e.g., whether delays now are affecting long stop of cookie retirement). Tracker of all relevant product lines under development should be published on website. There should be a mechanism to "**stop the clock**" on the current proposed timing of 3PC deprecation, as otherwise vague timing effectively runs down the clock against competing solutions.

		what the ***long term*** project status is, and continues to give the impression that Google will press on regardless of third party impacts, since the latter are not mentioned, and some earlier harmful statements (e.g., the discredited FLOC "95% as effective" paper) are referred to. This is exactly the type of publication harm which the Decision says that the Commitments package was supposed prospectively to address (4.97: Commitments cannot address past, but must address future harms). There is no evidence that this timing information has conferred the ability to "**influence**" and to "**adjust business models**" (para 11).	
Testing	Obligation to work with CMA on the **design of** testing (17(c)(ii)) for all Alternative Technologies and Annex 1 PS technologies. Obligation to **take account reasonable views** of third parties in such testing. Paragraph 12 extends the duty to take reasonable views into consideration so as to encompass testing as well.	The report discloses ongoing testing relating to at least: - The **UA String latency issue** which MOW has flagged to the CMA as being of special concern. The report even says "***results will be shared***" (p.20), which appears to be a breach of the obligation to engage with the CMA and third parties testing **including at the design stage.** Further important testing is taking place relating to Trust Tokens: "***Chrome is trying to understand how latency impacts pre-bid use cases via testing***" but this testing has not even been **disclosed**, let alone its design **agreed** as the commitments require. "***Pre-bid use cases***" is hiding a major issue in jargon – it	**Google to provide information on testing frameworks in all instances of potential competitive relevance.** These frameworks to be public and underlying data on effectiveness to be published on the PS microsite. There should also be confirmation that other testing beyond this is not being used by the PS team, reflecting the potential conflicts of interest between the browser and the ad stack. This is already required in data handling restrictions in paras 25-7 and non-discrimination provisions in 30. Google has already agreed not to discriminate

		is **the issue with timing of bids and how many rivals get into the auction**. The process for testing something so important should be transparent.	using the browser and should not be allowed to circumvent this using non-public testing and the uncertainty it imparts. This is the only way to avoid biased testing design, which can otherwise pre-confirm desired outcomes. There is a need for fair play in testing design **before testing takes place**.
Accounting for reasonable views	Google is obliged to engage with "publishers, advertisers, and ad tech providers" (Para 10(d)); provide clarity as to timing **additional to** the quarterly reports (Para 11) By paragraph 12, Google has agreed to "**take into consideration reasonable views** and suggestions expressed to it by publishers, advertisers and ad tech providers, in order to better apply the Development and Implementation Criteria" (DAIC). This reads not only on quarterly reporting, but also requires a "**process for stakeholder engagement**" ***separate to the Quarterly Reports*** to the CMA.	**The report contains many assertions and does not disclose reasons for decisions taken.** It frequently parks issues and does not state any objective or non-discriminatory basis to explain why certain issues are credited and others not (specific examples below). **There is also a failure to implement the DAIC as the report does not articulate balances between competition, privacy, etc.** There is no information as to audience of engagement, whereas Para 10(d) specifically flags "publishers, advertisers, and ad tech providers". Not clear if statements made by Google employees at the W3C are Google's. There are many statements on personal GitHubs, Twitter, etc. This undermines clarity as to timelines and other compliance (e.g., with DAICs).	**Google to explain specifically how the DAIC have been weighed and addressed.** Google to explain through full due process specifically how and why certain viewpoints are credited, and others not (see specific examples below) rather than simply asserting what the outcome of the process will be. **Google should be asked to define the PS suite definitively and those officially authorised to state positions on behalf of Google,** to ease stakeholder engagement. There should then be stages for engagement and DAIC-based weighing in a **clear project plan** available in advance with check in points for the CMA and **all** affected parties.

Training	Para 14 states: "Google will instruct its staff and agents not to make claims to other market players that contradict these Commitments. Google will provide training to its relevant staff and agents to ensure that they are aware of the requirements of these Commitments."	**There is no mention of training.** This is primarily for the Monitoring Trustee to verify (Annex 3, B9), but as the Quarterly Report does certify non-discrimination including self-preference, **it is odd that no information is present in the Quarterly Report as to training initiatives.** MOW's understanding is that there is very limited knowledge of the CMA commitments, and that Google continues to market using terminology that arbitrarily harms rivals, notably continuing references to first and thjrd party data handling. This is harmful to rivals because the mere presence of a rival handling data does not itself create any harm, but does have an important role to play in conpetition. To fulfil the purpose of the commitments, Google should stop referring to this discriminatory termno.	**Google to clarify extent of training provided to date using quantitative metrics (% trained etc).**
Omission of specific user controls testing information	Paragraph 17(d) requires Google to provide the CMA with **plans relating to user controls, including default options and choice architectures,** encompassing user research and testing underpinning them.	The report discloses a discussion with the CMA as to user controls (p.21), but provides no information beyond the expectation that these discussions will expand. It may be that research and testing is still ongoing, but **there is no reason why "plans" should not be articulated as of today.**	**Google should be asked to lay out plans on user controls, default options and choice architectures so that competing providers can ensure the compliance of their systems on an objective basis** (while accepting that research and testing might still come later as APIs develop).
Use of outdated terminology	The commitments contain a read-across to the UK Information Commissioner's Office in paragraph 18. The CMA and ICO have issued a joint statement noting that first- and third-party data handling distinctions are not accurate proxies	Google continues to rely heavily on the distinction between first- and third-party data handling. This risks significant competitive harm, as the more that third parties are cut off from data, the less they can compete. The law should instead consider evidence of harms, so that well-run	**Google should be asked to engage properly regarding the first- and third-party issue on the microsite.** This is a reasoned objection; moreover, it is one based on UK Government policy documents (CMA-ICO report). Therefore,

	for risk and that evidence outcomes of data handling should be considered instead (***what data, doing what*** and not simply ***who handles it***).	privacy-friendly companies can compete despite being "third parties."	Google's obligation to provide reasoned responses (para 12) encompasses responding to this point. **If there is no reason to depart from the CMA-ICO joint position on this issue, then Google should be required to publish a statement to that effect on the microsite.**
Signature	**Annex 2 requires signature of the report by the CEO** or an authorised delegate	The report was signed by a compliance manager, who could be a designate, but **no governance paperwork is provided to show this authorisation.** **This is serious as it undermines accountability to investors,** who can rely on strong investor protections as to statements in reports by board members and their delegates, whereas they cannot do so unless there is a clear paper trail between the signatory and a board member (UK – PLC verification; US – personal responsibility of board under SOX as to representations).	**Google to provide paperwork to prove that DuPree was specifically authorised under Google's corporate governance structures such that the Report is a binding representation of the CEO.** As the report specifically requires the CEO or an authorised delegate to sign off, nothing else will do. If this cannot be proven, **CEO should sign and thus unequivocally bind the company to the representations.** CMA should not be in the business of being fobbed off by deputies.

Issues with Specific Privacy Sandbox Components

Issue	Commitments reference	Substantive concern	Next steps to resolve issue
Topics API	DIAC principles Clarity and timely disclosure of timeframes Testing	**The discussion of Topics does not assess the impact on competition.**	**Google to be reminded to use the Para 17(c)(ii) process, including its notice and comment requirements.** Google to be prohibited from resurrecting old papers

		Arbitrary definition of "noise" applied with no basis for relevance or objective basis in DIAC principles. The discussion goes back in time to the **much-maligned FLOC paper,** increasing uncertainty. It should be recalled that this dates back over 18 months and was widely discredited. There is no reasonable basis to point to it as an example of good practice, as it is exactly the type of unclear and biased testing that Paragraph 17 of the Commitments seek to address.	that did not comply with these requirements (FLOC paper) (non-circumvention).
Fledge	Non discrimination Testing	**Latency issues with linked server use are flagged** but promise is only to "clarify when possible".	Google to propose non-discriminatory testing of latency benchmarking against current technology.
Attribution	Non discrimination Testing	The process is glacially slow.	Google should be required to clarify timing on pain of **"stopping the clock"** and pushing out the currently proposed 3PC cookie retirement timeframe.
UA string	Non discrimination Testing	Google says it is "**investigating ways to improve latency**" despite apparent earlier position that UACH did not raise such issues. **This admits that there is an issue with the UA string and latency.** Latency is estimated to cost millions in lost competition, as technical systems slow down and therefore cannot process as many bids for adverts. The report contains false information. It states that UACH information is the same, but it is not. The report refers to "The information affected remaining available through User Agent Client Hints", but this cannot be accurate: if meaningfully "affected" then no longer "remaining available." There is no basis for this assertion that the information is equivalent, yet that is what fn3 of the Commitments requires.	**Google to publish information relating to latency testing and the UA string.** Google to explain exactly what information is withdrawn, the latency impacts of this, and how the decision comports with a full analysis under the DIAC. Google to explain why UA string withdrawal is necessary despite Google's continuing ability to undertake device identification through multiple alternative pathways (self-preference issue).

		Indeed, this revealingly sloppy sentence makes for a sharp contrast with the news that Google is now testing latency issues in UACH: how, then, is the "information" "remaining available"? Moreover, Google's approach of "explaining" *how* UA string will be deprecated, but not stating *why* ignores the DIAC duty to balance competition and privacy. A principled privacy concern should instead be stated. This would clarify what is required to address any (valid) privacy concern and would enable third party input as to how any UA string replacement should operate in a non-discriminatory fashion. There is no detail on the testing design or framework. This is impermissible non-public testing of latency undermining the due process protections in paragraph 17 of the Commitments.	
Gnatcatcher	Non discrimination	**The report assumes that the browser should obfuscate IP addresses without stating an objective basis for this treatment, or a compliance standard for rival handlers of the information.** A very narrow conception of equivalence is applied: *simultaneous* IP and UA reduction presented as the only issue, but competition concerns can arise from the withdrawal of either (hence why there is separate demand for them). This tied products assumption makes a mockery of the DIAC by effectively tying two data sources together, despite their differing uses.	**Google should provide principled and separate analysis of the concern from the IP address sharing and how this can be complied with by any IP-handling company on an objective basis.**
CHIPS and FPS	Uncertainty harm	**The report notes concerns about the same issues arising with CHIPS that came up with First Party Sets.** In effect, this ignores the principled objections to FPS, and "evergreens" a new discussion in CHIPS instead. This undermines the obligation to take stakeholder views into account.	**Google should explain non-discriminatory basis for Sets definition**, including non-engagement with a GDPR-based definition. **Google should be asked not to "evergreen" issues using new nomenclature and instead to develop**

		Google has not implemented GDPR Validated Sets, which would provide a non-discriminatory basis for Set definition.	**the same concepts using the same terminology,** to avoid evasion of commitments requirements through use of new name so as to reset process for engagement. Google to address existing concerns in existing discussions and is not to open "old wine in new bottles" discussions for functionally equivalent proposals. This also eases workload for the CMA and affected third parties. Google should be asked to define the PS suite and the roadmap for engagement definitively, to ease stakeholder engagement and to open a principled discussion of the most important issues (e.g., impact of privacy protections on competition and how they achieve competitive non-discrimination).
FedCM	Non discrimination Self-preference Compliance with browser data firewall	The report states, oddly, that **the browser is to "play a more active role" regarding cross-site tracking "while still supporting federation".** This is tautologous as federation is broadly equivalent to cross-site tracking with a cookie (Google can see access across a wide range of sites, and if notice to consumers is inadequate for cookies, it is equally inadequate for this functionally equivalent data gathering system). Essentially, Google is asserting that Google should get to do cross-site tracking so long as it is called "federated log in". This risks serious self-preference by tying the log in to the browser, but Google has agreed not to self-preference under para 30.	**Google to clarify how a system of federated log in can operate in a competitively neutral fashion to allow similar use by competing rivals to that currently enjoyed using 3PCs.** Google to clarify how the agreed data handling firewalls will operate.

		Competitively sensitive information is likely to flow through such a system. There is no clear basis in the report for compliance with the agreed data handling firewalls (paras 25-27; para 30).	
Trust Tokens	Uncertainty Testing Reasoned responses	**Google says it is "open to" expanding limit but no basis specified. This breaches the requirement for reasoned responses.** There is also a very serious testing issue: "Chrome is trying to understand how latency impacts pre-bid use cases via testing" but this has not been disclosed. (a) Is this **Chrome's** role at all? Paragraphs 25-7 and 30 agreed that browsers would be competitively neutral by firewalling browsing history and banning self-preference. (b) "**Pre-bid use cases**" hides a major issue in jargon: *what* use cases? This is chiefly the issue with timing of bids and how many rivals get into the auction, i.e. how much competition takes place. Failing to engage in the Para 17(c)(ii) process on point, as appears to have happened, would be a particularly serious breach. This relates to concerns in Google initiatives like Jedi Blue, which appear to use latency to diminish the number of bids and limit competition.	**Given the severity of the impact on competition (competing bidding), Google should be required to walk back this statement** and supply a public statement on how it plans to approach latency issues in the browser in a non-discriminatory fashion, applying the agreed framework of Para 17(c)(ii). Google should clarify why Chrome is involved in this testing rather than a neutral third party or other firewalling mechanism, given the agreed data handling firewalling provisions. Google should publish the latency information and any related internal correspondence, given its competitive significance and the agreement not to self-preference using the browser.
Ad testing	Competitively sensitive information Vaporware Testing Data handling firewalls	The report notes concerns about early sight of APIs within Google. The report says that Google Ad testing is restricted from **final** API design knowledge: "Evaluations are not based on **prior** knowledge of **final** PS APIs".	**Google should be asked to provide an affirmative statement of who saw early drafts of APIs, when, and the communications to back this up should be provided.**

		Early sight of *non-final* APIs could introduce significant competitive harm, as could knowledge on which APIs will be advanced to the final stage. There is also a risk of competitively sensitive information flows (e.g., testing based on browsing behaviour that is not entirely on-Google should not be shared with Google Ads). This could be a heinous breach of the firewalls on browser data and ad tech data (paras 25 and 26) and the ban on self-preferencing (para 30) because the information flow would be baked into the next generation of technology, undermining innovation on the basis of information that it would not be legal for rivals to share. The browser would thus be a conduit for the framing of an API begotten of an illegal data exchange. Finally, the report singles out Conversion Measurement API testing by Criteo. The report omits that this testing found that the APIs were not as effective as existing technologies. So even if Google's point on testing were correct (i.e., that testing of an API can show competitive equivalence), the only example of competing testing by a rival found that the system was not equivalent to the existing technologies.	**Monitoring Trustee should be asked why the MT signed off on compliance despite apparent gap in this firewall (Google's carefully worded exclusion of "non final" APIs from firewalling).** Check existence and quality of firewall going forward, by tasking Monitoring Trustee to review and publish all correspondence relating to Privacy Sandbox with Ad Testing department. **The Monitoring Trustee should investigate and verify compliance with Clean Team procedures.** Google should be asked to clarify personnel roles and training to ensure compliance with paras 25-7 (data use) and para 30 (non-discrimination) through the use of **an affirmative clean team list.** This list should be published to ensure no breaches (e.g., comments on ads and Chrome issues by same person at W3C). Only these Clean Team personnel should be allowed to handle the project, and Google Ad businesses more broadly must be denied access. Employees in breach of Clean Team procedures should be reassigned away from Chrome and Google Ads work.
