# Additional details on Privacy Sandbox Governance structure ideas

## Submission for UK Competition and Markets Authority (CMA)

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This submission complements my research paper "*On the governance of privacy-preserving systems*" (Handbook on the Politics and Governance of Big Data and Artificial Intelligence, Edward Elgar Publishing., 2023). Additional context for these works may be found in "*Reconciling Privacy Sandbox initiatives with EU data protection laws*". The public version of the document has amended questions, as the original ones issued by the CMA were very precise. The question format in this document is made more general (with consultation with CMA), which has significantly *fewer* (~80%) details of the precise aspects covered, but on the other hand — is simpler to grasp for the reader.

### 1. What kinds of decisions would be appropriate to make in the governance structure that you are proposing?

In addressing the formation of a governance structure for overseeing the development, maintenance (and other relevant governance tasks) of privacy-improved digital online advertising capabilities, specifically, Privacy Sandbox, it's essential to first acknowledge the quasi-governance arrangement already existing in place in 2024. This arrangement, involving primarily Google, with an oversight of CMA, and supplemented by feedback expressed over GitHub forum board (and perhaps other channels) emerged more from circumstance than deliberate design. It is not a properly formed structure and does not meet important requirements, in the long term it is unsustainable.

For this reason a dedicated governance form should be established. The objective should be to ensure parity and relevant independence in decision-making, particularly regarding feature and configuration adjustments. Its goal should be to avoid self-preferencing by any market participant, upholding privacy properties and guarding from competition and privacy erosion that happened with cookie-based ecosystem, which is why the changes are happening. In other words, in addition to privacy and competition, it is also a stability structure.

This aim is to prevent stagnation or deterioration in the long term. The current Google-CMA governance dynamic, while a fait-accompli, and perhaps quite functional during early days towards the rollout, highlights the need for a more formalized and independent governance entity.

The final entity should draw inspiration from the W3C Technical Architecture Group. It should focus on privacy, competition, AdTech, and some modest elements of web platform issues (with mediation with W3C TAG), keeping track of efficiency and deadline adherence in development. That could mean in practice, that for example, some proposals should not be stalled without any reasonable reasons.

The success and ability to operate critically depend the initial composition of such a structure, its mode of work, and ability to prioritise well. The structure must be designed to operate with the agility, enabling swift and decisive action. It should not be bloated, overly sized, or under control of broad digital advertising industry groups that could potentially lead to its disfunctionality.

The governance body should engage in a range of decisions from the details of technical design, including standard or even algorithm/pseudocode adjustments, and configurations (e.g.: various bucket sizes, parameters, taxonomies, etc.), to fostering transparent discussions and consensus. This body's role is less about strict feature approval or disapproval and more about prioritization and consensus-seeking, transparency, highlighting traces of decisions, their provenance, motivation, goals, aiming to collect feedback and facilitate agreement among stakeholders.

Some corner cases necessary to handle by such a structure:

- Niche Feature Requests. The governance must navigate the challenge of niche requests that could disproportionately benefit specific players. At the same time, it is imaginable that some upon-first-sight niche proposals may be justified. The decision-making process here may be complex, particularly when consensus is difficult to achieve.
- Timeline Concerns. Issues such as testing timelines that might inadvertently favor dominant players  must be addressed, suggesting the governance body's potential role in adjusting testing durations. This is not just about current rollout timelines, but also future time to develop features. If a powerful player may force their feature being deployed in 2 months, at the same time stalling other proposals for years, it would clearly highlight an issue to address. This must be avoided.
- Feature Transparency. The current lack of clarity on feature introduction and testing parameters necessitates governance oversight to ensure testing validity and equitable timelines. This comment is based on merit and observation of feature proposals seemingly lacking proper motivation, seemingly with unclear provenance, yet potentially having significant impact on competition or privacy qualities, deterioration.
- Proposal and Evaluation Framework. A structured framework is required for the introduction and assessment of features, enhancing process clarity and accountability. Proposal of features may naturally arrive on various development stages: early proposals, initial implementation, or even following a feature being implemented and deployed (in cases of changes).
- Privacy vs Competition. The governance framework must rigorously evaluate features for potential privacy erosion, but also for self-preferencing risks and other competition parameters, ensuring fair playing field.
- Enhancing Transparency. Adopting a process akin to the W3C TAG-wide review, with broad feedback, would set high standards of transparency around feature requests and decisions, mitigating the influence of dominant market players, or demonstrating that their proposals are put forward in good faith. Feature proposals not gathering sufficient feedback quality should not be considered.

Governance structure should not only focus on technical and configuration decision-making but also ensure the fair and balanced consideration of all stakeholders, fostering a competitive and privacy-conscious advertising ecosystem. This requires competences in technology, privacy, competition, technology standardisation.

### 2. What kind of criteria would you put in place to ensure well-balanced opinions within the governance structure that you are proposing?

Crafting a governance structure that maintains balance in decisions affecting both 'utility', 'privacy', 'competition' would be difficult. It requires a very specific approach to composition and representatation. This structure should diverge from the conventional models used by other standards development organisations (like ETSI, CENELEC, IEEE-SA or even industry bodies like the IAB), drawing instead from the participatory criteria of bodies such as the IETF and the W3C. With slight, yet crucial differences when it comes to the participant picture.

Basic comments:

- Individual Representation. Emulate the IETF's model, where despite participants' affiliations with various organizations, engagement are understood as made on an individual basis. This approach encourages decisions that prioritize the broader ecosystem's health over narrow organizational interests.
- Open Participation. Ensure the governance structure is accessible to a wide range of interested parties, from technologists or experts, researchers, to vendors, mirroring the W3C/IETF. This diversity of perspectives can help in balancing decisions between 'utility' and 'privacy'.
- Emphasis on Benefit. Align with the W3C's principle where despite organizational affiliations contributions  aim towards consensus that benefits the global community. This can serve as a guiding principle to ensure decisions do not disproportionately favor 'utility' at the expense of 'privacy', or vice versa — without proper consideration.

In such an ecosystem and during times of volatility and changes, there may be justified concerns over power imbalances or fairness. Addressing those would be among the critical tasks of the governance structure, as the limits of the current quasi-governance arrangement are already reached.

- Implementing a transparent process for decision-making and feedback/comment sharing is the key. This openness allows the community to scrutinize decisions, providing a natural check against bias, self-preferencing, favoring specific changes, or deterioration of the product towards privacy-misuses (already in 2024 some proposals may hint at such a risk).
- Review Mechanisms. Establish mechanisms for review of decisions. This can help identify any consistent leanings towards undesirable ways, and recommend adjustments.
- Feedback. Incorporate structured feedback collection from stakeholders. This can provide early warnings of imbalances and inform course corrections. Lack of feedback or critical voices may signal that things may not be based on merit.
- Participation. Allow for a dynamic composition of the governance body, where underrepresented viewpoints can be bolstered as needed to address perceived imbalances.
- Escalation and Arbitration. Develop clear escalation paths for disputing decisions, including arbitration mechanisms that may engage external experts to provide an unbiased perspective on seriously contentious issues.

**3. How would you provide for sufficient independence of any such governance structure?**

Ensuring the independence of any governance structure from significant industry players is critical for success, and to credibility and effectiveness of the structure. To maintain such qualities, specific measures regarding the composition and representation within the governance body must be implemented.

Obvious Restriction. A foundational rule should be that a Google/Chrome representative or anyone such affiliated in the past five years cannot serve as the Chair. Google's representation within the governance body should be clearly limited to prevent any majority control. This measure ensures that no single entity, particularly one as influential as Google, can dominate the decision-making process, thereby preserving the body's autonomy and ability to act in the best interest of the wider community and ecosystem. It's also naturally in Google's interest — when it comes to trustworthiness but also regulatory safety.

The challenge are **Financial Aspects**. How to fund it? It is unlikely that the participants in such a board would agree to work for free and volunteer their time without any compensation. The question of who finances the governance structure is pivotal. Exploring diverse funding sources is essential. This could include membership fees from a wider array of stakeholders. Establishing a clear and transparent funding model that minimizes reliance on any single entity is crucial to maintaining the governance structure's impartiality and independence. On the other hand, the structure requires funding: compensation, perhaps financing travels (if needed), video-conferencing infrastructure, etc.

How to kick-start?

The quasi-governance structure is already functioning but it is showing its shortcomings. Selecting members for the future structure would be key, especially the initial members, and the Chair. Mistakes of Facebook's Oversight Body should not be repeated. Establishing a transparent and equitable selection process for members and leadership within the governance body to ensure that all appointments are made based on merit and the ability to contribute to the governance body's objectives. Instituting regular audit and review mechanisms to assess the governance body's independence and effectiveness, including the examination of funding sources and decision-making processes to identify and mitigate any potential conflicts of interest.

The process of selection of initial members and the chair will unavoidably be a difficult one. Pulling rabbits out of a hat would not bode well for the structure.

**4. How long would it take to set up any such governance structure?**

The timeline for establishing a governance structure and its accompanying processes depends significantly on the intended composition and actual goals. Generally, the process could span anywhere from two to seven months. The structure cannot work effectively directly after kick-starting. This estimation accounts for the initial tasks required to draft an initial Charter mode of work. The Charter (at least initially) or other documents should be concise and very simple, not overloaded with details difficult to navigate, or developed over years, with little actual uses. Warm-up period may take anywhere between 1 — 3 months.

**5. Given the diverse range of interests that would be represented within any such governance structure, how would you prevent stalling business-critical decision-making?**

Ensuring a balanced and effective decision-making process within a governance group, especially one encompassing a wide array of interests requires translates to the approach adopted towards its composition and mode-of-work . Achieving consensus while avoiding paralysis in business-critical decision-making is crucial. Indecisive body structure must be avoided.

The effectiveness of the governance group often correlates with its size. Too large a group can lead to unfruitful discussions, waste of resources, and difficulty in reaching consensus. Too small a group may not adequately represent the diverse range of interests and be paralyzed in case of members downtime. Finding an optimal number of participants is crucial. The group should be composed from 5-9 members (even number, with chair having an additional decisional influence), and not larger than 11. Members should hold the necessary qualifications.

- Expertise and Competencies. The governance group should be composed of individuals with a wide range of expertise, including data protection and privacy, competition, web technology, and digital advertising systems. This diversity ensures comprehensive understanding and consideration of the various facets of decisions. However, to prevent the group from becoming mired in legalistic or overly technical discussions, members should  possess a practical understanding of the implications of their decisions on business operations and innovation. This means actively avoiding a composition that is overly dominated by some types of profiles, like (an example!) purely of legal professionals, unless their presence directly contributes to the objectives of the governance group. Important caveat: the group should disfavour composition of people with distinct profiles. It would be ideal if the  members had as much of required competencies as possible (all-in-one), favouring broad knowledge in each specific people, rather than exclusive knowledge in a particular field held by separate people.
- Mode of Work is Consensus. (*But not always*). For decisions ranging from routine to business-critical, adopting a tiered approach to decision-making can ensure that not all decisions require strict consensus. But they always leave a trail of their road from conception to proposal, and analysing feedback. Still, less critical decisions could be decided by a simple majority.

The risk of decision-making paralysis remains relevant, particularly in groups where interests are diverse and stakes are high. Acknowledging this risk is the first step in mitigating it. The governance group must be aware of the potential for deadlock and equipped with strategies to address it, ensuring that the pursuit of consensus does not hinder critical business progress.

In essence, the governance group's success in balancing consensus with efficient decision-making lies in its careful design, both in terms of participant composition and operational procedures, including the experience of the members — including the experience in acting at or with standardisation body structures.

By acknowledging and planning for the inherent challenges of group decision-making, the governance structure can be a robust mechanism for guiding the development and implementation of policies and standards, while ensuring that business innovation and competitiveness are not unduly constrained.

**6. What evidence is available on the impact of deliberative forums on design outcomes?**

The assertion that deliberative forums like those within the W3C's Web Advertising Business Group (WAB) and the Private Advertising Technology Community Group (PATCG) had an impact on design and implementation decisions is supported by specific instances where public feedback and pressure was incorporated and directly influenced the course of feature development. A notable example of this is also the discontinuation of the Federated Learning of Cohorts (FLoC) following public pressure, or the discontinuation of Turtledove's predecessor, Pigin following identification of unfixable privacy risks identified.

Adjustments following feedback on discussion boards, driven by community feedback, underscore the influence of these deliberative platforms on the evolution of the technology stack.

It is also fair to say that the system shows some hallmarks of rust in 2024, with some decisions stalled without any clear reasons, and others — like proposals — put forward in not-exactly transparent ways. Those elements so far (by April 2024) escaped public scrutiny, highlighting the need for a governance structure or actually functioning trusted oversight, not the dysfunctional one in in place.

**7. Apart from GitHub, what other means would you propose for ensuring transparency over any such governance process?**

GitHub serves as a standard discussion platform and for collaborative development, offering robust functionalities for managing proposals, discussions, and code changes. Its interface and jargon can indeed pose barriers to those unfamiliar with software development practices. However, it is difficult to argue that GitHub discussion board is difficult to use. All forums types have some user interface and require initial adjustments to acquire familiarity. For purely discussion purposes, there are no significant differences between this particular board or others. The alternative would be to create a dedicated website but it would still require people to learn its use. Another option is mailing list but it would be less simple to use in comparison to GitHub. GitHub is simply the platform of choice for discussing standardisation aspects. Another alternative could involve regular face-to-face meetings, but those would be much less accessible for wide audiences, not even mentioning the difficulty to create “a paper trail”.

Situation with simplicity of using GitHub may change if someone becomes interested in engaging with actual proposals or projects, text or code edits. But any platform would require some adjustments. In those cases people finding it difficult could simply leave comments, rather than directly edit or compose documents.

Furthermore, criticism of Privacy Sandbox as overly technical and allegedly making it difficult to discuss privacy, are not substantiated on merit. There is no shortage of people with technical privacy acumen, or with abilities to understand technical concepts. It is in fact often as course offered in higher education establishments.

**8. How would you ensure that any such governance structure is seen as legitimate?**

Concerns regarding the legitimacy of organizations like the W3C, due to the perceived dominance or influence of large firms highlight a broader issue within the ecosystem of internet governance and standardization. While recognizing these concerns, it's essential to differentiate between the structural role of the W3C as a forum for discussion and its involvement in decision-making processes in the case covered in this submission.

As explained in the answer to point (1), I am not advocating for inclusion of the governance structure in the W3C structure. This should not happen, for many reasons.

The W3C's primary function is as a facilitator of dialogue among various stakeholders, rather than as an arbiter of technical decisions in the case of platform discussed in this submission. Those are crucial distinctions. Privacy Sandbox borne out of web standards-like processes, and it is why the initial ways of discussion or development adopted some of the values and patterns of work from W3C structure. Adoption of such mode of work did not stall impede progress of work — it even improved it (i.e. Pigin case). The alternative would be one totally non-transparent and totally in control of the initial proponent.

Criticism directed at the W3C may sometimes stems from broader frustrations with the standardization process or the influence of large firms within these forums, rather than specific failings of the W3C itself. The case of Privacy Sandbox is much different. It is clear from the start that it is proposed by a single company, Google (not W3C or via W3C process). The mode is thus very different, and the aim should be for the Privacy Sandbox governance or oversight to be handed over from the current setup. This may be done, as explained previously, by engaging trusted and respected people in the initial composition, separation from bias-sources. Even here it is not argued that Google should have no influence or impact at all. It should simply not be the only source, including of feedback or decisions, hence the need to broadening of the governance structure from the current one, considering also other actors. Those are the needs of data protection, privacy, and competition realities due to the existing marker existence.

In conclusion, while the concerns about the influence of large players are valid, addressing these concerns in a new governance structure may shoulder the broader issue. It all depends on the design of the structure, its composition, and mode of work. I was the first to raise those needs and basic considerations in the research paper "*On the governance of privacy-preserving systems*" (Handbook on the Politics and Governance of Big Data and Artificial Intelligence, Edward Elgar Publishing., 2023). Additional context for these works may be found in *"Reconciling Privacy Sandbox initiatives with EU data protection laws*.

And it is high time to start forming such a body.