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RESPONSE TO THE COMPETITION AND MARKETS AUTHORITY'S ONLINE PLATFORMS AND DIGITAL ADVERTISING MARKET STUDY

Introduction

We welcome the Competition and Markets Authority's (CMA) announcement of its market study into online platforms and digital advertising as part of its broader Digital Markets Strategy. We called for this market study in our 'Control, Alt or Delete?' report published in June 2018.¹ Our work in this area identified the need and urgency for a market study given the concentration of the digital advertising sector and the fact that the impact of digital advertising on consumers is poorly understood.

Proposed scope of the market study

We support the CMA's planned approach to focus the study on platforms funded by digital advertising. This will enable the study to look at this area in depth and deliver clear findings on the specific harms in the sector and recommendations to tackle them. However, such platforms are just one part of a broader digital landscape that impacts upon consumers. Therefore, we welcome that as part of the CMA's Digital Market Strategy there will be parallel work to this market study looking at, among other things, non-advertising funded business models. It is essential that these two pieces of work are closely linked. There is opportunity for learning and evidence to be shared between the two to understand the breadth of potential consumer harms across the digital sector and the suitability of possible remedies.

We also note the exclusion of online targeting from the study, given that this is being considered as part of work by other government bodies, particularly by the Centre for Data Ethics and Innovation (CDEI). However, there is the potential for overlaps on consumer harm between these two areas and the CMA should work closely with the CDEI to share intelligence on the harms and in considering different remedies. For example, the online advertising market is built upon the collection and use of consumer data which is used to create profiles of consumers that enable advertisers to target their adverts at individuals.² The impacts and consequences of such practices are poorly understood but our initial research suggests that these might include (i) behavioural nudges that retain users attention, diminish control or exacerbate addiction, (ii) increased prices for consumers or (iii) discriminatory access to information or services.

We welcome the study's full consideration of consumer control over data collection practices and consumers' effective choice. Our work on Control, Alt or Delete? shows that, through their market positions, the data collection practices of dominant companies can often deprive consumers of control and choice if they are only able to access services by accepting terms and conditions that require them to give away more data than they would do in a more competitive landscape. We also found that whilst consumers recognise and value the benefits that can come from the application of personal data, there is a widespread sense of disempowerment, with many people unsure of either the impact that data use has on them or whether it is even worth

¹ [Control, Alt or Delete? The future of consumer data](#)

² Facebook's use, since 2014, of 'people-based marketing' is one example of this targeting.

trying to take any action about practices that concern them. We therefore agree that the study look at these aspects of the market in detail in addition to assessing the nature of competition in the consumer-facing markets and the business-to-business digital advertising markets.

Potential remedies

We agree that it will be important to take a long-term approach in considering where remedies might be appropriate and the form these might take, so they remain effective as the market develops. This should include taking into account digital players who are not currently within the scope of the study but who may be so in the future, either through changes to the way they are funded or their position in the market. The study should also consider the impact that changes in technology is having on the digital advertising industry. For example, the IoT industry and connected devices have the ability to generate and communicate personal data which may be stored on a device and made available to advertisers, either now or in the future. It has recently been reported that Google have started to serve ads on Google Home devices.³ The market in these devices is continuing to grow and it is likely that both Google and Facebook and others will continue to innovate across their platforms and product ranges with techniques and opportunities for serving advertisements to consumers. This is likely to increase the range and variety of data they are able to collect on consumers to serve to advertisers, further entrenching their market dominance.

We fully agree that consumer research will be needed to test the impact and effectiveness of potential remedies. Our "Data Dozen" segmentation⁴ demonstrated the dissonance between consumers' attitudes towards data collection and use and their behaviour so it is important that any remedies are tested with consumers to offer a more robust insight into their effectiveness. For example, whilst data portability could hold significant potential as a remedy there is a substantial amount of work required to consider how consumers are brought into the process so that the benefits of data portability can be realised. In May 2019 we reran our 'Data Dozen' segmentation⁵ to mark the one year anniversary of GDPR coming into effect and found that people are not aware of their full rights under data portability.⁶ A consumer education campaign might increase awareness and uptake amongst these consumers but there may be additional barriers that need to be identified through consumer research, with mechanisms to overcome them built into the design of data portability initiatives.

Additionally, as part of the CMA's broader Digital Market's Strategy, the CMA will need to consider whether any suggested remedies to address specific harms identified by this study have the potential to have an impact on areas of the digital market outside the scope of the study to ensure a coherent approach in tackling harm in the sector.

³ <https://bqr.com/2017/03/17/google-home-audio-ads-beauty-and-the-beast/>

⁴ <https://consumerinsight.which.co.uk/data-dozen>

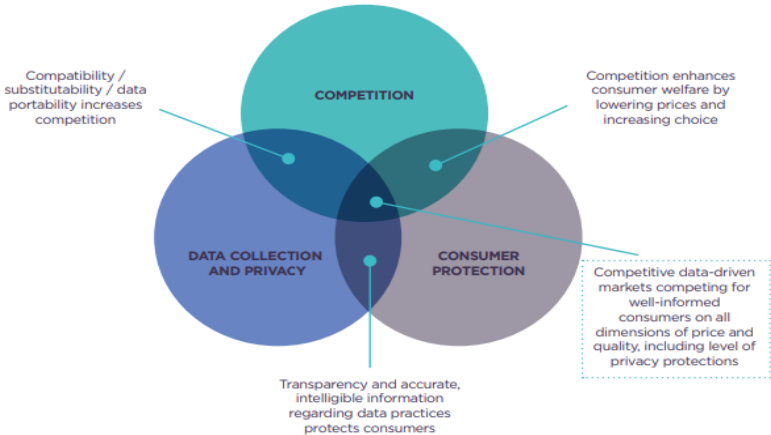
⁵ [How have consumers' attitudes and behaviours towards data protection changed since 2018?](#)

⁶ [Widespread confusion over GDPR rules that protect your privacy](#)

We welcome the commitment to work closely and share intelligence with other regulators and government bodies. Current government exploration of the digital market is fragmented, with many bodies looking at particular aspects. For example, earlier this year the Government published the Online Harms White Paper and the CDEI recently published its interim reports into its review of online targeting and algorithmic decision making.⁷ In addition, the Department for Business, Energy & Industrial Strategy has launched a consultation looking at how it can use data portability to improve the consumer experience.⁸ Similarly, the Department for Digital, Culture, Media & Sport has announced the UK Government’s intention to develop a National Data Strategy that would ‘unlock the power of data across government and the wider economy, while building citizen trust in its use’.⁹ While these studies are looking at different aspects, there is a clear need for the CMA to work very closely with the relevant authorities not only to share intelligence about the industry but also in designing possible remedies to ensure a coherent approach for the sector.

As the Australian Competition & Consumer Commission’s inquiry into Digital Platforms highlighted data-driven markets such as those in which digital platforms operate raise issues at the intersection of privacy, competition, and consumer protection considerations (see figure below). For example, in concentrated markets where consumers may experience harms from information asymmetries and a lack of bargaining power, data collection and privacy rights can help to remedy these issues. Transparency over data privacy policies may help to facilitate competition between service providers on privacy terms.¹⁰ There are also some trade-offs between different remedies that need to be fully understood in designing a coherent regulatory framework for the sector, so full collaboration between the different authorities is paramount.

Figure 1: Overlapping issues in data protection, competition and consumer protection



Source: Australian Competition & Consumer Commission, *Digital Platforms Inquiry*, 2018, adapted from European Data Protection Supervisor, *Privacy and competitiveness in the age of big data*, 2014.

⁷ [Interim reports from the Centre for Data Ethics and Innovation](#)
⁸ [Smart data: putting consumers in control of their data and enabling innovation](#)
⁹ [National Data Strategy open call for evidence](#)
¹⁰ [Australian Competition & Consumer Commission, Digital Platforms Inquiry, 2018](#)



Finally, given the international dimension of the digital market, we welcome the commitment to work closely with competition authorities in other jurisdictions who have carried out relevant work in this sector in order to share learnings, identify issues and consider possible remedies to tackle potential harms.

About Which?

Which? is the largest independent consumer organisation in the UK with more than 1.3 million members and supporters. Which?'s purpose is to tackle consumer harm and help individuals to be as powerful as the organisations they deal with in their daily lives. Which? empowers consumers to make informed decisions and campaigns to make people's lives fairer, simpler and safer.

30 July 2019