

## **Information Commissioner's response to the Competition and Markets Authority's "Market study of digital comparison tools: statement of scope"**

### **1. The Information Commissioner's role**

- 1.1 The Information Commissioner has responsibility for promoting and enforcing the Data Protection Act 1998 ("DPA"), the Freedom of Information Act 2000 ("FOIA"), the Environmental Information Regulations ("EIR") and the Privacy and Electronic Communications Regulations 2003 ("PECR"). She is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where she can, and taking appropriate action where the law is broken.
- 1.2 The Information Commissioner welcomes the opportunity to respond to the Competition & Markets Authority's (CMA) consultation on the scope of its proposed market study of digital comparison tools (DCTs).
- 1.3 In the event that problems in the market are identified, the Information Commissioner urges the CMA to consider privacy-friendly solutions that minimise information risk. It is important that well intended recommendations or remedies arising from the market study do not result in an increased information risk, especially given the need to foster public trust and confidence in this area.

### **2. Areas the study should consider**

- 2.1 The Information Commissioner believes individuals should be able to utilise, and benefit from, the data organisations hold about them. Given the importance of collecting, sharing and analysing personal data to many DCT models, we offer to share our knowledge and expertise with the CMA to help support and inform its understanding of the data protection and privacy issues arising.
- 2.2 Growth in the digital economy requires public confidence in the protection of personal data, and it is the Information Commissioner's fundamental

objective during her five-year term to build a culture of data confidence in the UK.

- 2.3 The Information Commissioner's staff regularly undertake an annual track survey to gauge how individuals feel about how their data is used, and their awareness of information rights. A survey commissioned for the Information Commissioner<sup>1</sup> indicated that UK adults have very little confidence in the current state of the data economy, and that trust in businesses use of personal data is essential for those pursuing data driven business models. Key statistics include:
- Only 1 in 4 UK adults trust businesses with their personal information
  - 16% agreed that businesses are transparent in their data use
  - 14% agreed they are in control of their data
  - 21% agreed that their data is kept secure
  - 39% had not used a service due to lack of trust in how their data would be handled
- 2.4 The Commissioner's annual track research considers individuals' views in general terms. It would be interesting to understand the extent to which individuals are concerned about how DCTs in particular collect and process their data - and the impact this has on their behaviour - as opposed to other concerns they may have, such as a DCT's market coverage or whether the most appropriate deal is being recommended to them.
- 2.5 The Commissioner would be interested to understand more about how data analytics are used by DCTs, and the ways in which they are able to ascertain whether the processing and analysis they perform is leading to fair outcomes for the consumer.
- 2.6 The Commissioner is also keen to understand more about how DCTs use the data they collect for purposes other than searching the market for the most appropriate product or service. For example, whether the data is being traded or shared with others for marketing purposes, or is being used to develop other products, build risk profiles or is combined with other sources of data to undertake other types of analyses.
- 2.7 Giving the consumer control of their personal data can help to build trust. The Commissioner would be especially interested to understand the extent

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<sup>1</sup> <https://ico.org.uk/media/about-the-ico/documents/1624382/ico-annual-track-2016.pptx>

to which consumers are able to exercise control over the data that DCTs collect and retain about them. Personal data stores (PDS) and similar personal information management services potentially provide one way in which consumers may take greater control of their personal data use. The CMA may wish to consider what barriers there are to consumers being able to use personal information management services when providing data to DCTs.

- 2.8 The relationship between data protection and consumer protection requirements, and the expectations of respective regulators, is another area the CMA may wish to explore. For example, under the first data protection principle processing of personal data must be fair and lawful, but consideration may be given to how that relates to the prohibition of unfair commercial practices under the Consumer Protection from Unfair Trading Regulations 2008 and the need for financial firms to treat customers fairly.

### **3. What likely developments over the next three years should we take into account and why?**

- 3.1 The government has now confirmed the UK will be implementing the General Data Protection Regulation (GDPR). The GDPR, which replaces the Data Protection Directive upon which our existing data protection laws are based, will take effect from 25 May 2018. Reform of data protection law is designed to be a key part of the European Commission's digital single market strategy, and seeks to foster trust in online services by consumers and legal certainty for businesses based on clear and uniform rules<sup>2</sup>. The GDPR will give individuals strengthened rights and place new obligations on organisations; there will inevitably be an impact on how DCT providers collect and process personal data.
- 3.2 An aspect of GDPR that is particularly relevant concerns the new right to data portability under Article 20. Under this provision an individual will have the right to receive, in a structured, commonly used and machine-readable format, the personal data they've provided. Individuals should be able to transmit the data to another organisation without hindrance and, where technically feasible, to have the data transmitted directly from one organisation to another.

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<sup>2</sup> [http://europa.eu/rapid/press-release\\_STATEMENT-16-1403\\_en.htm](http://europa.eu/rapid/press-release_STATEMENT-16-1403_en.htm)

- 3.3 The opening up of financial transaction data as a result of the CMA's recent retail banking remedy is another significant development. Financial transaction data may be used to build a very detailed picture about how an individual chooses to live their life. This has the potential to be especially intrusive, particularly given that the growth in contactless payments means there is an even greater propensity for individuals to dispense with cash and make even the smallest transactions electronically. It is envisaged DCTs will be keen to make use of this new source of data, especially if the products and deals brought to market by firms, and others, become increasingly complex. The nature of the data, combined with the ability for it to be quickly and easily shared, and then analysed in increasingly sophisticated ways which may not be transparent or easily understood, could adversely impact upon consumer trust and confidence in DCTs. The opening up of data by the energy industry is similarly a further significant development that the study should take account of.
- 3.4 The growth of the Internet of Things (IoT), and the ability for DCTs to utilise data generated from sensors embedded in devices is another area worthy of consideration. Telematics devices which are embedded in connected vehicles, plugged-in, or installed on a user's mobile device may be used to help an insurer understand an individuals' behaviours and risk, and in consequence the premium to be charged. Likewise, other devices and sensors such as energy smart meters may also generate information that could be used by DCTs to inform a search of what may become an increasingly complex market. It would be helpful to understand the likelihood, and manner in which, these new sources of data will be utilised by DCTs within the next three years, and what barriers may prevent DCTs utilising these new sources of data.