

## **Digital comparison tools market study**

### **Summary of the update paper**

**28 March 2017**

- 1.1 This paper provides an update on our market study of digital comparison tools (DCTs). We are now six months into the project, and are due to publish our final report by 28 September 2017.
- 1.2 DCTs play a major role in a variety of markets, and many consumers use them to shop around. They offer substantial benefits in reducing hassle for people and in increasing competition.
- 1.3 For those benefits to be maximised, a number of conditions need to be met: consumers need to be confident enough and have enough trust to use DCTs; DCTs themselves need the ability to operate effectively; competition needs to be effective; and regulation of DCTs needs to be appropriate.
- 1.4 At this stage, the evidence we have reviewed suggests that many people are likely to be realising significant benefits from DCTs in the sectors we have looked at, but that there is room for improvement.
- 1.5 During the remainder of this study we will consider four types of possible steps we and/or others could take to increase the benefits delivered by DCTs. These steps are:
  - (a) Maximise consumer confidence and build trust.
  - (b) Improve DCTs' access to necessary inputs.
  - (c) Make competition more effective.
  - (d) Improve regulation.
- 1.6 These steps could involve a combination of competition and consumer enforcement cases, recommendations to regulators and/or government, and working with firms in the sector. This could be done either through this project or as a result of considering further action.

- 1.7 We have decided that a market investigation reference is not necessary, as the four types of further action identified above can be pursued through the powers we and others have, without a market investigation.

## **Introduction (Chapter 2)**

- 1.8 On 29 September 2016 we launched a market study into DCTs. By ‘DCTs’ we mean digital intermediaries that help consumers compare or switch – including both price comparison websites and apps.<sup>1</sup> DCTs have been an important topic in a number of our previous projects, such as our private motor insurance (PMI), energy and retail banking investigations, or recent competition enforcement work.<sup>2</sup> We wanted to consider how the benefits of these increasingly important tools could be maximised, but also to consider concerns that had been raised on a range of issues from DCT-supplier contract terms to transparency.
- 1.9 We are looking at DCTs across sectors, starting with those sectors where we already have experience from previous work, such as energy, legal services and motor insurance. We have added some new case studies: credit cards, broadband, home insurance and flights. Together these form our focus sectors. While certain issues may well be specific to particular sectors, we expect many of the themes we are addressing to be common to DCTs beyond our focus sectors.
- 1.10 This update paper sets out our current views in broad terms, based on the evidence we have considered so far, and indicates our proposed focus for the second part of the study. It does not report or evaluate every piece of evidence or view we have received.

## **What DCTs do (Chapter 3)**

- 1.11 DCTs act as intermediaries between consumers and suppliers, presenting a range of products or services to consumers in various digital formats, and helping users choose between options. DCTs may also offer to complete the transaction or switch suppliers on consumers’ behalf.
- 1.12 DCTs offer these services in a range of ways, involving a variety of relationships with suppliers, but also including other parties such as affiliate networks or white-label comparison service providers. In our focus sectors,

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<sup>1</sup> Our working definition for DCTs is ‘web-based, app-based or other digital intermediary services used by consumers to compare and/or switch between a range of products or services from a range of businesses’.

<sup>2</sup> CMA, [Energy price comparison websites: suspected anti-competitive agreements](#). Case closed 6 October 2016.

DCTs are mostly commercial businesses, often earning revenues from suppliers on a cost-per-acquisition basis.

- 1.13 Different DCTs offer a variety of services, from simple ‘best buy’ tables, through to automated switching. Most common, however, in our focus sectors is currently something in between these two – comparison tables, often with various ways of refining a search, and in some sectors with bespoke pricing or eligibility checking.

### **The benefits DCTs can offer (Chapter 4)**

- 1.14 DCTs can offer several benefits. They can make searching around and switching easier for consumers, and can encourage disengaged consumers to shop around when they otherwise might not have. Shopping around and switching can directly benefit consumers, but they also strengthen competition. DCTs can also make it easier for new suppliers, particularly smaller ones, to enter the market. The overall impact of DCTs should be lower prices, more choice, and better matching between consumers and suppliers.
- 1.15 DCTs appear likely to offer the greatest potential benefits to consumers in sectors where they are not inclined to engage, perhaps because doing so is difficult or unappealing, and where there is a significant amount of money at stake. In sectors where there is deep-seated disengagement, DCTs have the potential to disrupt the status quo, encouraging consumers to become engaged and make decisions that will serve them better, through cheaper prices and/or products that more closely suit their needs.
- 1.16 However, for those benefits to be maximised, a number of conditions need to be met:
- (a) Consumers need to have enough confidence and understanding to use DCTs. If they either do not understand what DCTs do, or do not trust them to do what they say, this is likely to limit use of DCTs.
  - (b) DCTs need access to the right information to be able to offer effective comparisons. Precise requirements vary by sector, but DCTs need enough information about both the products they display, and consumers’ needs, in order to offer relevant, accurate comparisons.
  - (c) Competition needs to be effective, both among DCTs and between DCTs and the suppliers whose services they compare – ie between the DCT channel and suppliers’ own direct channels.

(d) Regulation of DCTs needs to be appropriate; it should support good consumer outcomes while not unduly acting as a barrier to entry or innovation.

1.17 In this document we use evidence we have reviewed so far in our focus sectors to illustrate the extent to which these conditions are met, and whether steps could be taken to ensure they are.

## **Consumers (Chapter 5)**

1.18 Consumers need to be aware of what DCTs do and trust DCTs to do what they expect. Expectations then need to be matched by the reality of what DCTs offer in practice.

1.19 We have gathered information on consumers' use and perceptions of DCTs through a survey of over 4,000 consumers; and we have been analysing what DCTs offer consumers through a mystery shopping exercise and a review of comparison sites and apps.

1.20 We found that the large majority (97%) of internet users are aware of DCTs and many (85%) had used one at some stage. Most DCT users said they used more than one DCT to shop around – mainly to check the prices of the same product across different sites.

1.21 Very few people (11%) thought the DCT they last used had shown the 'whole of the market' and most were content with the coverage they thought the DCT provided.

1.22 Over 90% of recent users said they were very or fairly satisfied with the DCTs they used, and DCT users were also more likely to be very satisfied with their experience than those shopping around in other ways, such as directly on suppliers' sites. Furthermore, most users, but also a substantial proportion of non-users, believed that using DCTs led to, or would lead to, better choices. Two-thirds considered that the results on the main site they had used fully matched their needs, with only 2% saying that they did not match their needs at all.

1.23 Most users felt confident using sites and found it easy to re-order or filter results and compare them on a like-for-like basis. However, while in most of the sectors we looked at, DCTs typically first presented results ranked by price and allowed users to filter or re-order them, many users do not do so and many only look at up to three offers.

1.24 While overall levels of user trust and satisfaction were high, there were some areas where we identified potential concerns:

- (a) There appear to be areas where sites could improve transparency – particularly around their market coverage, business models and ranking methods.
- (b) Most consumers trust DCTs to provide accurate and reliable information, offer the best products based on their requirements and provide them with the best price. However, they seem less likely to trust DCTs in terms of how sites store and use their personal information. Our review of sites suggests that there is room for improvement in how DCTs explain this to consumers and offer users the means to control how their data is shared.
- (c) Finally, consumers have low levels of awareness about what to do if things go wrong when they use a DCT, as well as how the sites are regulated. Low awareness may reflect high levels of satisfaction and low levels of complaints. But we would expect sites to be clear about their complaints policies; we found that the information they provided varied considerably.

## Inputs to DCTs (Chapter 6)

- 1.25 In order to be able to offer an effective service, DCTs need a number of inputs. In particular, DCTs must:
- (a) know enough about what a consumer wants, including information on individual consumers' usage where relevant, to be able to provide accurate and sufficiently tailored prices; and
  - (b) have access to data to offer accurate information on prices and service characteristics.
- 1.26 Our initial view is that there are potential concerns in this area in certain sectors – particularly the availability of inputs from suppliers. Issues raised include elements of pricing information, particularly in insurance and flights, eligibility in credit cards, and broadband speed information. In some sectors, notably legal services, DCTs have struggled to get off the ground primarily due to suppliers' lack of willingness to be included. In other sectors we have looked at recently, we have taken action to ensure better availability of data about consumers' usage – notably Open Banking<sup>3</sup> and our recommendations to DECC (now BEIS) to improve the Midata programme in energy.<sup>4</sup>

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<sup>3</sup> CMA, [Open Banking revolution moves closer](#), 2 February 2017.

<sup>4</sup> CMA, [Energy market investigation Final Report](#), June 2016, paragraphs 13.364 to 13.398.

## Competition (Chapter 7)

- 1.27 In a well-functioning DCT market, a number of DCTs compete with each other and with suppliers for consumers. They might compete on the effectiveness of their brands and marketing, the relevance, accuracy and user-friendliness of the comparison services they offer, and the deals consumers can get by using them.
- 1.28 DCTs deliver the best consumer outcomes when they provide their services at a reasonable cost, and without imposing unduly restrictive terms in their negotiations with suppliers. At the same time DCTs are able to use their position in the market to attract suppliers and negotiate good deals with them. The stronger the competition between DCTs, the more the benefits will be passed onto consumers.
- 1.29 In practice, it appears that competition is generally fairly effective, and serves consumers well, but the picture varies somewhat across sectors. We have explored some specific issues that have been raised with us, both about specific practices and about the effect DCTs have on the markets where they operate.
- 1.30 We are considering four types of practice which might raise competition concerns:
- (a) Wide MFNs ('most favoured nation' or parity clauses). A wide MFN agreement between a DCT and a supplier specifies that a product or service may not be sold more cheaply on a supplier's own website or on any other DCT. These could limit competition between DCTs by limiting suppliers' ability to negotiate lower commissions in return for lower retail prices. We have found specific instances of wide MFNs.
  - (b) Narrow MFNs. A narrow MFN clause requires a supplier to set a price on a DCT which is no higher than the price offered through its own website, but does not stipulate conditions for sales via other channels. Under certain conditions, these could have some similar effects to wide MFNs, but we have heard arguments about potential benefits that may offset these possible negative effects.
  - (c) We have found a range of terms limiting bidding for online search terms – referred to as non-brand-bidding or negative matching arrangements.<sup>5</sup> Negative matching is likely to have the most significant effect on competition, but we are continuing to explore these terms. Such

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<sup>5</sup> See paragraph 7.64 for an explanation of these terms.

agreements are unlikely to be limited to DCTs – they may appear in other markets as well.

(d) In some sectors, DCTs agree not to re-contact a consumer for a specific period – often just over a year – to offer a comparison for a service for which they had previously facilitated a sale. Again we are exploring the competition effects as well as possible justifications.

- 1.31 We are also exploring concerns around ‘hollowing-out’ – an undue focus on price to the exclusion of other factors. This can happen when the supplier prominently offers a product with certain features not included, as that allows them to promote lower-priced products. The concern expressed is that this results in consumers not buying the product that suits their needs best.
- 1.32 Some practices under this heading may in fact be beneficial – for instance, price competition resulting in unbundling can benefit those who do not need all the component parts of a previously bundled package. However, consumers could be harmed if desirable higher-quality products are forced out of the market as a result. We are continuing to explore the role DCTs play in this, both in terms of the extent to which they cause an increased focus on price, and the extent to which they have the incentive and ability to help consumers understand the non-price elements of the products they compare.

## **Regulation (Chapter 8)**

- 1.33 A number of key sectors in which DCTs operate are subject to specific regulation – notably financial services, telecoms, energy and aviation. These give consumers additional protection over and above standard consumer and competition law. In some cases, such as financial services, these take the form of statutory regulation, while in other sectors, such as energy and telecoms, regulators have developed voluntary accreditation schemes for DCTs.
- 1.34 Regulation can play an important role in ensuring good outcomes for consumers. But stakeholders raised a range of issues: from regulation contributing to a distortion of competition, to challenges around indirect regulation of DCTs in some sectors and concerns that regulation is inconsistent across sectors or risks constraining innovation.
- 1.35 Some of these concerns appear to have some merit. In particular, we agree with concerns expressed about the potential distorting effect of the ‘whole of the market’ requirement in the energy DCT accreditation scheme on negotiations between DCTs and suppliers. Our survey evidence indicates that coverage requirements are not necessary: a large majority of consumers do

not appear to expect full market coverage for the sectors we looked at. A similar issue is likely to apply to telecommunications, where the accreditation scheme also has a comprehensiveness requirement, albeit with a smaller effect due to more limited take-up of the scheme by DCTs.

- 1.36 There appears to be some basis to concerns about the potential for regulation limiting innovation that would benefit consumers, especially in sectors with the potential to change significantly in coming years. Any set of rules with requirements that are based on a certain model faces challenges as new models develop – for instance specific requirements about how results should be listed on a traditional price comparison website might not work for an automated switching DCT. In addition, concerns about enforcement carry some weight in sectors where the only DCT-specific ‘regulation’ is in fact a voluntary scheme which firms may choose not to sign up to.
- 1.37 In relation to consistency of regulation across sectors, the various schemes and regulations cover some similar ground – for example on transparency, accuracy or rankings – but the manner in which these items are dealt with is particular to each regulatory regime. With DCTs operating across sectors and consumers able to do the same, there may be an argument for considering greater consistency. However, there may be good reasons for some differences, given the distinct features of certain products across sectors. A key question becomes whether it is possible to arrive at DCT-specific principles which could usefully apply across sectors, while not being so high-level as to be ineffective or too hard to interpret. There is a supplementary question about how to enforce something like this if there are limited existing powers covering DCTs.

## **The future of DCTs (Chapter 9)**

- 1.38 It is important that our study should be informed by potential future developments. We are already starting to see newer models of DCT launched in some sectors – notably in energy – which promise greater automation and/or a better understanding of consumers’ individual requirements. The impact of these newer models is as yet unclear, as they are still in their early stages.
- 1.39 Wider developments in the digital economy are likely to have implications for DCTs; such as artificial intelligence, device proliferation, voice activation or tailored pricing. These could have a positive impact, for instance in helping more consumers shop around, but they might also raise questions, for instance over trust or consumer switching. We will be exploring these possible implications further in the second half of the study.



## Next steps (Chapter 10)

- 1.40 We have decided not to make a reference for a market investigation (ie a more detailed examination of the market lasting up to 18 months) at the end of this market study. We did not receive any representations suggesting that we should make a reference.
- 1.41 While a market investigation would potentially allow us to impose additional remedies, as set out below, all of the outcomes we are focusing on can be pursued through this study and possible related projects such as enforcement cases. They do not need a market investigation. Please see our Notice to this effect.<sup>6</sup>
- 1.42 We will continue to develop the analysis set out in this document, to refine our understanding of DCTs' roles in the markets where they operate. In particular, we are likely to increase our focus on two issues: the impact of possible future developments in DCT models, and the effects of DCTs on people who do not use them, particularly those in vulnerable circumstances.
- 1.43 We are considering whether there are steps that either we or others should take in order to increase the benefits that DCTs are able to deliver. These fall into four categories:
- (a) **Maximise consumer confidence.** We are considering two possibilities: first, taking enforcement action if consumers are being misled, and second, ways in which regulation could be used to improve consumer confidence:
- (i) On the first, we will review the case for action, if we have reason to believe that there is a risk of consumers being misled.
- (ii) On the second, we will consider whether there are steps that could be taken to refine regulation and enforcement, to improve industry practice (for example in relation to transparency or data use) in a way that increases consumers' confidence, without unduly constraining DCTs' abilities to deliver benefits to consumers.
- (b) **Maximise DCTs' effectiveness.** We will consider the circumstances, if any, in which DCTs could benefit from being provided with greater access to data in order to provide consumers with a more comprehensive – and

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<sup>6</sup> CMA, *Market study into digital comparison tools - notice of decision not to make a market investigation reference under section 131 of the Enterprise Act 2002*, March 2017.

competitive – service. This could involve building on existing initiatives by sector regulators and government.

(c) **Resolve competition issues.** We will consider whether we should launch competition law enforcement cases in any of the areas we are looking at, as well as whether there are other steps that could be taken to make competition more effective.

(d) **Refine regulation.** We are considering the possibility of a set of cross-sector principles for DCTs. This could include the content of any such principles and the various possible measures to ensure compliance, from self-regulation to certification to full regulation.

1.44 Possible outcomes of this study could include a combination of enforcement cases, recommendations to various bodies including regulators, and working with firms in the sector.

1.45 We invite stakeholder comments on the views set out in this document, particularly around the areas we plan to focus on in the second phase of our study. We ask stakeholders to consider the questions set out in Chapter 11, and request responses by **24 April 2017**.

1.46 We will produce a final report by **28 September 2017**.