

Study response

Digital Comparison Tools

Response to CMA's initial study

Which? is the largest consumer organisation in the UK with more than 1.5 million members and supporters. We operate as an independent, a-political, social enterprise working for all consumers and funded solely by our commercial ventures. We receive no government money, public donations, or other fundraising income. Which?'s mission is to make individuals as powerful as the organisations they have to deal with in their daily lives, by empowering them to make informed decisions and by campaigning to make people's lives fairer, simpler and safer.

This response reflects both our policy position and our experience of running and managing a white label Digital Comparison Tools (DCT), Which? Switch and Which? Money Compare. Which? Switch is a whole of market energy comparison tool, allowing consumers to switch their energy supplier. It also provides extra information in the form of the Which? customer scores which include both a customer score and star ratings for metrics including customer service levels. Which? Money Compare is a financial services comparison service letting consumers search all available credit cards, savings and Isa products and mortgages from providers large and small. It also provides extra information based on quality of service where available.

Summary

- We broadly welcome the initial findings of the market study and the extensive consumer research that has formed part of the evidence gathering process.
- We particularly welcome the focus on the views and experiences of consumers who do not use DCTs but think that the Competition and Markets Authority (CMA) may be underestimating how DCTs impact these groups.
- We are sceptical that price parity agreements between DCTs and suppliers – whether narrow or wide – are necessary for the effective functioning of comparison markets or beneficial for consumers. We would like to see any evidence (potentially from other countries) that development of comparison tools has been stifled where narrow price parity clauses have not been allowed.
- We tentatively support the development of a set of cross-sector principles, but these need to be focused on consumer outcomes and would need to be regularly reviewed and updated. Regulators should also be expected to set out regimes for testing whether regulatory interventions are achieving their goals.
- The CMA should set out any research gaps that they have identified to provide a framework for future research by academics, regulators or third-parties such as ourselves. In particular, further research is required to understand how consumers use DCTs, including how they make judgements about quality. Which? would welcome the opportunity to explore how we could help to develop the research evidence on these issues.

Which? is a consumer champion

We work to make things better for consumers. Our advice helps them make informed decisions. Our campaigns make people's lives fairer, simpler and safer. Our services and products put consumers' needs first to bring them better value.

The approach taken so far

We broadly welcome the initial findings of the market study and the extensive consumer research that has formed part of the evidence gathering process. The findings have shown the many benefits that DCTs can offer to consumers who use them but the CMA has also rightly identified a range of issues which may be detrimental to consumers. We highlight below which of these issues in particular the CMA should take action on, as well as areas that the market study has not explored sufficiently to date.

Consumers who do not use DCTs

We were particularly pleased that the CMA considered the views and experiences of consumers who do not use DCTs. This has formed a key part of the evidence gathering process for the market study, including via the consumer survey and qualitative interviews. In our submission to the Statement of Scope for the market study we highlighted the need to consider how DCTs affect consumer outcomes, including for those consumers who do not use DCTs.

The CMA has also identified three groups of non-users as potentially “experiencing disbenefits” from DCTs: non-internet users, internet users who do not shop around, and internet users who shop around but do not use DCTs because of concerns. However, the CMA notes that these effects may have occurred without the presence of DCTs – a point that is made repeatedly throughout the report in relation to a range of issues.

Given that DCTs have become such an integral part of many markets, how non-users of DCTs fare is of significant importance to this market study regardless of whether these effects can be explicitly attributed to the emergence of DCTs. In considering recommendations as part of this market study, it is vital that the CMA considers how less engaged consumers can be better protected and better served by competitive processes. This could take the forms of measures that affect how DCTs operate, or instead recommendations for how the CMA should recognise and tackle such issues in its work in markets where DCTs play a significant part.

Price parity agreements between DCTs and suppliers

It is right that the market study has raised the presence of most-favoured nation clauses, or price parity clauses, as potentially harmful. We are sceptical that either narrow agreements – which prevent a supplier offering a cheaper deal directly – or wide agreements – which prevent suppliers from offering cheaper deals on rival DCTs – are necessary for markets in comparison tools to develop or function effectively.

We support the CMA’s existing ban on wide price parity clauses in the private motor insurance market and it is important to note the emerging findings that competition between DCTs has increased since the ban came into force. Where wide price parity clauses are found in other sectors, we expect the CMA to take a similar approach.

The Private Motor Insurance review did however, stop short of banning narrow price parity clauses. The CMA has now found that these agreements are commonplace in other sectors. We urge the CMA to look again at the approach it has previously taken. While DCTs may want to avoid suppliers “free riding” on their services by offering cheaper prices directly, it is unclear that price parity clauses are necessary for the effective functioning of comparison markets or beneficial for consumers. We would like to see any evidence, potentially from other countries, that development of comparison tools have been stifled where narrow price

parity clauses have not been allowed. Further consideration should also be given to whether there are alternatives to price parity clauses that are less likely to dampen competition.

Proposals to introduce cross-sector principles

We agree that greater consistency in regulation across sectors could be beneficial for consumers. For example, it could help to ensure that consumers are clear about what final price they will pay when comparing services with numerous add-ons or it could improve consumers' understanding of how to seek redress if they feel they have been treated unfairly. The proposal to develop a set of cross-sector principles could help to improve these outcomes.

However, for any cross-sector principles to work they need to be robust enough to lead to tangible improvements, while being flexible enough to allow for differences in the way markets function across sectors. They also need to be future-proofed to allow innovative business models to develop. Which?'s recent work on demand-side remedies has shown that many requirements focused on the provision of information are not necessarily helpful to consumers and in some case can lead to worse outcomes. We are concerned that the possible approach that the CMA has outlined, based on a set of principles developed by the European Commission, is potentially overly prescriptive. Such an approach might lead to unhelpful or potentially detrimental changes in the way that DCTs operate.

Which? would welcome the opportunity to work with the CMA to explore how best to develop a set of cross-sector principles. In particular, any proposals should set out clearly how to ensure that:

- **Cross-sector principles are focused on consumer outcomes** – so that they allow for differences across sectors and avoid unnecessarily constraining innovation.
- **Regulators set regimes to test whether regulatory interventions are achieving their goals to improve consumer outcomes** – including identifying any unintended consequences.
- **The principles are regularly reviewed and updated** – to allow for innovation in the way that consumers search for and compare products and services.

Understanding how consumers purchase when using DCTs

The CMA should set out any research gaps that they have identified to provide a framework for future research by academics, regulators or third-parties such as ourselves. In particular, the market study has not explored in detail how consumers use DCTs to make judgements about what to purchase, including how they judge quality. Without this understanding it is difficult to assess whether there are certain sectors where widespread use of DCTs is leading consumers to purchase products and services that are of lower quality or lack key attributes that they might want. Which? would welcome the opportunity to explore how we could help to develop the research evidence on these issues.

Furthermore, while the CMA has set out the potential issues of hollowing out or unbundling, it also notes that there are strong incentives for DCTs to avoid both of these since consumers may use other DCTs in future if they have bad experiences. However, it is not always possible for consumers to judge quality after a purchase. In insurance, for example, it may not be possible to know how good a policy or provider is until a claim is made. Furthermore it is even more difficult to make these judgements at the time of purchase since many products and



services are complex and purchases are irregular, and consumers can find it hard to find the right information that they can use to compare performance.

One area that is likely to develop further is the bundling of services across different sectors, for example energy and broadband, which may make it more challenging for consumers to compare different offers. It is therefore important that the market study considers how these bundled purchases currently affect outcomes for consumers and how this might be expected to develop. The case studies and consumer research that have formed the basis of the market study do not appear to have considered these bundled services, instead focusing on four individual sectors - home insurance, credit cards, broadband, and flights.

For more information,
contact Which?, 2 Marylebone Road, London NW1 4DF

April 2017