

Consumer law compliance review: cloud storage

Invitation to comment

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Introduction

1. Cloud storage services allow consumers to store, manage, organise and retrieve their digital content via the internet. Many consumer devices, such as mobile phones, laptops and tablets, now allow consumers to upload and download data from personal cloud storage accounts. It is estimated that around 40% of UK adults use cloud storage.¹ They benefit from the ease of sharing files, ability to access content from several devices or locations, protection against data loss and access to a larger memory space and large libraries of music, films or TV programmes.²
2. Many consumers value cloud storage services. However, the Competition and Markets Authority (CMA) is also aware of reports about potential consumer protection concerns, including some regarding unexpected price increases and ‘unlimited storage capacity’ deals having been changed or reduced significantly after contracts have been agreed. We are also aware of reports about consumers’ data being lost or deleted, and consumers not being able to access their data. We want to find out whether these reports are well founded and how providers respond to such situations to make sure the sector is working well for consumers.
3. The CMA shares its consumer protection powers with a number of partner organisations. In using those powers, we will prioritise projects where there are systemic market problems or where consumers are unable to exercise choice, or where we can expect to achieve wider impact, for example, by developing the law or by having a deterrent effect. This role complements and reinforces the effects of our other work to improve markets and to support economic growth, by addressing problems where competition enforcement alone does not, or cannot, make a market work well for consumers.³
4. The CMA is committed to looking at online markets and the digital economy. The CMA’s Strategic Assessment,⁴ highlighted cloud computing as a specific sector of interest. The cloud storage sector is dynamic and growing and consumers should be able to make informed choices about which cloud storage services to use.
5. The CMA has taken an initial look at some of the terms and conditions, and practices used in the cloud storage sector. We have identified some potential

¹ Office for National Statistics (2015): [Internet Access – Households and Individuals 2015 \(Statistical Bulletin\)](#). Between January and April 2015, 40% of adults aged 16+ in Great Britain had used internet storage space in the last three months.

² [Eurostat research on internet and cloud services](#).

³ [CMA Annual Plan 2015 – 2016](#).

⁴ [CMA Strategic Assessment](#).

consumer protection issues that we would like to know more about. In order to understand how widespread these issues are, whether they breach consumer protection law and how they are affecting consumers, we have launched this consumer law compliance review.⁵ We invite consumers, cloud storage providers, and other interested parties to provide us with information about the issues set out in paragraphs 15 to 17 below.

6. The CMA has not taken any decisions about whether there have been any breaches of consumer protection law or what it might do once this review is completed. We will decide whether any action is needed to address any potential concerns and the form of any actions after we have considered the information gathered during the review.

The purpose and scope of this review

7. The CMA has identified some potential consumer protection issues in the cloud storage services sector and has launched this review to look at whether cloud storage providers are complying with consumer protection law. The review will assess how widespread the issues we have identified are, whether they breach consumer protection law and how they are affecting consumers.
8. The scope of this review is cloud storage services provided to consumers in the UK. This covers cloud storage service providers based in and outside the UK. The CMA is interested in cloud storage services, whose primary purpose is to allow consumers to store, organise, manage and retrieve all of their digital content on the internet and across multiple devices.
9. The review does not cover services or applications that allow consumers to upload and share data as an incidental part of another service, for example, sharing photos on a social networking platform, or online or cloud-based email accounts.

The legal and policy framework

Relevant legislation

10. A number of consumer protection laws may be relevant to the provision of cloud storage services to consumers, in particular:

⁵ The CMA has a general review function in section 5 of the Enterprise Act 2002. Information gathered can help the CMA to determine whether further action is warranted by the CMA or others, including whether further action is necessary in relation to consumer protection law compliance.

- Part 1 of the Consumer Rights Act 2015, which sets out consumers' rights and remedies in relation to contracts for the supply of goods, digital content and services (or any combination of these).
- Part 2 of the Consumer Rights Act 2015, which deals with unfair contract terms and notices for contracts entered into on or after 1 October 2015 (and the Unfair Terms in Consumer Contract Regulations 1999, which deal with unfair terms in consumer contracts before 1 October 2015).
- The Consumer Protection from Unfair Trading Regulations 2008, which provide consumers with protections against a range of unfair commercial practices which distort their decision making. They introduce a general duty not to trade unfairly, and ban certain specified practices in all circumstances.
- The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, which require traders, in contracts covered by the regulations, to provide certain pre-contractual information to consumers, and to do so 'in a clear and comprehensible manner'. This includes information about the characteristics of the goods or services and the total price. This statutory pre-contractual information is to be treated as included as a term of the contract.

Policy developments

11. We are also aware of, and are monitoring, policy developments that are relevant to the issues we are considering in this review.
12. The European Commission has announced its aim to create a 'Digital Single Market'. It has set out a [strategy](#) for tackling barriers faced by European consumers when using online tools and services. One element of this is legislative proposals for simple and effective cross-border contract rules for consumers and businesses. The Digital Single Market strategy builds on the previous European Cloud Computing Strategy, which was designed to speed up and increase the use of cloud computing across all economic sectors and included work on developing 'safe and fair' terms and conditions.
13. In October 2015, the Department for Business, Innovation & Skills (BIS) [launched a call for evidence on its switching principles](#). It asked consumers to share their experiences on switching suppliers and how the process could be improved, and considers, among other issues, whether there are contractual barriers to consumers switching.

14. In November 2015, HM Treasury and BIS provided an update on the government's work on its switching principles and [announced](#) that the government has asked the consumer group Which? to work with leading, consumer-facing businesses to review the way they present their terms and conditions, in particular online.

Key issues we want to hear about

15. The aim of our review is to find out whether cloud storage providers are complying with consumer protection law and, if not, how widespread particular practices are and whether consumers are being, or could be, harmed. We are particularly interested in hearing about the following issues:

Before consumers sign up to contracts

- How cloud storage services are advertised/marketed to consumers, including what information is provided about the price, length of contract, level of service provided, security of data and any limitations on uploading and downloading data.
- How consumers purchase cloud storage services, including the most predominant channels through which they buy services (for example through websites, mobile phones or other devices).
- Which terms and conditions in consumer cloud storage service contracts providers consider are most important and why.
- How important terms and conditions are communicated to consumers and how providers ensure that consumers have understood them before signing up to a service.

During contracts

- When and why changes are made to the price and/or service after consumers have signed up to contracts, how and what consumers are told about these and what options they have when it happens.
- In what circumstances providers might move consumers from one service to another at a different price.
- When and why consumers might lose access to their data, either temporarily or permanently, how and what they are told about this and the options open to them.

At the end of contracts

- When and why providers automatically renew consumers' contracts, how and what consumers are told about this and what options they have.
- When and why providers cancel contracts with consumers, how and what consumers are told about this and what options they have in these circumstances.
- What happens when consumers cancel contracts, including whether they incur any fees or charges, or can get refunds or compensation.
- What happens to consumers' data when a contract is cancelled, either by them or the provider.

When things go wrong

- What common problems and complaints consumers have with their cloud storage service, how these affect consumers and how providers address them.

Other issues we want to hear about

- Whether there are technological or other reasons, for particular practices or contract terms.
 - Whether providers use consumers' stored data for any purposes other than storage.
 - Information about the sector more generally, for example the benefits for consumers who use the service, the different business models used by providers, and the key trends, developments and consumer issues (including problems consumers may face) in the sector, both now and over the next three to five years.
16. We have published response forms for consumers, cloud storage service providers and other interested parties, which can be found on the [invitation to comment](#) page. We welcome responses from all of these parties. Further details on how to respond are provided in paragraphs 22 to 26 below.
 17. We have also written directly to a number of cloud storage service providers to gather information about the issues listed above.

Potential outcomes of this review

18. The CMA has not reached a view on whether or not the contract terms and practices it has seen comply with consumer protection law or what it might do once this review is completed.
19. The information gathered during this review will help the CMA to determine whether further action is warranted.
20. One outcome of this review could be initiation of consumer enforcement action. For the CMA, initiating consumer law [enforcement action](#) may be appropriate where:
 - it has determined that breaches of law point to systemic failures in a market;
 - where changing the behaviour of one business would set a precedent or have other market-wide implications;
 - where there is an opportunity to set an important legal precedent; or
 - where there is a strong need for deterrence or to secure compensation for consumers.

The CMA will make strategic choices about the cases it takes and apply its [prioritisation principles](#).

21. In addition, there are a range of other potential outcomes from this review, including:
 - providing guidance to the sector or consumers, or both;
 - seeking voluntary action from the sector;
 - working with our international partners, where appropriate, to address any problems or consumer harm;
 - launching a market study covering the whole sector, or a part of it; or
 - taking no further action.

Responding to us

22. We are interested in receiving views from a wide range of parties, including consumers, cloud storage services providers who are within the scope of this review (see paragraphs 7 to 9 above), trade associations, research and

academic organisations and consumer groups. Where possible, we would value responses that provide supporting evidence.

23. Please respond to this review in the following way:
- If you are a consumer of cloud storage services, please complete the [consumer response form](#).
 - If you are a cloud storage provider, please complete the [provider response form](#).
 - We have also published a questionnaire to gather views from parties who may not be consumers or providers of cloud storage services but have useful information to provide. If this applies to you, please complete the [third party response form](#).
24. Please return completed questionnaires either by:
- email to: cloudstorage@cma.gsi.gov.uk; or
 - post to:

Project Manager
Cloud storage consumer law compliance review
7th floor
Competition and Markets Authority
Victoria House
37 Southampton Row
London WC1B 4AD
25. Please note that while we are interested in hearing about consumers experiences of using cloud storage services, we are unable to provide consumers with advice on individual complaints. Any consumers looking for advice should contact Citizens Advice – see [its website](#) or call 08454 04 05 06.
26. Please identify any material in your response that you consider to be confidential and explain why this is the case. The disclosure of information that relates to the affairs of an individual or any business of an undertaking and which comes to the CMA in the course of this review, is governed by the statutory gateways in Part 9 of the Enterprise Act 2002 and can only be released in particular circumstances set out in the Enterprise Act 2002. **Please read [our statement](#) on how we will handle information provided to us in response to this review for more details.**

Timing

27. The review is open for responses from Tuesday, 1 December 2015 until 5pm on Friday, 15 January 2016. We would be grateful if responses could be provided early, if possible.
28. We expect to publish a summary of our findings and next steps in May 2016.