

RESPONSE TO COMPETITION AND MARKETS AUTHORITY CALL FOR COMMENTS ON SCOPE FOR ONLINE PLATFORMS AND DIGITAL ADVERTISING MARKET STUDY

1. We have worked extensively on online harms issues over the past year and our work has been influential on government and parliament. This short note provides some initial thoughts on the scope of the proposed market study and describes the work we have done in the adjacent area of online harm reduction, on which we have also attached a fuller paper for reference.
2. We welcome the launch of this market study by the CMA and the broader Digital Markets Strategy, of which it is a part. As the scope document acknowledges, a number of organisations have in the last year called on the CMA to undertake such a study (paras 42-47) and we are pleased that it is now in a position to take it forward. We also note that this market study will be the vehicle to take forward the recommendations from the Furman review into competition in digital markets.
3. We endorse the Digital Markets Strategy's approach to "protecting consumers in the digital economy while ensuring robust competitive digital markets". For too long, UK Government policy has prioritised the growth of digital markets and the consequential opportunities for innovation and investment, without addressing the challenges arising from the dominance of a few major platforms and the emerging evidence of consumer and other harms. Where consumer harms were identified, the default position has been to use analogue frameworks and protections and apply them to a digital age – a position that is now untenable, given the prevalence of online fraud and scams which disproportionately impact vulnerable groups, such as the elderly.
4. The dominance of a small number of platforms also has a wider impact on consumers in the digital world; as survey work by Doteveryone¹ has found, people have little conception of price paid when they use online networks. In our paper (see below) we say that:

"Indeed, there is a good case to make for market failure in social media and messaging services – at a basic level, people do not comprehend the price they are paying to use a service; research by doteveryone revealed that 70% of people 'don't realise free apps make money from data', and 62% 'don't realise social media make money from data'. Without basic awareness of price and value amongst consumers it will be hard for a market to operate efficiently, if at all, and this market is currently one which sees a number of super-dominant operators."

This is intrinsic to assessing whether competition can ever work in such an environment. With no awareness of price by the consumer, the service provider can continue to extract surplus far beyond marginal cost with little or no response from the consumer to what, if they consciously paid for goods, would be a strong signal to switch supplier if commensurate consumer value increases were not obtained. In any event, switching pre-supposes that a viable alternative exists; currently the dominant business model is the 'pay with data' model meaning that, at best, a consumer would need to search out alternatives which may not be immediately obvious.

¹ See <https://understanding.doteveryone.org.uk/>

Scope: the case for including children as consumers

5. We note the broad inter-related themes of the scope covering: the market power of online platforms in consumer-facing markets; consumer control over data collection practices; and competition in the supply of digital advertising in the UK.
6. We would urge the CMA – as we have done in our response to the Digital Mergers call for evidence – to ensure that their study takes account of the impact of all these three themes specifically on children and to place this work more firmly within the broader digital policy agenda. We note that there is no mention of children in the scope document and only one mention of the Information Commissioner’s Office (ICO), who are leading the implementation of the Age Appropriate Design Code, in relation to the joint work it is carrying out with the CMA on the ad tech market. The AADC directly relates to the second of the CMA’s themes (consumer control over data collection practices), with a direct impact on children but with wider implications for the design of platforms and apps.
7. It is unusual for the CMA to consider a market where children (people under 18 years old) are especially active as consumers. A number of experts have flagged up the special vulnerability of children as consumers of digital products and services and design features of digital platforms apparently designed to manipulate children’s behaviour². We would suggest that the CMA pay special attention to the effects of the digital advertising and related markets on children and to consider whether there are special competition issues. For instance, the fundamental ability to give meaningful consent as well as market definition – is there a separate market for digital advertising to children, does market concentration have a particularly heavy impact on children? Brands have for decades made huge efforts to influence the behaviour of the young and establish lifetime patterns of consumption. Special rules exist for children’s advertising in many media forms that reflect their developmental inability to make the same judgements as adults. The advent of digital media has enabled the aggregation of data about young people, and the AADC will apply special rules to data use.
8. More broadly it is, in our opinion, not enough to refer to the Internet Safety Strategy/Online Harms White Paper as the means by which “other forms of online harms” will be covered (para 10), not least because – as we argue in our response to the White Paper consultation³ – it deliberately excludes consumer harms that emerge on online platforms (for example, copyright infringement, fake reviews, scams and the sale of unsafe products). We do not feel this hard boundary between economic harms and “other harms” is justifiable, given that many stem from similar systemic roots that should be addressed in a coherent and mutually reinforcing way.
9. The CMA is in a powerful position to seek and review evidence and propose a coherent suite of remedies that may be far more far-reaching and effective in reducing a swathe of harms experienced by children (as consumers) as a result of the three identified themes than the Government’s proposals for a statutory “duty of care”; not least given that the political uncertainty surrounding the Government’s policy programme in the light of the new Prime Minister’s appointment will not be resolved in a short time frame.

² See the work of 5Rights Foundation <https://5rightsfoundation.com/resources.html> and Sonia Livingstone et al at LSE <https://blogs.lse.ac.uk/mediapolicyproject/2019/07/09/data-and-privacy-in-the-digital-age-from-evidence-to-policy/> also the UNICEF paper ‘Children and Digital Advertising’ December 2018

³ <https://www.carnegieuktrust.org.uk/publications/response-to-the-online-harms-white-paper/>

Our work on social media harm reduction

10. This note also covers a full reference paper that sets out work we have carried out to develop a proposal for a statutory duty of care for harm reduction on social media.
11. In 2018-2019, Professor Lorna Woods (Professor of Internet Law in the School of Law at the University of Essex) and William Perrin (a Carnegie UK Trustee and former UK government Civil Servant) developed a public policy proposal to improve the safety of some users of internet services in the United Kingdom through a statutory duty of care enforced by a regulator. Woods and Perrin's work under the aegis of Carnegie UK Trust took the form of many blog posts, presentations and seminars.
12. The attached reference paper, drawing together our work on a statutory duty of care was published in April 2019, just prior to the publication of the Online Harms White Paper. It can also be viewed, along with all the other material relating to this proposal and a full recent response to the DCMS consultation on the Online Harms White Paper, on the Carnegie UK Trust website: <https://www.carnegieuktrust.org.uk/project/harm-reduction-in-social-media/>
13. Our work has influenced the recommendations of a number of bodies, including: the House of Commons Science and Technology Committee, the Lords Communications Committee, the NSPCC, the Children's Commissioner, the UK Chief Medical Officers, the APPG on Social Media and Young People and the Labour Party.⁴ A statutory duty of care has been adopted – though not fully as we envisaged – by the Government as the basis for its Online Harms White Paper proposals⁵. Most recently, though it did not refer to our work, a report to the French Ministry of Digital Affairs referenced a “duty of care” as the proposed basis for social media regulation.⁶
14. While not directly focused digital advertising, our work has started from the premise that design choices drive the function and operation of digital choices. Overwhelmingly for online platforms, these design choices are driven by their underlying business model: advertising revenue is driven by user engagement, and user engagement is increased both by targeted content (using data and profiling to make it relevant and engaging) and the generation and proliferation of content for widespread sharing.
15. Our proposals for a statutory duty of care draw on the particular challenge posed by new and innovative technologies with reference to the precautionary principle⁷, which may be of interest to the CMA in its own deliberations, and also to the established approach of regulating in the public interest for externalities and harms to members of the public.

⁴ <https://www.nspcc.org.uk/globalassets/documents/news/taming-the-wild-west-web-regulate-social-networks.pdf>; <https://www.childrenscommissioner.gov.uk/2019/02/06/childrens-commissioner-publishes-a-statutory-duty-of-care-for-online-service-providers/>; <https://www.gov.uk/government/publications/uk-cmo-commentary-on-screen-time-and-social-media-map-of-reviews/>; <https://publications.parliament.uk/pa/cm201719/cmselect/cmsctech/822/82202.htm>; <https://labour.org.uk/press/tom-watson-speech-fixing-distorted-digital-market/>; <https://www.parliament.uk/business/committees/committees-a-z/lords-select/communications-committee/inquiries/parliament-2017/the-internet-to-regulate-or-not-to-regulate/>; <https://www.rsph.org.uk/our-work/policy/wellbeing/new-filters.html>

⁵ <https://www.gov.uk/government/consultations/online-harms-white-paper>

⁶ <http://www.iicom.org/images/iic/themes/news/Reports/French-social-media-framework---May-2019.pdf>

⁷ United Kingdom Interdepartmental Liaison Group on Risk Assessment (UK-ILGRA), The Precautionary Principle: Policy and Application, available: <http://www.hse.gov.uk/aboutus/meetings/committees/ilgra/pppa.htm>

16. The desire to gain data for advertising revenue has driven at least some of the problematic design choices of the major platforms; for example, a focus on user engagement as a business priority means that content that gets user engagement is rewarded, which then drives more and more extreme content (on whatever topic the user is engaged in). This then becomes exacerbated by the size of the major platforms: they are sufficiently large that they have difficulty in keeping on top of the problem, and – even where they make headway with a significant proportion of problematic content, the remainder will still be a big issue. Our duty of care proposals have relevance here: it seeks not just to tackle dealing with problems once they've arisen but also to address the conditions that shape the way content is created/shared. Design choices around frictionless communication also influence the ease with which content can spread across platforms.
17. There are many moving parts in this landscape, and many government and regulatory organisations undertaking concurrent reviews of bits of it. Protecting users from harm – however it manifests itself - has to be at the heart of all those proposals. The dominance of a small number of platforms is part, but not all, of the problem and a statutory duty of care does not displace the design and implementation of competition law that is fit for the digital age. However, we would urge the CMA's market study takes account of its principles and seeks to join up with the online harms regulator at the earliest opportunity.
18. We are happy to speak to you further about our proposals or assist in any way in the next phase of the CMA's market study.

Carnegie UK Trust

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[Attachment: "Online Harm Reduction: a statutory duty of care and a regulator" (April 2019)]