



**Competition & Markets Authority Invitation to Comment on
Online Platforms & Digital Advertising Market Study**

Response on behalf of Barclays

30 July 2019

1. Introduction

Barclays

- 1.1. Barclays is a transatlantic consumer and wholesale bank with a global reach, offering products and services across personal, corporate and investment banking, credit cards and wealth management, with a strong presence in our two home markets of the UK and the US. With over 325 years of history and expertise in banking, Barclays operates in over 40 countries and employs approximately 85,000 people. Barclays moves, lends, invests and protects money for customers and clients worldwide.
- 1.2. Barclays welcomes the opportunity to engage with the CMA's Online Platforms and Digital Advertising Market Study. As a major financial institution with a significant UK retail bank that is heavily involved in innovation and market developments such as the CMA's Open Banking remedy, we are well placed to provide views on the Market Study.

Nature of Response

- 1.3. Barclays has taken into account the areas the CMA specifically requested comments on, namely: the description of the sector, the proposed scope of the market study (including areas of focus/areas that may have been missed), the themes identified, range of potential remedies and approach to evidence gathering.
- 1.4. We have not rigidly followed this approach, but rather included relevant comments where we had observations. A key point is that in line with the CMA's Digital Markets Strategy, we consider there are a number of wider considerations concerning platforms and their future regulation of which the CMA also needs to be mindful. Our response is therefore structured using the following core headings: Scope of the Market Study, Future Regulation, Data Sharing and Advertising. We regularly refer to consumers in our response as this is a key focus for the CMA as well as Barclays, but of course data portability and sectoral regulation such as Open Banking and PSD2 can and does equally apply to business users.

2. Scope of Market Study

Overall Scope

- 2.1. We agree with the CMA's broad approach in that some delineation is needed to avoid any and all customer platforms being subject to review. We understand that advertising is the key driver for free to use (for consumer) platforms and the CMA at para. 103 limits itself to advertising funded platforms. It is not clear to us if this would include other significant consumer free-to-use platforms that are supported by revenue generated through data/digital/advertising services.¹ Barclays considers that such platforms, which also play a central role in the digital economy, should also be included within the scope of the market study.
- 2.2. This definition would include other important platforms and would also be in line with the US DOJ's antitrust investigation into market-leading online platforms, which referenced "*search, social media and some retail services online.*"²
- 2.3. We also welcomed the G7 Common Understanding announcement on 18 July on competition in the digital economy. In particular, we note the statement that "*One of the challenges is the common presence in the digital economy of various multi-sided platform models – ranging from platforms offering relatively simple ad-financed services to hybrid platforms active in both offering their own services and providing access and*

¹ For the avoidance of doubt and in line with the CMA's intention, this should mean enterprises that have a significant presence in consumer facing platforms.

² <https://www.justice.gov/opa/pr/justice-department-reviewing-practices-market-leading-online-platforms>.

infrastructure to competitors” (emphasis added). That statement also identifies companies beyond Facebook/Google³ as having a central role in the digital economy and areas of concern to competition law.

- 2.4. These cases ultimately reflect mounting concerns that Big Tech multi-sided platform operators, which serve as a “gateway” to consumers can fundamentally shape (and potentially, harm) competition in the digital economy, and we would encourage the CMA to reflect accordingly on the scope of the market study.
- 2.5. We welcome the fact that the CMA is engaged with its international counterparts, such as those in the ECN, around platform concerns. Barclays would be keen to understand how this cooperation will be used and built upon during the course of the market study, in particular in light of a potential “no-deal” Brexit. We consider that this is a global issue and not simply limited to the UK or EU – how does the CMA propose to deal with the truly international nature of the industry players and coordinating efforts to provide a consumer focused framework that works, rather than a network of parallel local interventions?

Consumer Aspects

- 2.6. The CMA’s second theme on consumer data control is welcome and builds on similar concerns identified by other European competition authorities such as the Bundeskartellamt in relation to Facebook and its collection and use of personal data.⁴ We are interested as to how the CMA proposes to tackle the issue from a UK perspective. We would urge the CMA to work with the ICO and other bodies with consumer responsibility to ensure a coordinated and clear approach to any changes to data use by such platforms. Barclays regularly updates its customers and the public on staying safe in the digital environment (for example through the Digisafe campaign⁵ our award-winning digital safety advertising campaign) and so clarity of message and outcomes across platforms would help us to support the CMA in this regard.
- 2.7. As part of the consumer focused work, we note at para. 112 that the CMA is proposing pulling together existing research such as that by *Which?*, rather than conducting empirical user research into consumer journeys and use of platforms. Barclays has regularly used qualitative and quantitative market research to help shape its decisions on its Open Banking architecture and in other customer facing changes including understanding the impact of vulnerability.⁶ We would urge the CMA to reconsider this approach as conducting its own research will allow it to use a robust and independent methodology. Barclays considers that it is important to ensure that policy interventions by UK authorities in this space are based on robust consumer research that is representative and reflective of the UK population. This work could be conducted via the UKRN to provide a useful body of information to help mandate going forward how consumers should interact with online/app-based services beyond just platforms. In particular, the CMA may find it valuable to seek inputs from sector regulators, who may offer additional insights on consumer preferences based on their own research. For example, as the CMA knows, the FCA has spent considerable time researching consumer needs and behaviours and put forward guidance on the treatment of vulnerable customers. OFGEM has similarly focused on addressing concerns about vulnerability. The underlying principles adopted by these regulators could guide the CMA in considering a cross-sectoral framework to safeguard vulnerable customers and ensure their fair treatment by all companies in the digital economy. It is important to note that such considerations apply equally to non-regulated sectors such as those in scope of the CMA’s market study. In developing such a framework, regulators should also be mindful of the potential adverse consequences for vulnerable consumers.

³ This was also the case with HMT’s Digital competition expert panel (“Furman”) terms of reference, which among others was tasked with looking at the “impacts of the emergence of a small number of big players in digital markets such as social media, e-commerce, search, and online advertising.”

⁴ We note the CMA’s consideration of these cases in Annex B.

⁵ For information, see: <https://www.barclays.co.uk/digisafe>.

⁶ See e.g.: <https://www.ipsos.com/ipsos-mori/en-uk/open-banking-data-sharing-dilemmas> and <https://home.barclays/content/dam/home-barclays/documents/citizenship/our-reporting-and-policy-positions/Consumer-attitudes-to-identifying-vulnerability-through-the-use-of-data.pdf>.

Furman Interaction

- 2.8. We note that the CMA considers this market study is a core part of its Digital Markets Strategy and will inform its thinking around responding to Furman. This includes the Digital Markets Unit (DMU) recommendation. The CMA has also been clear in setting out its strengths in monitoring digital markets as part of the Digital Markets Strategy and we note that under Priority Five (Policy work to consider a possible DMU), the market study is seen to feed into consideration around the DMU.
- 2.9. While this market study and the digital strategy are both welcome, we do have some concerns that this approach would mean the DMU may not be set up until after the market study (or potential market investigation reference) has been completed. We would welcome clarity from the CMA and indeed the government on when and in what form the DMU should be expected. If this is not set up as a body that spans current regulatory expertise (but of course using that e.g. via the UKRN) then we feel an opportunity will have been missed given the problems it will have to decide on are across data protection, data sharing, frameworks and competition and other laws. One of the key aspects of the DMU that comes through from Furman is that the authors intended it to be a body that can work with stakeholders to formulate guidance and provide quick decisions on e.g. requests for data to be shared and on what terms.
- 2.10. There is an additional benefit to the DMU being set up as an independent cross-sectoral body. Organisations like OBIE have driven innovation in their sector on the back of being tasked with supporting a specific remedy. However, as Open Banking matures, it may be necessary to have a wider debate as to the future of OBIE and its mandate. A cross-sectoral body such as the DMU would have the ability to address such issues while taking account of the learnings from Open Banking. Given that the FCA is looking to explore the further development of Open Finance, the CMA should consider as a matter of urgency if it will be pursuing a cross-sectoral approach to data sharing, so that effort on the part of both regulators and firms is not duplicated, and to enable the benefits of extended data sharing to be provided to consumers in a more efficient manner, without causing customer confusion. In addition to the interaction with the Furman review, we would also suggest that consideration is given to how the CMA's work on the market study links to the Government's current Smart Data Review.

3. Future Regulation

The Issue

- 3.1. We appreciate the CMA needs to perform a targeted platform focused review, but Barclays does have concerns beyond this review as to the future of digital markets and whether customers are being disadvantaged. Many of these build on the same concerns the CMA has identified, including the use of data sharing and data portability to assist consumers, but there is also a systemic concern around the financial services ecosystem.
- 3.2. As we noted in response to the Furman review, the digital revolution is also having a significant impact on financial services. We appreciate that the CMA has asked for comments on this market study, but we do not feel these can simply be decoupled from the wider issues facing the digital economy. Barclays sees competition in financial services as being driven by two phenomena: a) fintechs that use new technology and often data access such as Open Banking, to innovate and transform service offerings and b) large data driven firms (Big Tech) moving into providing financial products.
- 3.3. Barclays welcomes changes in financial services that see consumers being empowered and offered more choice. However, the expansion of Big Tech, which includes data rich household platform names, into financial services demonstrates the interlinking in the online world and the creation of a connected ecosystem. As the lines are blurred, barriers are removed and products and services increasingly move to being platform based/linked through data sharing, the UK needs to ensure a framework is in place to put the consumer first.

- 3.4. The regulatory world needs to move from pure vertical regulation and approaches to markets that are product/perceived harm based and move into one that ensures that:
- 3.4.1. the systemically important nature of major players is recognised and provided for to ensure resilience (e.g. AWS as the world's biggest cloud services provider); and
 - 3.4.2. creates cross-sectoral horizontal regulation across all platforms which play a significant role in the digital economy.
- 3.5. We appreciate that the CMA's market study is more narrowly focused but we have given the topic considerable thought and think this could help inform the CMA's digital strategy.

Current Perimeters

- 3.6. There is also the related issue of ensuring the consumer is put at the centre of regulation. This has of course been the driver of data interventions to date be they PSD2 or the CMA mandated Open Banking framework. However, these are narrow solutions to broader problems and reflect the ex-post nature of competition/legislative solutions within a sector. What they cannot do is provide protection for consumers where technology quickly moves to seize an opportunity and offer a product direct to consumers. Barclays, in line with other banks, is highly regulated and has concerns that the principle of "*same activity, same risk, same regulation*" is not yet being applied to protect consumers who are frequently unaware of the underlying framework governing a product they are using and the significant impact that can have if something goes wrong. A good example is the expansion in use of e-money licensed products, which to a consumer appear the same as a current account, but without the protection of the deposit guarantee scheme.
- 3.7. We consider data sharing separately, but the UKRN bodies and government need to establish a roadmap and framework for pan-sector data sharing that puts the consumer at the centre. This can build on the good work done to date in the UK including by the CMA in relation to Open Banking. We are also supportive of transformative efforts within the financial services sector in relation to "Open Finance", but these are vertical and will not address the ability of consumers to share and port their data in either other sectors or more widely. They also fail to address the fact that the largest repositories of data across people's lives are in fact the platforms that are the CMA's current focus. There is an opportunity now for the CMA to lead the way and consider setting a precedent for cross-sectoral data sharing, in a customer-centric manner (i.e. by empowering customers to share, in a way that lets them make their data work for them). For example, the CMA could consider a common roadmap or framework for data-sharing, or the creation of standards to facilitate such sharing across sectors. This has the potential to transform competition across the digital economy.
- 3.8. We accept that there will continue to be a need for data sharing remedies and approaches within sectors at least in the short term, but this should not preclude more expansive standards being agreed: competition should take place for the best technology and consumer experience. A failure to provide this will see consumer uptake ultimately limited and competing APIs/approaches developed (and likely by vertically integrated companies) to the detriment of the best solutions being available no matter the size of the company. This scenario would also increase the risk of bad actors being able to create or take advantage of customer confusion resulting from inconsistent approaches to data sharing for their own gain, which would lead to adverse consequences for consumers and ultimately undermine trust in the burgeoning space of data sharing.

Potential Risks

- 3.9. The interconnected nature of the online world is ever greater and yet while banks are heavily regulated and identified as having key systemic importance, the same analysis has not been conducted by regulators or Government regarding Big Techs. The increasing dependency and size of platforms/Big Techs affects multiple markets: consumers increasingly use services including financial services via such platforms, while

for example many of the same organisations are also of key importance in providing solutions such as cloud storage/services used by banks as well.

- 3.10. The interlinked proliferation of services and users and the risk of outage or collapse is not protected against: while a bank is regulated prudentially, a platform may have unregulated and regulated activities and the latter are usually regulated on a narrow basis for the specific service provided. A related concern as to how they may manifest themselves e.g. if a platform becomes a major supplier of financial services via an agency model then no balance sheet risk is retained by them in lending and other activities in which they are engaged compared to say a bank.
- 3.11. In financial services, as customer data is made available by the traditional providers and the market shifts, the risk framework is not shifting at the same speed. This leads to an overreliance on traditional players to cover losses e.g. for fraud, while the ever expanding payments system for example means the fault may well lie elsewhere. We will always want to do the right thing for our customers, but are they being empowered to seek redress in the right place and are the new providers taking on appropriate accountability?
- 3.12. We have already touched on e-money, but there is a wider liquidity credit risk question going to the systemic nature of many tech platforms in day to day life. The contingency is not generally there in the wider system for SMEs.

International Approach

- 3.13. The international aspect is also ever more important. PSD2 provides a good example of how international frameworks can still see different results in implementation, but it is a pan-EU solution. The large data players are however not limited to a given region and as concerns around data use show, they present consumers with their commercial terms, which are often based on their home region only, on a take it or leave it basis. It is therefore important that a common approach to data and pan-sector online platform use is prepared. The US and potentially China are both very important in this regard alongside the EU. There are also a number of other proactive countries that have taken steps to open up financial data sharing and review data access and online platforms more broadly. Their experience should also form part of this collaboration. Examples include Japan (with its Electronic Payment Intermediate Services “open banking” type work) and Australia (where the ACCC has similarly to the CMA conducted a wide-ranging online platforms review to shape where intervention is necessary in digital markets and also worked with government on the Consumer Data Right framework which introduces a consumer data sharing framework starting with banking).
- 3.14. Facebook’s Libra has garnered considerable attention as details emerge as to how this “stable coin” may function with the Libra Association of payments, market places, blockchain providers and other organisations overseeing the crypto-asset. The G7’s July 2019 warnings showed the international community aligning to tackle technology shifts that challenge existing frameworks and raise concerns around systemic and consumer risk.

4. Data Sharing

Barclays’ Experience

- 4.1. Data sharing should be at the heart of any future empowerment of consumers. There is already significant work being undertaken across government and regulators to build out data sharing across consumer markets. Barclays has been an active participant in these discussions and has responded to various consultations including Furman, the Modernising Consumer Markets Green Paper and the Online Harms White Paper.

- 4.2. Barclays starts from a position of experience through the CMA's RBMI Open Banking remedy and PSD2 data sharing requirements that are due to go live in September 2019. These were all remedies designed to provide access to customer account data (current/payment accounts) held by established financial institutions to new entrants and to allow customers to easily access products/have visibility of these through APIs in a UK setting. As the CMA will be aware, Barclays has always sought to put its customers first as part of this revolution through communications, education and functionality. This included rolling out Open Banking from the outset to both Barclays' online as well as app based users (so a total of over 10m digitally active customers, of which 6m use the app). At the same time, we have supported the ecosystem in partnership with the CMA/OBIE often against tight timelines e.g. in revising customer journeys.⁷
- 4.3. The FCA is now working on Open Finance based on expanding areas where data sharing should apply in financial services. We are fully supportive of these efforts now the infrastructure is bedding in, and fintechs (TPPs) and banks have worked through the teething issues.

The Right Model?

- 4.4. There is currently an asymmetry in data sharing and how consumers can use this. GDPR has, at least in principle, introduced personal data portability, in that consumers can ask for certain personal data held on them to allow them to port this to a new provider. This is a positive step in recognising data-portability as a concept and can in theory be used to drive innovation and competition where consumers are empowered to use this data and receive a tailored offer from providers utilising this, for example in insurance. However, for the reasons explained below, in practice, it has so far delivered limited benefits for competition and this seems unlikely to change, unless certain underlying issues with the GDPR model for data-portability are addressed in future initiatives for data sharing. For example, under GDPR there is no common framework to dictate how this information is to be provided and so the potential for consumers to actually use this effectively with service providers is limited. In essence, you have to recreate a personal profile every time you move provider no matter the source of your underlying data. This unwieldy nature of the GDPR portability provisions is underlined by the lack of real-time data sharing: the data only needs to be provided within 30 days and on a one-off basis – it is to all intents and purposes a data dump.
- 4.5. Open data sharing like Open Banking provides consumers access to data in relation to their products. What it does not give them is ready and useful access to the data held by them by platforms, who are currently benefitting from their unique position to monetise that data. At the same time, there is rightly nothing preventing platforms and other internet companies expanding their competencies to benefit from Open Banking or PSD2 data ingestion, while traditional financial services participants enable such access, but are not able to provide a more tailored service by customers sharing their social media data for example.
- 4.6. Barclays does not consider there is a need for unfettered access to the data held by any platform, including the Big Techs. Instead, the consumer should be empowered and given greater control over their data, in a format that is useful, to make it work for them e.g. to facilitate comparisons and switching products and services across sectors. In addition, increased availability of data could also foster greater innovation by providers for consumers. It is an indication of the breadth of this data that it has become essential for targeted advertising by customer characteristic – the days of scan data or customer records being the only insight into customers has gone. This has instead been replaced by the social graph and the underlying links and data contained within. Access to that is key in our connected world. Barclays would urge the CMA to use this opportunity to consider whether it would be appropriate to put in place a framework for wider access to such data currently held by platform providers e.g. through the creation of standards or a cross-sectoral framework for data-sharing, drawing on the experiences from Open Banking in the financial services sector.

⁷ Others continue to work on this with OBIE as the original March deadline could not be met.

Shape of Sharing

- 4.7. Barclays considers the solution is not simply an expansion of data sharing frameworks. Instead, the UK needs to take the lead in consulting on and constructing a system whereby the core data held on individuals is put back into their hands and securely shared with consent to service providers across sectors. As part of this the strengths of different data holders can be used, for example banks have traditionally been at the centre of ID based data given their regulatory KYC frameworks. There are also many advantages for customers through such empowerment, for example consumers being able to choose to securely share key personal data quick fill information or to influence insurance quotes through personalised pricing.
- 4.8. Of course, the other side of this is the need to ensure vulnerability characteristics are not targeted e.g. through algorithms. This has been considered by the CMA in its pricing working paper and the wider vulnerability agenda is at the centre of the work across UK regulators at present, with them encouraging the identification of vulnerability to improve treatment and support. Consumers must be comfortable, including reassurance that relevant data is only shared with their consent. Barclays is as the CMA may recall very engaged with vulnerability and how this should be factored into to dealing with consumers.
- 4.9. One area of the debate that we consider to date has not had enough time dedicated to it is the extent to which vulnerability should be factored into pricing considerations or decisions. There is little research in this regard and regulators need to agree how vulnerability should be defined (both within financial services and across sectors) in order to benefit these consumers. We can all agree the vulnerable should not be unfairly targeted but how should they be proactively assisted? It should also be noted that there is a strong focus on traditional bank/bricks and mortar branches when it comes to vulnerability as opposed to the wider and ever evolving digital ecosystem. In this ecosystem, it is clear that there are potential risks for vulnerable customers, who can be readily targeted with political messaging, aggressive sales tactics and unfortunately, scams (as we know, from helping our customers who are victims of fraud online). The need to safeguard vulnerable customers from these practices and ensure that they are treated fairly seems as relevant to companies in the digital ecosystem as it does to banks and we would urge the CMA and UK regulators to consider whether it is appropriate to put in place a cross-sectoral framework or guidelines for addressing vulnerability.
- 4.10. Part of the ongoing work by the CMA has focused on unfair business practices. In building a future data sharing system, Barclays is concerned that platforms that hold data currently apply their terms and conditions on consumers with little scope for consumers to opt in or out of parts of these. Well-meaning attempts to improve consumer control in the online space, such as cookie control have in reality created a “click and forget” culture and in some cases have actually seen the level of data gathered via cookie consent and banners increase as most users click yes to the default permission. In future, the CMA, government and other stakeholders need to find a way of ensuring that consumers do not face the same default risks as opposed to exercising real power over their data and its use.
- 4.11. In addition, the CMA may wish to consider future governance of any data sharing framework, and in particular whether it would be appropriate to introduce an ombudsman to deal with customer complaints.⁸

5. Advertising

- 5.1. Barclays regularly advertises in the UK across various media (online, print, TV, billboards and social media). We note that the CMA will be reaching out to agencies and other participants in the advertising space for more detailed feedback, but we did want to briefly comment on certain of the CMA’s concerns.
- 5.2. Transparency is called out in paras 38 and 73 and Barclays agrees that this is something that needs investigating. In Barclays’ experience, terms and conditions can be opaque and not user friendly for consumers or those commissioning advertising. In much the same way as consumers face difficulties in the

⁸ See ACCC Digital Platforms Inquiry recommendation. 23.

terms applying to the use of their data, the need to interact with a large platform for digital advertising penetration means there is little alternative – platform advertising has become a must have for consumer facing organisations. We are therefore supportive of the CMA’s intention to consider the market power held by platforms and whether this results in anticompetitive outcomes for advertisers and consumers.

6. Conclusion

- 6.1. The market study is a welcome move in addressing concerns in how platforms operate for the consumer and the advertisers that support them. Alongside those named, other significant consumer free-to-use platforms that are supported by revenue generated through data/digital/advertising services should also be within the scope as discussed from para 2.1, above.
- 6.2. Barclays sees the study as an initial step in a wider discussion on how platforms use data and on the sharing of that data across industries along with suitable cross-sectoral horizontal regulation: technology is fast linking together our lives and removing the traditional walls between products as data becomes the bond between all consumer products and services.
- 6.3. The fact the CMA already considers that it may need to recommend wide-reaching changes in how platforms operate is in Barclays’ view indicative of the need for a much wider national and international discussion on how to regulate data and platforms. We would urge the CMA to take such steps as part of its Digital Markets Strategy in parallel with the market study, rather than after, given the potential importance of these issue.