



**Competition & Markets Authority  
Online Platforms & Digital Advertising Market Study**

**Interim Report**

**December 2019**

Response on behalf of Barclays

19 February 2020

## 1. Introduction

- 1.1. Barclays is a British universal bank: a 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 further 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, market developments and CMA remedies such as Open Banking, we are well placed to provide views on the CMA's Interim Report of 18 December 2019 ("**Interim Report**").
- 1.3. Barclays has structured its response to comment on the themes raised in the Interim Report, rather than seeking to answer each individual consultation question, with a focus on those areas where we have the most to contribute.

## 2. CMA's understanding of the markets/initial findings and concerns

### Advertising

- 2.1. We agree that there are significant barriers to entry in advertising.
- 2.2. We also agree with the CMA's concerns in relation to opacity of terms of use for advertisers. As a customer of such services, we face an unequal landscape whereby our customers rightly expect clarity and openness in how we use their data, while we are not afforded the same by platforms when using their services.
- 2.3. The position in terms of search and display advertising echoes our experience.

### Data Use

- 2.4. We welcome the analysis of consumer privacy policy and data use and in particular the privacy paradox. A middle way has to be found for consumers to offer up their data willingly and allow interconnections for such an ecosystem to gain traction, while also respecting consumers' desires to maintain control. Barclays has long been supportive of the principle of consumer control, for example in relation to Open Banking.
- 2.5. On privacy policies, we can see the need for clarity as to how consumer data in general should be used going forward. This issue will not become easier as the complex chains of data sharing become interconnected via APIs - this is an opportunity to address these issues for the future, not just with regard to advertising funded platforms.
- 2.6. We recognise the concerns around terms and conditions applied by the advertising driven platforms and note this applies equally to those looking to advertise with them – opacity is an issue from consumers to sophisticated corporate groups.
- 2.7. We agree there are issues around data privacy regulation. GDPR has been a step change, but we would urge the CMA and Government to consider the conflicts between competition law (and related remedies to open up data) and data protection in more detail as part of the platforms work.

### 3. The merits and challenges of the potential interventions identified

- 3.1. Barclays is active in several markets that have been the subject of intervention by the CMA and FCA, as well as others in which intervention is currently proposed. We would continue to encourage the CMA to take an objective, proportionate and evidence based approach to remedies, with a focus on obtaining the best outcome for the consumer and being mindful of adverse consequences.
- 3.2. Barclays believes that the evidential burden for intervention has clearly been satisfied in the present case. We agree in principle with the introduction of new rules on platforms and data sharing and interoperability, but as previously expressed we consider that any such rules should be adopted across sectors rather than in individual sector silos. If the CMA continues to conclude that the recommendations are best taken forward by Government, rather than the imposition of remedies by the CMA, we would encourage the CMA and Government to consider this point further.
- 3.3. Irrespective of the means by which these new rules are taken forward, it will be important for sufficient thought to be given to the tension between on the one hand ensuring the rules remain fit for purpose in a fast moving sector as the practices currently under the spotlight evolve, and on the other providing certainty to firms both in and outside the sector. The consumer angle must also remain paramount. As an example, Barclays was the only member of the CMA9 that chose to deliver Open Banking processes through both online and mobile channels from February 2018. Although this involved considerably more effort and cost on our part, we made this choice based on clear evidence that consumers overwhelmingly preferred access through a mobile channel. Had we not adopted this approach, the majority of our customers would likely not have had the opportunity to take advantage of Open Banking. Our decision therefore helped drive adoption and grow the broader ecosystem.
- 3.4. Barclays is supportive of the proposal that any platform regulation, including an enforceable code of conduct, *“could work as an effective complement to competition law”*, and agrees that the CMA should retain discretion to pursue issues by way of ex post competition enforcement where this is warranted. We would welcome further clarification of where the line would be drawn between such competition action and measures envisaged to enforce the requirements of any code of conduct, and how such a division would work in practice if the Digital Markets Unit (“DMU”) is not housed within the CMA.
- 3.5. Barclays would also encourage the CMA to consider further the interplay between Open Banking and the present market study. Open Banking provides customers with a safe and secure way to share their transaction data, should they wish to. We believe it is important that customers have the same opportunities to share their data regardless of sector. We note that Jean Tirole in his keynote speech at the DG Comp conference - *‘Shaping competition policy in the era of digitisation’* in January 2019 stated that although the Open Banking regime may have been well-intentioned, it raises issues such as whether there is a need for a “level playing field” with respect to tech companies. 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.
- 3.6. We have set out below Barclays’ views and questions on the proposals for improvements to personal data mobility in Appendix L. We continue to support the Furman report’s recommendation for an open standards based data mobility system which the DMU could oversee and welcome the CMA’s attempts to outline how such a system could develop including by reference to Open Banking, in line with our response to the Statement of Scope.
- 3.7. As a starting point, it is critical that any data sharing proposal is founded on a secure and stable transmission mechanism that respects customers’ views on how their data should be treated. This is also important as such a remedy will shift where data is stored from a few large organisations to many processors which are closer to consumers – the infrastructure and security around that needs careful consideration given the inherent risks in any transfer of data.

- 3.8. We consider that APIs are the most appropriate and secure method for data transmission and welcome the consideration of this approach. While the CMA considers Open Banking and the FCA's work on Open Finance and Smart Data in passing, we would urge the CMA to work alongside these initiatives and Government in finding the right solution for consumers. This would also ensure uptake since from a consumer perspective there would be a UK mandated solution irrespective of the type of platform or industry the consumer is interacting with. We also note that other jurisdictions e.g. the EU are actively considering the interplay between data and competition law and the most appropriate tools to manage this challenge – we welcome the CMA looking beyond the UK at best practice given the global nature of data flows and use.
- 3.9. The consideration of data types (observed, inferred and derived data) is interesting. Barclays understands that the CMA's position is that inferred and derived data, as well as observed data, may need to be shared in order to remedy the CMA's competition concerns.
- 3.10. Barclays would welcome further clarification from the CMA in the next phase of the market study as to the scope and nature of such a remedy. In particular, which holders of data would be in scope – we note the CMA's support for the Furman concept of strategic market status ("**SMS**") and would expect this to be applied to determine which platforms are in scope.
- 3.11. Barclays would note that inferred and derived data has usually been processed by a company to add value. It therefore important to consider carefully what categories of inferred or derived data are linked to a user i.e. personal to them and necessary for them to be able to share with other organisations under the remedy as their data, compared to where there may be scope for more debate on the aspects which could be deemed proprietary to an organisation.
- 3.12. There is a valid debate, which has also featured in the Furman review, on how far the obligation to share data to support mobility should go. Should this be a real-time, standardised sharing mechanism and/or should this be limited to larger firms, which by their nature in the current environment hold most of this data? This needs careful consideration and the framework needs to ensure any firm that requires the data should be able to receive it if they meet the relevant security or other requirements. This also feeds into the proposed role for the DMU in providing quick decisions on data access requests where there is a challenge.
- 3.13. A mark of the success of any such data portability remedy will be the shift over time of where this data is held, i.e. it should be opened up and in so doing empower the consumer as to its use. At the outset however there will be issues around large data holding companies. Large technology companies with access to significant social media, search history and other data could leverage their preferential data access to enter other markets. In the case of financial services this would be facilitated by them receiving access to data such as payment account information via PSD2 or Open Banking data if registered as a TPP. This is of course a function of these data opening frameworks and free competition, but care is needed to not simply foster an environment in which the existing data controlling companies simply leverage that starting position into other markets thereby locking in customers to their platforms through vertically integrated service offerings. This is exacerbated by virtue of the gatekeeping role platforms have through their customer interactions, which in turn drives the data they create on their users.
- 3.14. The CMA has noted Open Banking as a partial potential template. It would make sense for further consideration to be given by the CMA to issues that have already been raised through Open Banking, and whether a different approach is warranted in relation to online platforms, for example:
- 3.14.1. the proposal that platforms might be required to share data with third parties on reasonable commercial terms, in contrast to the Open Banking requirement for such data to be made available without charge; and
  - 3.14.2. the potential use of a Trustmark, which we understand is no longer being taken forward as part of Open Banking due to a lack of support in the ecosystem

We would also welcome further clarity from the CMA as the market study progresses on whether it thinks a data portability remedy would require a body such as Open Banking and if so how such a body would be

funded and enacted – in line with our other comments we consider any remedy needs to be across regulators/government backed and could sit in the future DMU.

- 3.15. We would encourage the CMA to consider further issues such as mechanisms for control, revocation, transparency of usage and sensible minimal defaults.
- 3.16. The CMA raised potential payment for data and also whether intermediaries should be involved in any portability remedy. We consider there is an ethical issue around monetising data, for example how you stop people simply selling to the highest bidder, not least in situations where a consumer may be classed as vulnerable. On policing advertising companies and data use, GDPR implementation has seen companies move to interstitials that are accepted by users to get to the content they are after, but which leaves the ad companies/publishers with a broad grant to the user's data.
- 3.17. We would encourage the CMA and Government to consider further whether the sanctions are sufficient to impact the business and change behaviour. It is not clear that existing financial penalties are the answer. We would urge the CMA to consider as part of any future work on data portability remedies whether there should be a mechanism to revoke access including potentially across classes of customers – we appreciate this may require work with Government and other departments-
- 3.18. Where ad tech companies do presently provide access to data, this is not transparent and comes with very limited control. Such access should be regularised and clear so that entities that are concerned about customer data use can set appropriate defaults and prune data as needed on an ongoing basis.
- 3.19. We would also encourage the CMA to consider whether there are any additional remedies - such as splitting out Facebook's social graph as a utility - that might solve certain of the problems identified.
- 3.20. Barclays would be very happy to be involved in further assessment of any potential remedies envisaged by the CMA. Given our experience of CMA remedies such as Open Banking and the role we play in society both in terms of safeguarding consumer data and for example through our Digital Eagles<sup>1</sup> and LifeSkills<sup>2</sup> programmes, we consider that Barclays has a valuable perspective on this matter.

#### **4. Market investigation**

- 4.1. The CMA notes that in the alternative it would consider a market investigation reference and use of its existing competition powers. This route would not provide the same level of ex ante ability to intervene that the DMU would have and would also only be able to impose remedies in relation to specific competition concerns raised at the end of the full market investigation, which is also a long process and does not easily align with the need for quick decisions in a fast moving markets. There are some parallels with - and learnings from - Open Banking and other CMA market investigation remedies in financial services which we would be happy to discuss further.
- 4.2. Barclays agrees that test for a market investigation appears to be met, but that remedies such as the imposition of a code of conduct and the setting up of a DMU could be pursued faster via regulation. However, we would note that should such regulation not proceed and the CMA pursues a fall-back option of a market investigation then resolution of the issues at question is still likely to be several years away.

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<sup>1</sup> <https://www.barclays.co.uk/digital-confidence/eagles/>

<sup>2</sup> [https://barclayslifekills.com/?campaign=Google\\_RS-2018\\_Barclays\\_Lifeskills\\_Brand\\_Exact&chnnl=PSB&gclid=EAlaIQobChMlptzBu5-75wIVF-DtCh3tEAHTEAAYASAAEgJ0fD\\_BwE&gclsrc=aw.ds](https://barclayslifekills.com/?campaign=Google_RS-2018_Barclays_Lifeskills_Brand_Exact&chnnl=PSB&gclid=EAlaIQobChMlptzBu5-75wIVF-DtCh3tEAHTEAAYASAAEgJ0fD_BwE&gclsrc=aw.ds)

## **5. Further work in the second half of the study**

- 5.1. We are particularly interested in the proposals around the DMU, SMS and related guidance/codes of conduct and would welcome the CMA and Government providing more clarity on their views here. In particular, we consider that it is important for future regulation to also encompass platforms outside the narrow scope of the market study, but where similar issues may arise, and we welcome the statements that the code would likely apply in other digital markets.<sup>3</sup> We welcome the CMA's proposal to keep under review whether there is a case for requesting changes to its existing merger control tools for companies designated as having SMS, or for a parallel regime for acquisitions undertaken by such companies.
- 5.2. As mentioned in our response to the statement of scope, we are also supportive of projects such as "Open Finance", but note that these are vertical and will not address the ability of consumers to share and port their data in 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 data, 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.
- 5.3. 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 (likely by vertically integrated companies) to the detriment of the best solutions being available no matter the size of the company.

## **6. Conclusion**

- 6.1. The Interim Report is a welcome and comprehensive summary of the functioning of platforms and how they work with advertising funding. We are supportive of the direction of travel and planned further work in the lead up to the CMA's final report.
- 6.2. We particularly welcome the work to address concerns on opacity around advertising terms and functionality and the support for the Furman recommendations on guidance/codes of practice and the DMU. We do not however think these items can be addressed by the CMA alone given the issues are broader than purely competition harms, but rather consider that Government and impacted regulators need to work together to take forward the CMA's recommendations and create a truly cross-sectoral data sharing framework.
- 6.3. The data sharing/portability remedy options being proposed are interesting. We are supportive of empowering consumers to control and move their data, but note there are many aspects that will require further consideration. There is an opportunity now for the CMA's work to form the basis, with support from Government and other regulators, of a single UK consumer focused solution.
- 6.4. Barclays looks forward to engaging further with the CMA and Government as this important work continues.

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<sup>3</sup> Appendix I, paragraph 7