

Centre for Data Ethics and Innovation – Response to Interim Report

Dear Online Platforms Team

The CDEI has now published the final report of our review into online targeting, including our first set of formal recommendations to the government. The review is informed by new analysis of public attitudes towards online targeting, a regulatory review, and an academic landscape summary, as well as our engagement with industry.

We invite the CMA to consider the report as the CDEI's response to its interim report. The report and supporting documents are published at:

<https://www.gov.uk/government/publications/cdei-review-of-online-targeting>

In the report, we conclude that existing regulation, including competition regulation, may help to address some of the risks we have identified in relation to online targeting, and strongly support the work of the CMA and others to incentivise greater competition online and enable greater choice. However, it is unclear that increased competition will incentivise online platforms to sufficiently address the risks their systems pose to users, at least in the short term.

We recommend to the government that the new online harms regulator should be required to provide regulatory oversight of online targeting, in the form of a systemic code of practice.

We recognise that the risks we have identified span multiple areas of regulation, including competition, consumer protection, data protection and content regulation. We therefore recommend that regulators including the CMA develop formal coordination mechanisms to ensure regulation of online targeting is coherent, consistent, and avoids duplication. We suggest that the concurrency framework for competition law enforcement in the UK may provide one possible model for these mechanisms.

We also recommend a number of measures to support user empowerment. Participants in our public dialogue generally felt that they could not control how their data is used online, reflecting the CMA's findings in relation to consumer control over data. We therefore welcome the CMA's proposed "fairness by design" duty, and support the CMA's proposed interventions to improve consumer information and people's control over their online experiences.

In relation to the CMA's specific consultation questions:

I.3 What are your views on the proposed form of regulation: a set of principles-based rules, supported where appropriate by guidance?

We note that there are similarities between this proposal and the CDEI's proposed approach for regulation of online targeting systems, as set out at paragraphs 289-296 of our report. We recommend that online targeting systems are regulated via a systemic code of practice focused on the processes organisations use to target content, and that the online harms regulator works with stakeholders to develop an

understanding of best practice. Over time, we expect that the online harms regulator may develop additional detailed guidance on areas of particular complexity where there is potential for harm, for example in relation to children.

L.1-L.9 Data sharing and data intermediaries

L.10-L.26 PETs

We consider that data intermediaries could improve data governance and rebalance power towards users, and that government and regulatory policy should support their development.

As the CMA notes and as we discuss at paragraph 265 of our report, attempts to establish data intermediaries have met with limited success to date due to technical challenges and commercial viability. We consider that this model may also create new privacy and data protection risks that would need to be managed. As such, new regulation or standards may be necessary to support their development. In particular, consideration of the type and role of privacy enhancing technologies (PETs) will be needed to determine a sustainable model.

This is an ongoing area of interest to the CDEI. We believe the right model for data portability is of significance to a wide range of industries and public services. The CDEI would be interested in engaging with the CMA further on this.

Annex M Potential interventions in digital advertising

We note our recommendation, as discussed at paragraphs 316-319 of the CDEI's report, that the government considers introducing responsibilities on online platforms for the targeting of advertising content. Our view is that the best way to do this would be through the inclusion of advertising content in the online harms duty of care, creating a responsibility for online platforms to protect their users from harm caused by personalised advertising and driving compliance with standards set by the ASA.

We see this recommendation as complementary to the market interventions being considered by the CMA. Inclusion of advertising content in the duty of care could help to address potential harm to users from targeted advertising content that may not be achieved through pro-competitive interventions.