

Information Commissioner's Office comments on the Competition and Markets Authority market study interim report into online platforms and digital advertising

1. The Information Commissioner has responsibility for promoting and enforcing the UK General Data Protection Regulation (GDPR), the Data Protection Act 2018 (DPA18), the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations 2004 (EIR); the Privacy and Electronic Communications Regulations 2003 (PECR); the INSPIRE Regulations; eIDAS Regulations; Re-use of Public Sector Information Regulations; and the NIS Regulations.
2. The Information Commissioner is independent of government and upholds information rights in the public interest, promoting transparency and accountability by public bodies and organisations and protecting individuals' privacy and information access rights.
3. The Information Commissioner's Office (ICO) welcomes the opportunity to respond to the Competition and Markets Authority's (CMA) interim report into online platforms and digital advertising. As a regulator, we have experience of dealing with and enforcing against some of the largest digital platforms.

Introduction

4. The ICO welcomes the CMA's interim report into digital advertising and its digital market study. The interplay between data protection and privacy law and competition law is an issue that is engaging regulatory authorities and law makers around the world and the CMA's market study makes an important contribution to the landscape.
5. We have enjoyed a constructive working relationship with the CMA during phase one of the market study. We look forward to continuing this engagement in phase two and agree with the CMA's observation that it is important for competition and data protection authorities to consider jointly the interface between consumer, competition and data protection law. We agree that engagement is likely to produce the best outcomes for consumers in assessing conduct which overlaps the

regimes. As noted below regulatory alignment will be key to ensuring coherence across the regulatory landscape.

Synergies between data protection and privacy law and competition law

6. The ICO recognises that the concentration of data in the hands of large businesses can become a threat to individuals' data protection rights.
7. The ICO has previously raised concerns about "data monopolies", notably with the Lords Communication Committee in 2018¹. The Information Commissioner commented that many mergers and acquisitions occurring in the digital market are really about data and consolidating more personal data in the hands of one or a few companies.
8. We also have experience of regulating in this sphere. We took action in 2018 to protect the personal data of UK consumers when we intervened in the WhatsApp/Facebook merger by ensuring WhatsApp sign an 'undertaking' whereby they have given a public commitment that data sharing would not take place until they could prove to us that it would be lawful².
9. We note that some of the interventions put forward for consultation in the interim report have the objective of giving consumers greater control over their data. Such provisions would complement the data protection principles and individual rights under the GDPR. A key concept is the right to data portability which we will touch on below.
10. The interim report looks at the role of data in digital advertising and consumer services noting the ICO's detailed review into the advertising technology (adtech) real time bidding (RTB) industry. The work and the market is complex involving thousands of companies across the data supply chain. We continue to have general systemic concerns linked to key data protection principles including lawfulness, transparency and fair processing and accountability. We are working with the industry to address them and will take regulatory action where necessary.

¹Lords Select Committee on Communication 2018 <https://bit.ly/2UG1P9g>

² ICO A win for the data protection of UK consumers 2018 <https://bit.ly/2SATTDw>

How key principles and individual rights in UK data protection law can help consumers and encourage competition

11. The concepts of transparency, accountability and trust remain central to data protection in and of itself and are the basis for how competition can flourish in the digital world. In order for individuals, as consumers, to have confidence in digital businesses they must have trust that their personal data will be handled responsibly and in ways that they have agreed.
12. As the GDPR continues to bed in, businesses can look to the opportunities that it presents rather than simply complying with the requirements. Data portability and interoperability are such opportunities.
13. The right to data portability under Article 20 of the GDPR allows individuals to obtain and reuse their personal data for their own purposes across different services. It allows them to move, copy or transfer personal data easily from one IT environment to another in a safe and secure way, without affecting its usability.
14. The role of data portability as a catalyst for greater competition is clear. By strengthening the right of individuals to move their data from one business or platform to another creates incentives on the marketplace for better services, better products and greater innovation.
15. There are also broad competitive advantages to good privacy practices, such as privacy by design and default, revolving around basic concepts like customer satisfaction. Equally, a business which is built upon sound data protection principles will find itself unburdened by out-of-date customer information, duplicated data, wasted storage, and redundant man hours spend meeting data protection requirements retrospectively. The concepts of data minimisation and purpose limitation allow companies to become streamlined and nimble in their use of data, opening up avenues to competitive advantage.
16. As a general and final point, we note that where there is the potential for overlap in the competition and data protection regimes, there will be a need for regulators to cooperate to ensure overall coherence and to ensure consistency and unnecessary duplication. We will continue to work with the CMA and other regulators in the digital space on these matters.