

Appendix X: assessment of pro-competition interventions to enable consumer choice over personalised advertising

Introduction

1. Our review of the privacy settings and controls available to consumers on general search and social media platforms has revealed that consumers do not always have the choice to switch off personalised advertising when using online platforms.¹ While some search platforms, including Google, do allow consumers to choose not to have their data used for personalised advertising, most social media platforms, including those owned by Facebook, do not provide users with a choice.² Consumers' use of these platforms is therefore conditional upon them receiving advertising targeted to them on the basis of their personal data, which may include their gender, age, interests and demographic information.
2. While advertising-funded business models, such as commercial radio stations and free newspapers, provide consumers with products and services in exchange for their attention, platforms which are funded by personalised advertising provide services in exchange for the collection and use of consumers' data, as well as their attention.³
3. Recent consumer research⁴ showed that only a small percentage of consumers are happy for online companies to collect and use their data for personalised advertising, and there is a body of survey evidence⁵ to indicate that consumers value having control over their data. Platforms that do not give consumers an option to switch off personalised advertising are depriving them of control over the use of their data.
4. In addition, many consumers lack understanding of the nature of the exchange into which they are entering by using the platforms. We found that consumers' engagement with platforms' privacy policies is very low and there is extensive research and survey evidence to demonstrate that privacy

¹ This assessment is explained in Chapter 4, and set out in more detail in Appendix K.

² We note that Facebook does offer consumers some control over the type of personal data used for personalization: for example, consumers can choose to not have data on their off-Facebook activity used for the purposes of personalized advertising. However, Facebook does not allow consumers to opt out of having their Facebook activity used for personalised advertising.

³ As we explain in Chapter 4, targeted digital advertising can be broadly divided into contextual and personalised. Contextual advertising is based on the content that the consumer is viewing, along with limited types of consumer data such as their device, location and language. By contrast, personalised advertising targets ads on the basis of consumers' personal data, including demographic and interest-based data alongside data inferred from other consumers.

⁴ Ofcom, [Online nation 2020 report](#) (2020).

⁵ This is set out in more detail in Appendix L.

policies and terms and conditions are often complex, lengthy and inaccessible.⁶ In view of this lack of transparency, consumers are likely to have only a limited understanding, at the time that they sign up to the service, of the amount and nature of the data which will be collected from them.

5. We think this lack of choice and control harms consumers. Although some consumers may be relaxed about their data being collected and shared for personalised advertising, others express concern. Were consumers to understand fully the extent of the data collected from them, they might be uncomfortable with it. According to our analysis of the available evidence, when consumers are given more information about the data being collected from them and the way that it is being used, they may wish to make different choices about sharing their data. Currently, consumers lack the knowledge and understanding to make that assessment and the control to give effect to their preferences. As a result, many are likely to be sharing more data than they would otherwise have chosen to and not be receiving a fair return for the data they provide.
6. In addition to causing direct harm to consumers, lack of choice and control over users' data can also exacerbate the competition issues that we set out in Chapters 3 and 5. We found that data acts as a barrier to entry on both the user side and the advertising side of the platforms. Consumers' lack of control over the use of their data means that the large platforms are able to entrench their competitive advantages over potential entrants, leading to harm to competition over time. The loss of competition and its benefits for consumers, and consumers' lack of effective control, may also mean that they have lower trust in digital markets. These harms may be magnified for more vulnerable consumers.
7. In light of these concerns, we outlined some potential interventions in our interim report which would enable consumers to exercise choice over the use of their data for personalised advertising.⁷ In this appendix, we set out:
 - stakeholders' views on those potential interventions;
 - our assessment of the merits of the interventions, including the likely impact on consumers, platforms and advertisers, and our conclusions, and

⁶ We discuss this in detail in Chapter 4.

⁷ Even where the platforms we reviewed do provide consumers with a choice of whether or not to receive personalised advertising, factors such as the accessibility of settings, the use of defaults and limitations on the extent of the control given to users can deprive consumers of any real choice and control over the collection and use of their personal data. Our potential intervention to address these issues – a 'Fairness by Design' duty – is considered in detail in Appendix Y.

- our views on to how the intervention should be designed and implemented.

Potential interventions identified in our interim report

8. In our interim report, we invited views on a potential direct intervention that platforms should be required to give consumers an option to choose not to share their personal data⁸ for the purposes of personalised advertising when they use a service (the '**choice requirement**').⁹ Consumers choosing not to share their personal data would continue to receive advertising while using the service, but this would be non-personalised in nature, for example contextual advertising.
9. In addition, we outlined a further potential intervention requiring platforms with strategic market status (SMS) to opt consumers out of personalised advertising by default, so that only those consumers who had actively engaged with the platform and chosen to share their data would receive personalised advertising. This tougher requirement for SMS platforms was intended to ensure that consumers received extra protection when using the largest platforms, which benefit from network effects.

Stakeholders' views on potential interventions in the interim report

10. We received support for the choice requirement from various stakeholders:¹⁰
 - Privacy International submitted that 'consumers should have a choice over the amount of data they provide'.
 - Which? identified potential consumer and competition benefits from our proposals, for example, from the need for platforms to grow consumer trust, since the 'mix' of personalised and contextual advertising sold by each platform will depend on the proportion of consumers opting into the use by that platform of their data for personalised advertising – which might reflect the level of trust engendered by the platform. Which? also expressed support for the proposal to opt consumers out of personalised

⁸ As defined by the GDPR. Personal data only includes information relating to natural persons who: can be identified or who are identifiable, directly from the information in question; or who can be indirectly identified from that information in combination with other information. Pseudonymised data can help reduce privacy risks by making it more difficult to identify individuals, but it is still personal data. See: ICO, [What is Personal Data?](#)

⁹ The choice requirement does not replace data protection law. Data protection law will continue to apply alongside the requirement and all platforms will be subject to it, whether or not they are in scope of the choice requirement.

¹⁰ Stakeholder responses to our interim report are considered in more detail in Appendix B.

advertising by default and queried whether this should only apply to platforms with SMS.

- Microsoft commented that it is ‘critical that users have control of their data and how it is being used’.
 - Competition Law Forum said that ‘Facebook is effectively forcing its choice upon consumers. Such choice is unsurprisingly tailored to meet Facebook’s own requirements regarding the processing of personal data.’ It also agreed with the proposal that consumers should be opted out of personalised advertising by default and would have to opt in to receive this.
 - DuckDuckGo strongly supported the choice requirement, noting that ‘the contemplated opt-out, however, needs to be clearly described’ and stating that ‘opting out of seeing personalized advertising does not mean that Google has stopped profiling consumers, collecting massive amounts of personal data for use in other ways, such as creating look-alike audiences or filter bubbles.’.
11. Some respondents also commented that the requirement would complement existing data protection provisions (with some, eg Privacy International and the Incorporated Society of British Advertisers (ISBA), highlighting the need for regulatory cooperation between competition and DPAs to ensure consistency), while others took the view that, with the interpretation and application of GDPR still in its early stages, interventions to give consumers greater control over their data were unnecessary at this point.
12. However, some stakeholders, particularly social media platforms, expressed concerns about the choice requirement. These concerns mainly centred on the possible impact of the intervention on the platforms’ advertising revenue, particularly for smaller companies, which operate on much tighter margins than the dominant platforms:
- Twitter said that ‘such a radical intervention, which has the potential to undermine platforms’ business models, should not apply to platforms without market power.’
 - Snap Inc. stated that, while it ‘would not object to ad hoc, ex post interventions (by the CMA in close consultation with the ICO) on SMS companies as a quid pro quo for the privileged position they enjoy in the market’, it was concerned that ‘if the ability to target advertising were to decrease, so would the economic value of the advertising. For smaller companies, operating on much tighter margins than the dominant

platforms, this kind of value destruction would likely prove unsustainable'. Snap Inc. also pointed out that personal data is used for 'a variety of purposes beyond monetisation when it comes to advertising', such as to ensure that consumers are served with age-appropriate advertising.

13. Facebook did not support the choice requirement, arguing that consumers can in fact exercise choice by choosing not to use a platform if they do not want to receive personalised advertising. It submitted several arguments against imposing the requirement, which we have grouped into a number of broad themes,¹¹ as follows:

- Most consumers prefer relevant personalised advertising over untargeted advertising, so a requirement to offer an option of no personalised advertising could lead to the majority of consumers being substantially worse off.
- The alternative to personalised advertising is contextual advertising and this is no less data intrusive and could be more offensive or annoying for consumers so that the consumer experience would be worse.
- Advertisers - and in particular SMEs - benefit from personalised advertising because they can target consumers for whom their advertising is more likely to be relevant, reducing wastage and increasing the overall value of advertising.
- Personalised advertising is a core part of some platforms' consumer offering, with targeted adverts being integrated with personalised organic contact (eg in Facebook's News Feed).
- Personalised advertising allows the platforms to fund valuable services which benefit consumers; any remedies that threaten to reduce these revenues might lead to a reduction in innovation and benefits for users.
- The choice requirement to allow consumers to turn off personalised advertising would have a disproportionate impact on social media platforms and other display advertisers which use personalised targeting relative to, for example, search engines for whom similar value can be captured through the search query (ie in a contextual rather than personalised manner).

¹¹ Facebook have also put forward arguments relating to the application of the choice requirement only to SMS platforms; these are addressed elsewhere in the text.

14. We address these arguments in our assessment of our final recommendation, below.
15. Finally, we received a number of responses from publishers, expressing the view that the choice requirement should not be extended to them as it could potentially negatively impact the economic value of advertising for smaller companies and publishers:
 - Telegraph Media Group said that ‘giving consumers the option to use platform services without requiring data for personalised advertising – should only apply to browser/platform services, and not act as an overall adblocker, which would hamper the ability of publisher websites to serve personalised ads to its readers’ and sought confirmation that the measures will apply to SMS platforms only.
 - News UK did not believe that extending consumers’ ability to opt out of personalised advertising to publishers (eg newspapers) as well as platforms was warranted as ‘consumers have a genuine choice whether to use any given publisher’s website, in contrast to the position facing the users of dominant platforms such as Google and Facebook’.

Our assessment and recommendations

16. Having reviewed the submissions received from stakeholders, we remain of the view that the choice requirement would help to address the harms that we have identified. As with the other remedies proposed by the market study, we envisage that this intervention would be taken forward by the Digital Markets Unit (DMU). Discretion over how and when to use the choice requirement powers and how to design the requirement will lie with the DMU and our expectation is that any decision will need to be informed by further analysis by the DMU concerning the impact of different design choices on consumer protection and the financial implications for platforms.
17. In this section, we set out our assessment of the case for this intervention, its likely impact and our recommendation.

The case for the choice requirement

Addressing consumer harm

18. In our view, the choice requirement would directly address the lack of choice and control currently experienced by consumers over the use of their personal data for personalised advertising and would therefore represent a significant benefit to consumers.

19. Providing consumers with a choice of whether or not to receive personalised advertising enables consumers to select the option which best gives effect to their preferences: consumers who are relaxed about the use of their data and who prefer to receive personalised advertising continue to be able to do so, while those with a preference not to have their data used for personalised advertising would be able to exercise that control, and could still receive 'relevant' advertising, for example, of a contextual, rather than personalised, nature.
20. Research has demonstrated that one reason for consumers not engaging with privacy controls and settings was a feeling of powerlessness on the part of the consumers: that firms would find a way of collecting their data anyway.¹² Giving consumers an explicit choice could help to reduce the perception of there being a power imbalance between the consumer and the platforms, thereby encouraging consumers to engage with these choices more actively.

Focusing the remedy initially on platforms with SMS

21. In terms of application, we think that initially focusing the choice requirement on SMS platforms would maximise the impact of the remedy on consumer harms. Focusing the duty on platforms with SMS in the first instance would allow the DMU to review and refine its implementation and assess the impacts before considering its wider application.
22. Although some of the responses received from stakeholders considered that it would be appropriate to apply the requirement to all platforms (given widespread practices, or a view that platforms should be treated equally), many suggested that it would be burdensome and unnecessary to apply it to smaller firms and publishers. We envisage that the initial development and application of changes to platforms' choice architecture will involve some costs; imposing such developmental costs on smaller businesses could hinder the entry or expansion of platforms which may act as a competitive constraint on SMS platforms, while the impacts will be manageable for larger and well-established platforms which already carry out some testing and trialling.
23. In addition, Google and Facebook are used by very large numbers of consumers and use very substantial volumes of their data. Where platforms have SMS, consumers often have little meaningful choice over whether to use the platform, resulting in an imbalance of power between controller and consumers which these interventions are intended to address. Facebook argued that consumers can in fact exercise choice by choosing not to use a

¹² See Chapter 4 (qualitative surveys for the ESRC, Ipsos Mori and Which?)

platform if they do not want to receive personalised advertising. However, we have shown in Chapter 3 that Facebook has significant market power in social media. It is a 'must have' platform for many consumers. These consumers do not have a realistic option of switching to an alternative provider that does not use personalised advertising, so the only way in which consumers of platforms with SMS would be able to exercise genuine choice would be for them to be given the option of using the platform without personalised advertising.

24. Whilst other platforms would not initially be subject to the choice requirement, they would still need to comply with the requirements of the GDPR, including the fairness and transparency provisions and the requirements for data protection by design.

Competition benefits of the choice requirement

25. We believe that the choice requirement also has the potential to bring about improved competition in this market for the benefit of consumers, by increasing the engagement of both platform and consumer and by prompting innovation. The impact of a lack of competition on consumers is considered in more detail in Chapter 6.

Increased engagement

26. Depending on the way in which the choice is presented and how defaults are used, the choice requirement could shift the bargaining relationship between consumers and platforms substantially, putting the burden on platforms to engage and persuade consumers. An active approach on the part of the platforms to engage consumers could lead to a strengthening of competition more generally and may lead to platforms offering consumers a greater share in the value of their data to encourage them to accept personalised advertising.
27. We believe that the increased transparency which results from the choice requirement will also encourage consumer engagement. Requiring platforms to provide consumers with the option to use their services, without compelling them to allow their data to be used for personalised advertising in return, will increase the transparency of these platforms' data practices. It may encourage consumers to engage with their settings and ultimately learn more about how their personal data is being used. This will in turn enable consumers to make more informed choices about which platform's services they wish to use. It may also incentivise platforms to improve the privacy elements of their services in order to attract consumers who value this.

Innovation and the use of incentives

28. In addition to the detail on how and what data is shared, consumers will want to know how data sharing may benefit them and have a balanced picture about the consequences of doing so. Equally, platforms will want to set out the benefits of personalised advertising as compared with the non-personalised, or contextual, advertising that consumers will receive if they choose not to share their personal data for the purposes of personalised advertising.
29. The choice requirement has the potential to prompt platforms to come up with innovative products, services and offers in order to encourage consumers to share their personal data. In the interim report, we set out our initial view that platforms should be allowed to offer incentives to consumers to accept personalised advertising, such as additional services over and above the core service of the platform, reward schemes or a reduced number of ads, as this provides a mechanism by which consumers can benefit more fully in the value of their data and attention. This may, in turn, encourage greater consumer engagement in the future and promote competition.
30. Responses from stakeholders highlighted various issues about the use of incentives. Privacy and consumer groups expressed concerns that incentives would make it harder for people to decide against sharing their data for personalised advertising and would therefore impinge upon individuals' 'informational self-determination'. They also cautioned that SMS platforms would be in a position to offer higher rewards than their competitors, so entrenching their dominant position in the market for personalised advertising.
31. One respondent¹³ stated that platforms should not be able to offer incentives to consumers as they are able to monetise their services through other means, such as offering sponsored ads or high ranking in search results. Some respondents expressed concerns about the likely cost of introducing incentives and cautioned that any additional costs involved might be passed on to consumers.
32. Although we acknowledge these concerns, it remains our view that platforms should be able to offer incentives to consumers to accept personalised advertising, since this would provide a means by which consumers can derive more benefit from their data, drive greater consumer engagement and promote competition. Privacy-conscious consumers are unlikely to be motivated to consent to use of their data as a result of incentives offered by platforms (in the same way that some consumers refuse to sign up to loyalty

¹³ Telegraph Media Group's [response to our consultation on the interim report](#).

cards), while consumers who are happy for their data to be used for personalised advertising should be able to realise the value of that data.

33. Incentives could take various forms, for example, a reduction in the number of ads shown or special offers. We envisage that the use of incentives has great potential to benefit competition: given their interest in ensuring that consumers choose to opt into personalised advertising, we anticipate that platforms will take a creative and innovative approach to developing incentives, and that this will drive innovation and competition between platforms as they strive to come up with attractive offerings.
34. Platforms processing consumers' data based on their consent will need to ensure that there is no detriment for those consumers who choose not to receive personalised advertising as this may create tensions with the GDPR, in particular the requirement that consumers' consent to share their data must be 'freely given' and not induced in some way. We propose that the DMU work with the ICO to consider what incentives such platforms could legitimately offer to users in return for using their personal data for the purposes of personalised advertising.

Consideration of Facebook's response to our proposals

35. In considering whether to make a recommendation in relation to the choice requirement, we have considered carefully the arguments put forward by Facebook, set out above, and how these could be addressed.
36. The most immediate impact on Facebook from the choice requirement is likely to take the form of a significant number of consumers choosing not to agree to their personal data being used for personalized advertising. As we set out below, it is not possible at this point to reach a definitive view on this, but the introduction of the choice requirement will incentivise platforms to explain the choice to consumers and persuade them to opt in; the impacts will greatly depend on how the remedy is implemented, which we propose is subject to further analysis and testing.

Consumers' preferences for personalised advertising

37. Research suggests that a majority of consumers prefer 'relevant adverts', and we recognise that some consumers will be relaxed about receiving personalised advertising. As a result, consumers might lose out if they no longer received personalised advertising following the introduction of the choice requirement. However, in practice we think that this risk of harm to consumers is likely to be small, for two reasons.

38. First, the choice requirement would not ban personalised advertising based on consumers' personal data, but simply require platforms to give consumers a choice about whether to agree to it. If consumers do value personalised advertising, they are likely to choose it when given a free choice.
39. Secondly, non-personalised advertising is not necessarily 'irrelevant' advertising. Where consumers choose to opt out of sharing their data for personalised advertising, this would still allow platforms to provide contextual advertising.
40. Under the choice requirement, therefore, consumers may continue to receive some forms of advertising as a condition of using the service, regardless of whether or not they choose to share their personal data with the platform. Where consumers choose not to share their data for personalised advertising, platforms will still be able to serve consumers with non-personalised (including contextual) advertising as a pre-condition of the use of the service.
41. Research has shown that consumers prefer to receive advertising that is relevant, rather than irrelevant, to them, but it has also demonstrated that, the more that consumers understand how online platforms currently use their data for personalised advertising, the less comfortable they feel about it. Contextual advertising addresses these issues by providing relevancy of advertising (based, for example, on the search parameters that the consumer is using at that moment) without the need for processing personal data or profiling individuals.
42. Contextual advertising has the potential to provide benefits to advertisers (and, by extension, the platforms) as it becomes more sophisticated. We understand that developments in the use of machine learning and AI over the longer term are expected to enable consumers to be targeted in real time,¹⁴ rather than relying on past behaviour. As a result, contextual advertising may come to be regarded as offering similar targeting opportunities as behavioural-based advertising.

Contextual advertising can be data intrusive and annoying

43. Although contextual advertising may involve the collecting, parsing and interpreting of more data about the content a user is browsing than was historically the case, it is not based on personal data collected from a wide range of sources, such as previous browsing history, location, age, gender, previous purchase history, etc. As contextual advertising is based on the

¹⁴ This is discussed in more detail in the next section, which looks at the likely impacts of the choice requirement.

content a user is looking at, it is still likely to reflect their interests and so can still be relevant to the consumer.

Advertiser benefits from personalised advertising

44. Advertisers may benefit from being able to serve personalised advertising to consumers as a result of less 'wastage' since an advert would only be shown to consumers who are likely to be interested in the product or service and therefore could be more likely to purchase.
45. However, we are not suggesting that platforms should be prohibited from offering personalised advertising to their consumers. Many customers are likely to continue to receive personalised advertising, either because they actively prefer it or because of an incentive Facebook has given them. Where consumers do not opt out of sharing their data, that provides a signal to platforms and advertisers that they are happy to receive personalised advertising and may be less likely to engage in ad avoidance strategies. These consumers could therefore in principle be more valuable to advertisers.
46. In addition, we expect that contextual advertising will become more sophisticated over time, which would again reduce the potential reduction of advertising revenues. Overall, we accept that there may be some reduction in value of advertising, if significant numbers of users were to opt out of personalised advertising, notwithstanding any incentives offered by Facebook. However, as we set out below, this would depend on the eventual choice model adopted, and would be subject in any case to trialling to assess the impacts and welfare gains.

Personalised advertising as a core part of the platforms' offering

47. Facebook submitted that personalised advertising is a core part of some platforms' offering and is a core part of the user experience. For example, where curated content is provided through the News Feed, having irrelevant ads might damage the product and the user experience.
48. We recognise that, to the extent that consumers prefer to receive 'relevant' personalised advertising, the platforms would want to provide that. However, the choice requirement would not prevent this; it would simply offer consumers the choice. We have seen no evidence that consumers perceive or value the social media offer as a combined one of 'personalised content plus personalised advertising' and note that social media platforms do not describe their services in this way.

49. Some respondents also suggested that personalised advertising is an integrated and well-understood part of the social media platforms' contract with users to provide personalised content plus personalised ads, which cannot be disaggregated. They suggested therefore that there is no need for consent to share data for personalised advertising specifically since it is covered under the terms which consumers are asked to accept when they sign up.¹⁵ However, our choice requirement is agnostic as to the legal basis for consumers' personal data to be processed to serve personalised advertising. We recommend that a choice should be given to consumers, and that will also apply to platforms which currently base the processing personal data to serve personalised advertising on contractual agreements with consumers.¹⁶

Personalised advertising funds the services from which consumers benefit

50. We recognise that users benefit from many of the services provided by the platforms for no direct monetary cost and that platforms rely on digital advertising to fund these services. Therefore, there is a concern that introducing a choice requirement would lead to a reduction in revenues for platforms, and hence a worsening of service to consumers.
51. We have reviewed evidence that personalised targeting increases the value of advertising inventory. For instance, our analysis of a randomised control trial (RCT) carried out by Google indicates that publishers currently derive higher advertising revenues from being able to serve personalised advertising compared to advertising that has cookie IDs disabled. As set out in Appendix F, our analysis of Google's RCT data suggests that the short-run effect of blocking third-party cookies on publisher revenues could be to decrease short-term publisher revenues by 70% of the average revenue per query in the control group, which approximates business as usual during the study period. However, for the reasons given in Appendix F, we think this is an overestimate of the long run effect of restricting personalised advertising, as the RCT analysis focuses on the very short-term impact of publishers not being able to offer personalised advertising while competing against others who can, and without being able to adjust their strategy.
52. As discussed above, the choice requirement would not remove personalised advertising; it would simply make it optional. We would expect many

¹⁵ As we note in Chapter 4, the ICO, and EDPB (European Data Protection Board), have expressed doubt that contract or legitimate interests are likely to provide appropriate legal bases for the processing of personal data for personalised advertising as currently practised. For a contractual basis, clauses about advertising are likely to be ancillary to the main purpose of the contract and therefore would not be necessary for the performance of the contract.

¹⁶ The choice remedy is parallel to data protection and PECR, with which platforms must also comply.

consumers to choose to continue to receive personalised advertising. We have also explained how contextual advertising and other approaches would allow platforms to continue to earn revenues from those that have opted out of personalised advertising. We accept that there may be some reduction in revenues from advertising, but SMS platforms would be able to manage the risk to their revenues through offering greater encouragements to users to opt into personalised advertising.

53. Further, our proposal would involve imposing a choice requirement only on SMS firms. Specifically, in relation to Facebook, our analysis in Chapters 2, 3 and 5 has shown that it has significant market power in social media and in display advertising and that it has been able to earn profits which are significantly in excess of its cost of capital. As a result, we believe that Facebook's services would continue to be highly profitable even if there was a reduction in revenue as a result of some consumers choosing not to receive personalised advertising. Both Facebook (in its offer of incentives to users) and the DMU (in amending the design of the intervention) would be able to adjust their approach in the event that revenue losses were higher than expected.

The choice requirement would have a disproportionate impact on Facebook

54. Facebook noted that a choice requirement would have a disproportionate impact on social media platforms, and Facebook in particular, when compared to Google, which already offers consumers the option of turning off personalised advertising. Facebook argues that this is because the value of personalised advertising is significantly less to Google, as the primary source of value in search advertising is the contextual search query, rather than data about characteristics of the individual making the search.
55. We accept that the value of personalised advertising does vary between search and display advertising. As a result, the choice requirement would indeed have a more significant impact on platforms using display advertising. However, as set out in Chapter 5, we think that there is limited competition between search and display advertising in practice. Therefore, we would not expect this to have a significant negative impact on competition, and hence consumer outcomes.

The likely impact of the choice requirement

56. We have also thought about the likely impact of a recommendation for a choice requirement on consumers, platforms and advertisers more broadly. We recognise that some of the arguments set out above in relation to the issues raised by Facebook will also be relevant more generally.

57. As already stated, we anticipate that the specific impact of the choice requirement will greatly depend on how the remedy is implemented and this will be subject to further analysis and testing by the DMU. As a result, it is not possible to reach a definitive view of the impact of the choice requirement. We set out below a high-level, qualitative assessment of the potential costs and benefits (including the risk of unintended consequences) that are likely to be associated with this intervention.

Impact on consumers

58. We consider the impact on consumers in terms of (i) greater choice and engagement and (ii) the consumer experience in terms of receiving contextual advertising as opposed to personalised advertising.
59. We have set out above our view that giving choice to consumers where there is currently no choice would represent a benefit to consumers; that the existence of choice could prompt consumers to engage with these choices more actively, and encourage platforms to explain the advantages of opting in to receiving personalised advertising and even to provide incentives to consumers to opt in. Consumers could thus benefit from such incentives and indeed secure a fairer exchange in return for choosing to have their personal data used to provide personalised advertising.
60. There is also academic research¹⁷ which indicates that giving consumers control over how their data is being used (and potentially increasing information about the data collection process) may be able to help firms to mitigate some of the trade-off between how informative their advertising can be to consumers and how intrusive consumers find that advertising. As a result, it is possible that consumers may become more receptive to personalised advertising.
61. At the same time, we note that the evidence available to us (eg the data on the levels of user engagement set out in Chapter 4) indicates that, where large platforms such as Google and Facebook have been in charge of determining the default settings for privacy controls, only a limited proportion of consumers do actually engage with those settings. This could suggest that without further research and trialling – and other measures such as the Fairness by Design duty described in Appendix Y – the number of consumers who are able to exercise that choice in practice could be limited and the DMU may need to step in and be more prescriptive to ensure that the choices

¹⁷ Tucker, C. (2013). Social Networks, Personalized Advertising, and Privacy Controls. *Journal of Marketing Research*. <https://journals.sagepub.com/doi/10.1509/jmr.10.0355>.

consumers are presented with are in line with their expectations, understanding, etc.

62. We would emphasise that we are not automatically associating better consumer outcomes with large numbers of consumers opting out of receiving personalised advertising. Greater consumer engagement would mean consumers understand the choices available to them; and are able to make an active choice that matches their preferences.
63. In terms of the consumer experience, even where consumers opt-out of receiving personalised advertising, platforms would still be able to make use of contextual advertising. As outlined above, Facebook has suggested that this could mean that consumers would be exposed to advertising that is more data intrusive, less relevant and more of a nuisance. However, the same submission also recognised that contextual advertising was becoming increasingly sophisticated and able to make inferences about consumers interests in real time (through collecting, parsing and interpreting far more data about the content a user is browsing). As a result, it was argued that on a social media platform, the intrusiveness of contextual advertising was potentially greater.¹⁸
64. As contextual advertising becomes more sophisticated in terms of its ability to deliver relevant ads to consumers, without involving the same level of processing of personal information, then that could represent a benefit to consumers. It should also mean that contextual advertising is no more intrusive or annoying than personalised advertising.
65. We do recognise that consumers may need to experience receiving only contextual advertising in order to be able to make a proper, informed assessment about their true preference for personalised advertising. If consumers found contextual advertising to be more intrusive or more of a nuisance than personalised advertising, they could then choose to share their data in order to receive the more relevant, personalised advertising.
66. Overall, we consider that giving consumers more choice is a benefit to them. However, given the various factors at play, such as the balance between consumers choosing to share their data to receive personalised advertising and the potential increase in the use of contextual advertising, we do expect it will take a period of time for the impact of the choice requirement on consumers as a whole to become clear.

¹⁸ The paper by Professor Catherine Tucker on personalised advertising submitted by Facebook does make the point that we should not assume that contextual advertising is less data intrusive than personalised advertising, particularly in a social media context.

Impact on Platforms

67. In this section we consider the impact on platforms both in terms of a potential loss of revenue and also in terms of potential additional costs in terms of further research and trialling,
68. Platforms currently derive higher revenues from being able to serve targeted advertising to consumers. At the same time, they also incur costs in relation to the processing and storage of the personal data they collect.
69. Restricting the ability of platforms to offer personalised advertising has the potential to have a negative impact on their revenues. As set out above and in Appendix F, our analysis indicates that – in the short-run - publishers currently derive higher advertising revenues from being able to serve personalised advertising compared to advertising that has cookie IDs disabled.¹⁹ However, as also set out above, we think these results could overstate the long run effects in that the results of the RCT focus on the very short-term impact of publishers not being able to offer personalised advertising while competing against others who can, and without being able to adjust their strategy.
70. In addition, there is also uncertainty over the number of consumers that might end up choosing not to receive personalised advertising if given the choice and how the value of the remaining consumers to advertisers might change. It is therefore difficult to be definitive about the long-run impact of this requirement on platforms.²⁰ Further research and testing will be needed to inform a more detailed impact assessment.
71. The main impact of the choice requirement would fall on social network platforms with SMS that do not currently offer consumers the choice not to share their data for the purposes of receiving personalised advertising. They face the prospect of at least a proportion of their customer base exercising the ability to make a choice and choosing not to allow their data to be used for personalised advertising. As a result, it is possible that they might be expected to experience some reduction in revenue. As set out in Appendix D, our profitability analysis has shown both Google and Facebook are consistently earning profits well above what is required to reward investors with a fair return. As a result, we believe that Facebook's services would

¹⁹ See discussion in Appendix F.

²⁰ We note that in a recent paper, Aridor et al (2020) which looked at the impact of GDPR on the ability of firms to collect consumer data. They reported a 12.5% drop in the number of consumers as a result of the opt-in requirement of the GDPR. However, the authors also reported that the remaining consumers were observable for a longer period of time and that the average value of the remaining consumers to advertisers increased, offsetting most of the losses from consumers that had opted out. Aridor, G., Che, Y-K. and Salz, T. (2020) 'The Economic Consequences of Data Privacy Regulation: Empirical Evidence from GDPR. NBER Working Paper No.26900.

continue to be profitable even if there was some reduction in revenue as a result of some consumers choosing not to receive personalised advertising

72. As indicated above, platforms would still be able to offer contextual advertising. Although we are not in a position able to evaluate the extent to which contextual targeting could replace personalised targeting, as indicated above there is some evidence that contextual advertising is becoming more sophisticated with the use of machine learning / AI techniques which can increasingly parse and interpret data enabling consumers to potentially be targeted in real time rather than relying on past behaviour. As a result, in the future it may come to be regarded as offering similar targeting opportunities as behavioural-based advertising which would help to offset the loss of revenue from consumers not sharing their data for personalised advertising.
73. We recognise that supplementing the choice requirement with further research and trialling would tend to impose additional costs on platforms with significant market power. However, the purpose of this research and trialling would be aimed at exploring customer expectations in more detail and establishing how best to present choices to consumers that allow them to express their preferences about sharing data for personalised advertising. This in turn should assist platforms in better meeting those needs, fostering trust and confidence in the platforms and promoting user engagement. As indicated above, that could also result in consumers being more receptive to advertising which would benefit platforms if they were able to charge higher prices.
74. Finally, DuckDuckGo told us that a requirement for SMS platforms to impose a default opt out for consumers from personalised advertising could increase the ability of other platforms to compete more effectively, or even encourage new entrants if contextual advertising were to become more prevalent. It is also possible that it could increase the attractiveness of those platforms based more on contextual advertising to external capital providers, which appear to have been favouring the personalised advertising business model in most recent years.
75. An increase in the number of competitors in the market, facilitating the investment opportunities in a market which relies less on the use of personal data to serve advertisements to consumers, would be a positive outcome in general from a privacy and a competition perspective.

Impact on advertisers

76. Advertisers derive a benefit from being able to serve personalised advertising to potential customers in terms of:

- less 'wastage': an advert is only be shown to consumers who are likely to be interested in the product or service and therefore could be more likely to purchase; and,
 - consumers are less likely to engage in ad avoidance techniques such as ad skipping ('ad blindness') or ad blocking.
77. Our analysis and feedback from the industry indicates that advertisers are typically prepared to pay more for personalised advertising which implies that advertisers see value in the ability to target. For instance, one of the features of the studies on the impact on publishers/media owners of removing targeted advertising is that the price of impressions which have personal information attached is higher than impressions without personal information.
78. Advertisers would still be able to make use of personalised advertising under the choice requirement, as this only requires that platforms provide consumers with the ability to opt-out of sharing their data for the purposes of personalised advertising. However, we recognise that this could have an impact on how attractive certain platforms (or other sources of display advertising like publishers) are to advertisers. For example, if a significant proportion of the customers of a SMS platform chose not to share their data, that could initially reduce its attractiveness to advertisers relative to other platforms or publishers. However, that does potentially represent a benefit for advertisers in terms of reducing the extent of 'wastage', as advertisers would previously been advertising to consumers who were resistant to their advertising.
79. As indicated above, our analysis indicates that advertisers have been willing to pay higher prices for better targeting of consumers. As a result, we might expect that where consumers have opted out of receiving personalised advertising, the 'price' that advertisers are willing to pay to reach those consumers will fall. However, if this advertising is not as effective as personalised advertising (for example, if the conversion rate of this advertising is lower), then advertisers may end up having to spend more to achieve the same effect as before. In addition, as we have noted there is some evidence to suggest that the price advertisers are prepared to pay for the consumers that can be targeted over a longer period of time may increase.
80. To the extent that personalised advertising becomes more effective on some channels than others as a result of retaining consumers that were happy to receive personalised advertising, advertisers would benefit in terms of being able to focus their advertising expenditure on those platforms that were able to deliver effective advertising performance.

81. It is thus difficult to determine what the impact on the overall spend on advertising might be.
82. We note that contextual advertising is able to offer a degree of targeting but the extent of the targeting is currently limited. If contextual advertising were to become more sophisticated over time, then it may come to represent an effective alternative to personalised advertising. If it is able to be carried out in a way that is regarded as being as relevant as, and no more intrusive than, personalised advertising, the negative impact on the ability of advertisers to achieve specific campaign objectives would be mitigated and the price differential between personalised and contextual advertising would fall.
83. We also recognise that – to the extent that platforms need to offer incentives to consumers to opt-in to receive personalised advertising – at least a part of these costs could be passed through to advertisers.

Our recommendation for a choice requirement

84. In view of all of the above, we think that the consumer welfare benefits of the choice requirement outweigh its potential costs for SMS platforms. The balance of control over consumers' data is too far in favour of the platforms, with the result that consumers are sharing more data than they might otherwise have decided to do and having their data used for personalised advertising in a way that they may not be happy with.
85. We consider that consumers should have greater control over whether and how their data is used by online platforms for personalised advertising and that the responsibility for ensuring this should rest with the platforms. We think that giving consumers the opportunity to make this choice on an individual basis recognises that consumers may hold differing views about sharing their data for personalised advertising and enables them to give effect to their personal preferences.
86. We also consider that giving consumers a choice as to whether or not to share their data for these purposes also has the potential to increase competition and innovation in this market.
87. While there is uncertainty over the number of consumers that might choose not to receive personalised advertising, which makes it difficult to determine the impact of the requirement on platforms' revenues, we consider that the profitability of the large platforms means that they should be able to absorb some reduction in revenues. Furthermore, a developmental approach by the DMU in terms of further research and testing should result in some mitigation of the costs and risks of the requirement.

88. We therefore **recommend that, as part of the legislation for the DMU, the government gives the DMU the power to require platforms to provide consumers with the choice not to share their data for the purposes of personalised advertising**. This should include powers to influence the presentation of the choice, including defaults.
89. In our view, this intervention should apply, at least initially, only to platforms with SMS. As outlined above, the initial development and application of changes to platforms' choice architecture will involve some costs which could impact on the entry or expansion of platforms which may act as a competitive constraint on platforms with SMS. We consider that, in the first instance, these developmental costs will be manageable for larger and well-established platforms. Smaller platforms would continue to be subject to the existing regulatory framework and data protection law will continue to apply to personal data processing by all platforms, but we do not think it appropriate at this stage to make platforms without SMS subject to the DMU's ex ante regime.

How the choice requirement could be designed and implemented

90. As stated above, the design and implementation of the choice requirement will be informed by further analysis by the DMU concerning the impact of different design choices on consumer protection and the financial implications for platforms. In this section, we look at how our recommendation might be taken forward by the DMU and outline some design aspects of the choice requirement to which we have given some thought during our study and to which, amongst others, we anticipate the DMU will have regard when considering how best to implement the requirement. These suggestions are not intended to be prescriptive; it will be for the DMU to take these ideas forward and do further research in order to evaluate the various options for implementation of the choice requirement.

The role of the DMU

91. The power to implement the pro-competitive interventions recommended by this market study should be available to the DMU only where it has identified (including by having regard to the analysis done in this study) that the intervention is required to address the adverse effects of the market power of the largest platforms on competition and/or consumers in the UK and/or internationally. The DMU would then need to assess (including by means of public consultation) what use of its powers would constitute an effective and proportionate response to address that effect comprehensively. This process would necessitate the DMU undertaking further research and trialling as part

of the consultation process. The DMU would then have wide powers to implement and enforce the appropriate interventions itself.

92. We consider that the DMU will need to have the relevant expertise to undertake or commission further research and evidence-gathering ahead of any decisions on implementation of the choice requirement. The DMU should be ideally placed to engage with SMS platforms, to which the choice requirement will initially apply, in order to establish a sound evidence base before finalising all aspects of the choice requirement and rolling it out. This process will also allow the DMU to test the claims made by the platforms regarding their business models' reliance on personalised advertising.
93. We recognise that the implementation of the choice requirement raises a range of complex issues, which will need to be considered and explored with the platforms. There are also various options, and combinations of options, relating to way in which the choice of whether to share personal data might be presented to consumers; these are likely to need testing in order to establish consumers' expectations, levels of engagement, understanding and a range of other factors. The DMU will also likely wish to define the scope and meaning of certain terms and concepts.

The role of further research and trialling in previous market studies

94. This 'developmental' approach will also provide the DMU with the opportunity to explore consumers' views on personalised advertising, and whether these are in line with the submissions we have heard from the platforms. Although a lot can be inferred about how consumers are likely to respond to prompts or choices that are made available to them through a remedy in previous investigations, we have previously stressed the importance of research in determining whether such inferences are accurate and reliable.
95. As part of our market investigation into retail banking, for example, we conducted qualitative research to assess whether the use of event- or situation-based trigger points and periodic reminders was likely to prompt personal current account holders and SMEs to review their current account providers at times when they may have a higher propensity to consider a change of provider. This research helped guide our selection of appropriate trigger points and periodic reminders.²¹
96. However, while research can certainly help better understand whether consumers will behave as intended as a result of a remedy, testing, and particularly RCTs, are a much better guide as to whether behavioural

²¹ See our [Provisional Decision on Remedies](#), Retail Banking Market Investigation, paragraphs 3.213-3.222.

outcomes are likely to match policy objectives. Indeed, as a report from the Behavioural Insights Team concluded, 'Randomised controlled trials are the best way of determining whether a policy is working'.²²

97. The importance of trialling proved particularly important in the implementation of the open banking remedy that the CMA adopted. Open banking permits consumers to share their bank account transaction histories with trusted third parties (intermediaries) who are able to use this information to, for example, help borrowers identify mortgage lenders whose eligibility criteria they meet and to populate application forms.
98. In order to share this information with third-parties, however, the customer had first to authenticate themselves online with their bank and we discovered that some banks' authentication processes, whilst not actually containing obstacles, did introduce friction into the process that was leading consumers to abandon attempts at data sharing.²³ We discovered that, in an online environment and a sector characterised by customer inertia, apparently very small differences in the customer journey could have a dramatic effect on consumer behaviour.
99. We think that similar considerations may apply in this case and that it is likely to be necessary for the DMU to trial remedies as well as research likely consumer responses.

Our thoughts on designing the choice requirement

100. In order to establish how the choice requirement might be best presented to consumers (whether by choice screen or other means), we anticipate that the DMU and the platforms will need to work together to design various options for trialling with consumers. We expect that, whatever form the presentation of the choice requirement takes, it is likely to involve ensuring that the presentation of the choice is:²⁴
 - accessible – providing consumers with clear information and options. For example, it should be made clear to consumers what data is being collected from them for personalised advertising and how the platform generates revenue from the data so that consumers can take this into account before committing to using the platform;

²² Behavioural Insights team (2012), [Test, Learn, Adapt: Developing public policy with Randomised Controlled Trials](#).

²³ Because these journeys were undertaken online, it was possible to track at what point consumers gave up.

²⁴ In suggesting these high-level principles, we draw on our recommendations in relation to the implementation of Fairness by Design duty in Appendix Y. The DMU may find these principles helpful in developing and implementing the choice requirement.

- balanced – describing the consequences of consumers taking certain decisions regarding the use of their data – for example, if they choose to turn personalised advertising off, what the impact will be on the service they receive – so that consumers can compare the direct and longer-term consequences of data sharing as well as the direct and longer-term benefits;
- consistent and enabling – ensuring that consumers can make the choices they want to make and that their decisions are easily reversible. Consumers should not have only one opportunity to make a choice about the use of their data, and it should be clear and easy for them to change their mind about sharing their data at a later stage.

Behavioural insights on design of the choice requirement

101. For consumers to be able to exercise choice over whether to share data for the purposes of personalised advertising, it is important that they are presented with a choice whether or not to share their data and that the presentation of that choice enables consumers to form a preference and choose according to this preference. The way in which the options are presented is referred to as ‘choice architecture’ in the behavioural literature.²⁵ Choice architecture influences how people process information and draw conclusions or make choices.²⁶
102. For the purposes of the choice to share or not to share data, behavioural insights are used to consider how to balance the choice architecture of the two (or more) options, in order to ensure that:
 - the choice architecture of each option makes information about each option equally accessible to consumers; and
 - each option is equally attractive in terms of the choice architecture design.
103. Achieving this balance ensures that consumers are presented with a real choice. These behavioural insights are categorised into the two major drivers of human behaviour: the ability to perform a certain behaviour and the motivation to do so. The relevant behavioural insights overlap with those covered in Appendix Y (on the Fairness by Design duty) but are discussed

²⁵ Sunstein and Thaler, 2008.

²⁶ There is also an overlap in the underlying behavioural insights that relate to choice architecture. These explain (1) why and how consumers react to information offered, and also (2) why and how consumers react to options offered. Choice architecture and the underlying behavioural processes are addressed in detail in Appendix Y.

here in the context of the choice. A selection of relevant examples are described below.

Accessibility and ability to choose

104. All options should be easily accessible and provide consumers with the unbiased choice architecture to choose either option. Consumers should be provided with complete information on each option and there should be no difference in the cognitive effort required to understand this information.²⁷ For example, options should be similar in terms of the number of ‘clicks’ necessary to access the choice. They should also be similar in design, without any differing design features (eg colour, boldness) that may attract more attention to one over the other.²⁸

Attractiveness

105. In general, both options must be equal in their use of framing that might influence consumers to prefer one option more than the other. In particular, neither option should be framed as more personally relevant than the other, eg by stating that the option will result in the consumer seeing more relevant advertising, as the use of the term ‘relevance’ can cause consumers to choose an option without the option actually being relevant for them.²⁹
106. Where information on the consequences (ie the pros and cons) of one option is provided, these should also be presented for the other option, in an equally accessible way. Finally, as we note above, the use of incentives by the platforms (and the potential this might create for tension with the GDPR) is discussed above; from a design perspective, however, where incentives are offered for choosing one option, these should be marked as ‘additional benefits’ and may not be included in the overview of the consequences to ensure consumers can fully assess the options.³⁰

²⁷ Persson, P. (2018). Attention manipulation and information overload. *Behavioural Public Policy*, 2(1), 78-106.

²⁸ Milosavljevic, M., Navalpakkam, V., Koch, C., & Rangel, A. (2012). Relative visual saliency differences induce sizable bias in consumer choice. *Journal of Consumer Psychology*, 22(1), 67-74; and Parkhurst, D., Law, K., & Niebur, E. (2002). Modeling the role of salience in the allocation of overt visual attention. *Vision research*, 42(1), 107-123.

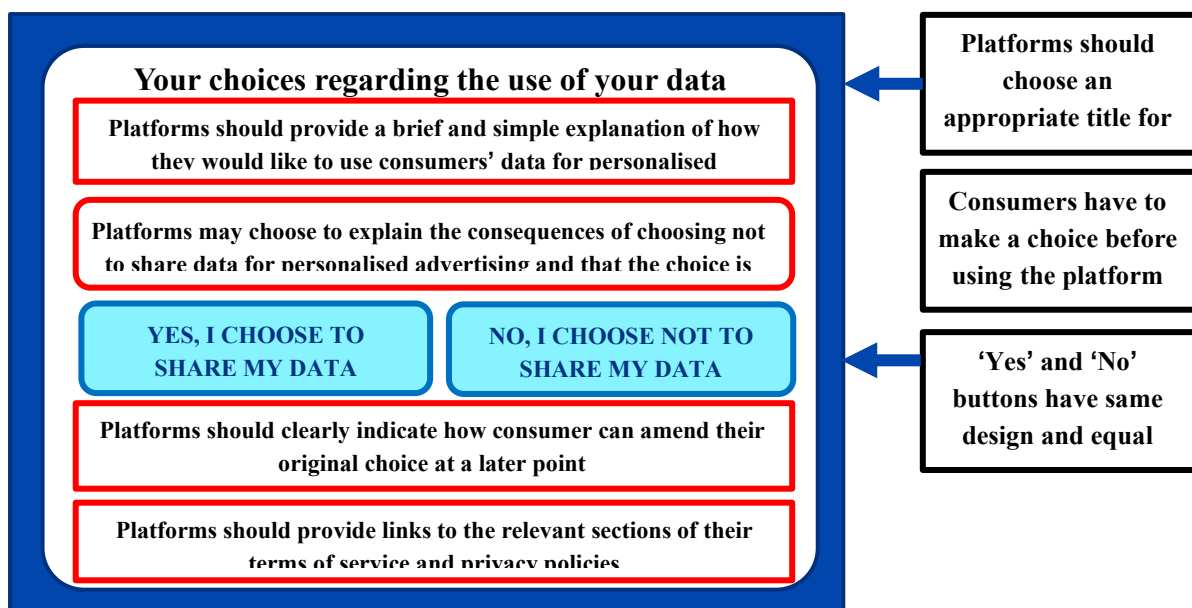
²⁹ Kuvaas, B., & Selart, M. (2004). Effects of attribute framing on cognitive processing and evaluation. *Organizational Behavior and Human Decision Processes*, 95(2), 198-207; and Adjerid, I., Acquisti, A., Brandimarte, L., & Loewenstein, G. (2013, July). Sleights of privacy: Framing, disclosures, and the limits of transparency. In *Proceedings of the ninth symposium on usable privacy and security* (pp. 1-11).

³⁰ Thaler, R. (1980). Toward a positive theory of consumer choice. *Journal of Economic Behavior & organization*, 1(1), 39-60.

Presentation of a choice to consumers

107. During the course of our market study, we have given some thought to the various options by which the choice of whether or not to share their data for personalised advertising should be presented to consumers. As we have previously said, it will be for the DMU to carry out research and trialling of these options, or combinations of options, in order to build a strong evidence base on which to decide on the most appropriate approach. We set out below our thoughts on some of these options.
108. In terms of the presentation of the choice requirement, platforms could be required simply to provide consumers with the choice not to share their data for personalised advertising in their settings page. Consumers should be made aware that they have an option to switch off personalised advertising and this option should be easy to locate and access. It should also be made clear to consumers that they can revisit their choice, should they choose to do so, and they should receive periodic reminders to review their choices.
109. Alternatively, consumers could be presented with a choice screen with which they are required to engage before they can continue to use the platform. Such a choice screen would likely be required to present consumers with a clear and prominent choice of whether to share their data for the purposes of personalised advertising when they first visit a platform's website or app and could take the form of binary 'yes' and 'no' options.
110. The platform could ensure that consumers engage by making it impossible for consumers to proceed with using the platform's services until they have made an active choice. If they choose not to share their data and thus not to see personalised advertising, they will continue to receive non-personalised advertising, such as contextual advertising. They would then, we expect, receive at least the core service and have an easy way to change their choice and turn personalised advertising on.

Figure X.1: Screen mock-up, indicating how different choices might be presented to consumers and the information that should be provided by the platform



Source: CMA.

Use of default settings

111. A further alternative would be to present consumers with a choice screen with which they did not have to engage before proceeding to use the platform (for example, by presenting the choice in a pop-up screen which the user can dismiss without entering a choice). A default setting would then need to apply where the consumer declines to make an active choice: this could be 'opted in' to personalised advertising, or 'opted out' so that a consumer's data would not be processed for personalised advertising unless the consumer subsequently actively engaged and agreed to share their data.
112. Whether a default is used, and, if it is, whether the default is to receive personalised advertising or not, is likely to have an important bearing on the overall impact of the remedy. We note that recent qualitative research by Which? found that consumers had a clear preference to opt in to, rather than opt out of, data collection for targeted advertising.³¹ This was evidenced by the roll-out of the Off-Facebook Activity feature in 2019, which allowed consumers to disconnect and disassociate data on their off-Facebook activity from their Facebook accounts (disconnected or disassociated data is not used to target an ad to a consumer). Users were required to opt out on their settings page if they wanted to exercise this option but, as reported in Chapter

³¹ Which? (2020). [Are you following me? Consumer attitudes to data collection methods for targeted advertising.](#)

4, we found that a negligible percentage of users who were given this option at the end of 2019 exercised it.³²

113. This is a clear example of the power of defaults in influencing decision-making. We also note that, according to Which?'s research, none of the participants in the research were aware of the tool, despite being selected on the basis that they were regular users of Facebook.
114. Setting the default to 'opted out of personalised advertising' would maximise protection, particularly for those that cannot or do not wish to engage. But, perhaps more importantly, setting a default opt out (so that consumers would not have their data used for personalised advertising unless they actively agreed to it) would reset the balance between platforms and consumers. It would put the onus on the platform to do more to engage with consumers to explain the benefits that could arise from personalised advertising, and to encourage consumers to make an active choice.
115. In proposing that the DMU be given the power to impose the choice requirement on the platforms, we envisage that this might include powers to influence the presentation of the choice, including defaults. The DMU might wish to consider requiring platforms to opt consumers out of online advertising where consumers do not have to make an active choice to share their data for personalised advertising prior to using the platform's services.

Design of choice screens

116. It is clear that there is an important role for the DMU to play in scrutinising the design choices associated with any choice screens to be implemented by platforms. Such involvement will likely require the trialling of different versions to ensure they are sufficiently visible and comprehensible to users.
117. The information that platforms provide to consumers about how their data may be used for the purpose of personalised advertising on the choice screen would need, we expect, to be complete and accurate and equivalent and provided equal prominence to information provided regarding the sharing of information with, for example, other consumers. The choice screens would need to be promoted and made easy to find by the platforms and there should be no unnecessary 'friction' for consumers accessing these.
118. The design of choice screens should not encourage consumers to select the option which enables platforms to process their personal data for the purpose of personalised advertising and that the effort required by consumers to

³² Although the feature was only rolled out to a sample of users towards the end of 2019.

choose not to see personalised advertising should be no greater than that required to see personalised advertising.

119. Any information provided by platforms to consumers regarding the possible benefits of allowing their data to be used for personalised advertising on the choice screens should be accurate and balanced. For example, platforms could inform consumers that, by allowing personalised advertising, they will be less likely to be shown ads which are not relevant to them, if this is demonstrably the case.

The use of choice screens in other contexts

120. We note that measures to encourage consumers to make an active choice have been implemented by digital platforms in other contexts with some success. Some such measures have increased consumer engagement with available options and subsequently driven consumers to make selections different to those which are pre-selected by the platform.
121. For example, in August 2019, following the European Commission's July 2018 Android decision, Google announced that it would implement a choice screen for general search engines on all new Android phones and tablets shipped into the European Economic Area (EEA), including the UK, where the Google Search app is pre-installed.³³
122. Whilst research suggests that this choice screen can deliver meaningful search engine choice to consumers,³⁴ we have heard concerns regarding Google's design and implementation of this choice screen. As described in Appendix V, these concerns relate primarily to the number of choices made available, the use of descriptive text and the timing and frequency of their display.
123. A further example arose in Spring 2019, when Google introduced an alert for consumers using mobile devices running the Android operating system which was designed to encourage them to choose which search engine they wanted to make the default on their device. This was not a choice screen or preference menu as such but took the form of an alert box within Google Search that notified consumers they could select a different search engine, and then directed consumers to their Settings page where they could select a different search engine.

³³ <https://www.android.com/choicescreen/>.

³⁴ <https://spreadprivacy.com/search-engine-preference-menu/>.

124. This did not represent a comprehensive preference menu akin to the type of choice screen which might be considered under the choice requirement, and which may be necessary to give consumers the opportunity to meaningfully engage with their options regarding the use of their personal data for personalised advertising.
125. In their response to our interim report, DuckDuckGo sought to illustrate how effective such a preference menu could be in the context of search engine choice on Android OS devices and has conducted research for this purpose. This indicated that prompting consumers to choose their search engine via a preference menu could have a significant impact on the market shares of those search engines suggested as an alternative to Google which are featured on the menu. This respondent also submitted that active and granular direction from government on the specific design and mechanics of such a menu would be necessary to prevent Google from ‘gaming’ its design in order to lead consumers to continue to choose Google as their search engine.
126. While the context and purpose of these interventions differ from the type of choice which might be adopted under the choice requirement, they highlight how incumbents are in a position to influence consumers’ behaviours and outcomes in these markets.

Our thoughts on implementation of the choice requirement

Provision of a core service

127. It is important that consumers are not deterred from freely exercising their choice over sharing their data by other considerations. For example, the CMA’s view is that consumers should receive the same ‘core service’ from a platform irrespective of whether or not they choose to share their data for personalised advertising. The DMU may wish to consider whether a failure to offer the same core service would be at odds with the intention behind the choice requirement, as this might represent a failure to provide consumers with genuine choice and control over their data. Given the role played by platforms’ services to consumers’ daily lives (eg by enabling them to stay in touch with friends and family), consumers might feel compelled to agree to the use of their data for personalised advertising in order to gain access to services that they regard as necessary.³⁵

³⁵ Which? noted in their [response to the interim report](#) that Article 6(1) of the GDPR already obliges platforms to provide their core service without collecting any data beyond that which is necessary for the performance of the contract with the consumer.

128. As set out earlier in this appendix, we believe that platforms should be allowed to offer enhanced or additional services and incentives, over and above the core service, to encourage consumers to choose to share their personal data for personalised advertising, particularly as this offers the potential for innovations which might increase competition and provide benefits for consumers. In our view, however, offering enhanced services to those who choose to share their data should not constitute a degradation of the core service provided to those who do not choose to share their data, for the reasons we set out above.

Data collection

129. For consumers to exercise meaningful choice, platforms will need to make clear that personalised advertising involves the processing by the platform of consumers' personal data, which may include the collection, profiling and storage of that data as well as the combining of that data with information taken from other platforms, websites and apps.

130. However, it is important that consumers also understand that their data will still be collected by the platforms, even if they have chosen not to share it for the purposes of personalised advertising. Platforms collect and use consumer data for a variety of reasons. The choice requirement focuses specifically on enabling effective consumer control of the use of personal data for the purpose of serving personalised ads to individual consumers. It does not prevent platforms from collecting and processing personal data for other purposes which could include improving their services and measuring the effectiveness of advertising.³⁶ Data protection law will, of course, still apply.

Conclusions

131. For the reasons set out above, we think there is a strong argument for introducing a choice requirement on SMS platforms, requiring them to offer consumers the choice to opt out of personalised advertising. This would address one of our key concerns about lack of consumer choice and control, and also help address some of the competition barriers we have identified.

132. As noted above, if there were more choice for consumers, then there could be scope for more competition between platforms as platforms would need to compete more actively to persuade consumers of the benefits of personalised

³⁶ Google already offers consumers the choice not to see personalised advertising but informed us that switching off personalised advertising does not, in itself, prevent collection of any personal data (although there is a reduction in the data collected, depending on the applicable control used. For example, the signed-out user ads personalisation control for web users has the effect of removing the unique cookie, meaning that Google no longer collects unique cookie data).

advertising. There would also be scope for other platforms to compete for consumers on the basis of alternative business models offering different options in respect of the privacy choices and the services that they offer. At present, consumers do not experience the full benefits of competition in terms of more quality, choice and innovation.

133. The DMU would have discretion over the implementation of the requirement, which could even result in a range of options for consumers, including, for example, platforms offering an option for consumers who opt out of personalised advertising to receive their full service but with more non-personalised ads, or to receive a core service only, or to receive the full service but not receive the incentives provided to consumers who opt in.
134. We accept that there are some potential costs of such an intervention to consumers, advertisers and the platforms themselves, but think that these need to be weighed against the important consumer welfare benefits of the choice requirement. For the reasons set out above, we consider that the costs and risks are uncertain but could be effectively managed by the DMU in the design and implementation of the intervention.
135. Finally, as explained above, the DMU would have discretion over how and when to use the choice requirement. We expect that its decisions would be informed by further analysis, including testing to understand the impact of different design choices on consumer protection and the financial implications for platforms.