



# Algorithms

## Call for information on competition and consumer harms

1	<p><b>INTRODUCTION</b></p> <p>The British Brands Group provides the voice for brands with branded producers comprising its members. Its mission is to build a climate in the UK where brands can best deliver value and choice to consumers. This requires competition that is both vigorous and fair. Members vary in size with well over half being SMEs. Members supply a range of branded products and the digital retail channel is an important route to the consumer for most.</p>
2	<p>The Group welcomes the Competition and Markets Authority's interest in and scrutiny of algorithms, recognising that they shape the dynamics of competition online. The online market has grown by some 35% between 2019 and 2020 and now accounts for some £140 billion of consumer spending in the UK.</p>
3	<p>Branding is a positive competitive force in markets, with products competing on quality, innovation and reputation as well as on price. Brands drive innovation which is essential to sustain consumer preference, inspire strong levels of trust in shoppers and help fast, accurate and confident purchase decision-making. They are also highly responsive to societal demands, whether relating to sustainability, inclusion or responsible sourcing for example, as these underpin and sustain reputation. Algorithms play a significant and rapidly growing part in the effective performance of these roles and we highlight here some of the considerations important to consumer welfare and vigorous competition specifically in relation to e-commerce.</p>
4	<p><b>THEORIES OF HARM</b></p> <p>Of the theories of harm outlined in the paper <i>Algorithms: How they can reduce competition and harm consumers</i>, those of greatest relevance to brands in the context of e-commerce relate to the ranking of products. This is of course key to the presentation of choice to shoppers and the vigour and fairness of competition.</p>

5	<p>Of particular significance online is the importance for products to feature on page one of any search. For example, research from Telenicks (2020) suggests that only 6.6% of users are willing to go to the second page (or beyond) on a Google search. On Amazon specifically, winning the Buy Box is critical, with 82% of purchases going through that mechanism, a percentage that is even higher for mobile purchases.</p>
6	<p>In contrast to the bricks-and-mortar world, the commercial transparency of the forces at play in determining which products are presented to shoppers and how has dramatically reduced. As such, it is hard to determine whether short-term effects around the presentation of choice to individuals and medium-term effects around investment, innovation and market entry are positive or negative for consumers and / or competition.</p>
7	<p>The following have been raised by members as being of particular relevance to their business. We must stress though that, in most instances, we do not present evidence of current actual harm, highlighting instead those areas where we suggest regulators focus particular attention.</p>
8	<p><i>The presentation of choice on page one</i>  Competition for page one results and for such features as the Buy Box is intense and valuable to any engine in terms of revenue potential. Organic search is competing for space on page one with paid advertising, 'choice' products, 'sponsored' products, private label and other categories of products, yet organic search results are (or at least should be) the best reflection of what the consumer actually seeks. It is important for search results that most closely reflect the consumer's intentions achieve appropriate prominence in terms of space allocation and proximity to the top of the first page.</p>
9	<p><i>The primacy of trade marks in organic search results</i>  Where a shopper uses a trade mark as a search term, then products carrying that trade mark should appear at the top of the organic search result, without interference. The presentation of shopper choice should not be unduly distorted by the algorithm to reflect the commercial self-interest of the retailer or platform, whether this be the generation of revenue or a mechanism to strengthen its negotiating position, for example by manipulating the algorithm to penalise a particular supplier.</p>
10	<p>The primacy of trade marks in organic search is central to keeping barriers to entry low. This is of course of particular significance for new products.</p>
11	<p><i>Transparency of preferential treatment in search results</i>  Where products are ranked higher on the page because of paid advertising, other payment (for example sponsored products) or factors other than the shopper's search aims (for example, the commercial interest of the retailer or platform), these should be clearly identified and the rankings identifiable as distinct from organic search to avoid confusion.</p>
12	<p><i>Hidden and/or non-transparent algorithm effects in delivering rankings</i>  We consider it important for shoppers to understand the influences that shape the choices with which they are being presented and to have some control over those influences. In a competitive market, the absence or presence of such influences would be a competitive force between operators. Where markets are not competitive, then regulators may need to consider how consumer welfare may be best served where hidden influences on rankings are at play.</p>

13	<p>Transparency of algorithms is important for competitors to understand the rules of competition. Where concerns arise in relation to the presentation of consumer choice, other aspects of consumer welfare or distortions in competition, mechanisms are required for such concerns to be reported, investigated and where appropriate rectified, by the operator in the first instance, with the realistic prospect of intervention by enforcers if valid concerns are not addressed. This would support regulators in their work of ensuring markets are competitive.</p>
14	<p><i>Fair competition with private label products</i></p> <p>In many markets, both off-line and on, branded products compete with private label products belonging to the retailer or platform. The private label product will have significant competitive advantages, with the retailer controlling its consumer price and that of all its branded competitors, its position in relation to those competitors, promotions and point-of-sale communications, for example. Where private label enjoys advantages not available to its competitors, these warrant assessment to ensure they are fair and pro-consumer. In contrast to the bricks-and-mortar world where choice is visible (albeit potentially at different shelf heights), scrutiny is required to ensure choice is fairly presented and not masked.</p>
15	<p>Instances where an algorithm may give undue advantage to private label may include:</p> <ul style="list-style-type: none"> <li>- the censorship of promotional messages whereby the private label may make comparative claims against a branded product but a branded product is unable to compare against private label;</li> <li>- disruption of the consumer journey, where the shopper receives an invitation to switch from a branded to a private label choice prior to purchase;</li> <li>- product descriptions and titles which may influence rankings but which cannot be amended at the request of the brand owner to deliver equitable treatment;</li> <li>- the favouring of private label products by the algorithm, even where a brand on promotion may offer the shopper stronger value.</li> </ul>
16	<p><i>The fair presentation of the digital shelf</i></p> <p>For many retailers, the primary digital shelf is the search results page though there are other examples such as category pages, curated product lists, promotional listings and new product releases. These are all important windows for consumer choice and influence the nature and strength of competition. They become even more influential where the retailer or platform has market power, with control over access to the digital shelf being a tool of that power. Branded suppliers naturally seek the fair representation of their products on the digital shelf, in the context of the wider product category.</p>
17	<p><i>Algorithms not delivering the best price or value to the shopper</i></p> <p>Making the lowest price visible and available to shoppers is not always delivered. Where suppliers invest in promotional prices to deliver best value, these should be visible in relevant searches to ensure shoppers are presented with the best options.</p>
18	<p>Separately, promotional prices which suppliers are funding do not always reach the shopper. In such cases the shopper misses out, and indeed may be charged more, while the retailer benefits from additional revenue from the higher retail price as well as the promotional funding from the supplier.</p>

19	<p><b>THE ROLE OF REGULATORS AND ENFORCEMENT</b></p> <p>The effectiveness of enforcement will depend on the level of transparency over the operation and effects of algorithms. It is important for suppliers (as well as regulators) to understand the forces and influences at play. This would allow them and/or their representative organisations to alert regulators of instances where competition may be distorted and / or consumers are losing out.</p>
20	<p>Key to the effective working of a market is the willingness of parties, notably retailers and suppliers, to work together to resolve problems at the point of trading, rather than a reliance on complaints and other mechanisms after the event which can be resource intensive and unattractive to pursue. Direct resolution between parties is preferred over market regulation which in turn is preferred over state regulation, though for direct resolution between parties to work requires motivation on both sides.</p>
21	<p>There are examples of there being little sign of human intervention from the retailer or platform when the supplier raises concerns, despite clear harm to consumers and/or a breach of an agreement. Where retail operations are increasingly automated, instances when things go wrong can go unaddressed and the supplier left at a loss on how to pursue the matter. There is a sense that the motivation to resolve matters is entirely one-sided.</p>
22	<p>A contrasting situation is evident with retailers with online operations designated under the Groceries Supply Code of Practice where both retailers and suppliers have strong incentives to resolve differences that breach the Code, at point of negotiation. This remedy has transformed relationships between retailers and suppliers for the better while delivering for competition and consumers. It has delivered “an increase, not a decrease in competition”, “stronger and more effective communication between retailers and suppliers”, more efficient working and “an increase in innovative products” (Foreword, Groceries Code Adjudicator <a href="#">Annual Report and Accounts</a>, 1<sup>st</sup> April 2019 – 31 March 2020).</p>
23	<p>A dedicated regulator has been influential in UK grocery as it makes enforcement a credible influence on the operation of the market. It provides an important part of the incentive for the mutual and speedy resolution of potential breaches at the point of negotiation rather than later. We therefore welcome the introduction of the Digital Markets Unit, in the hope that it may too, along with the associated codes that it develops, exert a positive influence on how algorithms and other aspects of the digital market operate.</p>

J A Noble

16<sup>th</sup> March 2021

British Brands Group

100 Victoria Embankment

London EC4Y 0DH

Tel: 01730 821212

Email: [jn@britishbrandsgroup.org.uk](mailto:jn@britishbrandsgroup.org.uk)

[www.britishbrandsgroup.org.uk](http://www.britishbrandsgroup.org.uk)