Algorithms, competition and consumer harm: call for information

Date: 23 March 2021

Sent to: algorithmsprogramme@cma.gov.uk

UK Finance is the collective voice for the banking and finance industry.

Representing more than 250 firms across the industry, we act to enhance competitiveness, support customers and facilitate innovation.

1. The responsible use and development of algorithms is an important and cross-sectoral policy issue. The CMA's paper is a helpful contribution to this domain.
2. UK Finance is also working actively with members on issues relating to responsible and ethical implementation of artificial intelligence (AI) and related technologies. CMA might be interested in our white paper on AI explainability and our paper setting out a potential set of ethical principles for AI and advanced analytics in financial services.
3. Please find annexed some further comments from UK Finance, in response to the CMA's paper *Algorithms, competition and consumer harm* (the paper).

If you have any questions, please contact me at walter.mccahon@ukfinance.org.uk.

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Annex – detailed comments

Importance of coordination

1. Given the number of different policy areas and actors with a shared interest in this issue, regulatory cooperation is vital, so as to ensure a coherent and consistent approach. It is positive to note in the paper the collaboration between the Competition and Markets Authority (CMA), Equality and Human Rights Commission (EHRC), Financial Conduct Authority (FCA), Information Commissioner's Office (ICO) and Ofcom. We further note the recent announcement of the Digital Regulation Cooperation Forum.
2. Related to this, please see our comments below on aligning 'explainability' expectations (paragraph 11).

Personalised pricing

3. We note that the CMA paper considers the use of personalised pricing and how this may give rise to consumer harm. Whilst a common practice in some industries, we suspect there are few firms in financial services using personalised pricing techniques across their product range.
4. However, as algorithms, analytics and related technologies become more sophisticated, we may see more use of personalised pricing in the future. As this develops, regulatory action should take account not only of the potential risks of personalised pricing but also the potential benefits.
5. There are potential commercial benefits to businesses and customers also stand to benefit from personalised pricing. Personalised pricing can incentivise and reward good customer behaviours, such as better financial or risk management.
6. Notwithstanding the above, we agree that risks around transparency, unfair bias or potential discrimination stemming from use of personalised pricing must be considered and managed effectively by firms. Data ethics principles can assist in this regard.

Algorithmic discrimination

7. We agree with the observation of the CMA that in principle algorithms can give rise to biased or discriminatory outputs, and that firms need to ensure they have controls to mitigate this risk effectively. However, in any future discussions with the ICO and EHRC – or indeed other authorities – it is important to also consider that protected characteristics can be important inputs in algorithmic systems that protect customers, for example fraud prevention and vulnerable customer support.

Investigation of potential algorithmic harms

8. The paper calls out two ways of investigating algorithmic harms – one with and one without access to the underlying algorithmic code and data.
9. Building on the points in 3.14 of the paper, we would suggest that, in many instances, reviewing supporting business documentation, which outlines the purpose of the algorithm, the governance process and internal monitoring results (where applicable), is likely to be sufficient. This information should be more comprehensible than code or data, and more meaningful to a wider range of individuals. This documentation would also be stored in a format that can be more quickly and easily shared, giving more timely access to key information to the CMA and reducing administrative burden on the firm.
10. The CMA should do this review in the first instance before deciding to access the underlying data and code for a more technical analysis.
11. CMA should take account of algorithmic explainability expectations of other authorities (notably the ICO and FCA) when making requests, in order to minimise unnecessary complexity and maximise coherence between regulators' approaches.
12. We also note that, if data and code were to be accessed, CMA would need to consider how best to do this, for example via direct access from the firm, via a trusted third party or via an online tool similar to the FCA's Gabriel system.

13. We also highlight that the algorithmic codes created by firms are part of their intellectual property and contain highly sensitive information. Regulators should take into account trade secrets and intellectual property considerations when making requests. The CMA should also ensure that, where they are required to access firms' codes and data, that the mechanism for sharing information is secure and has the capacity to receive large data files.

Existing regulatory oversight

14. As the CMA will be aware, the financial services sector is heavily regulated and is already required to share information on many practices and processes with regulators. For example, firms' capital models already have regulatory oversight from the Prudential Regulation Authority, with the possibility of sanctions where these are deployed incorrectly.
15. Similarly, there is detailed supervision of conduct requirements to ensure firms act with care and integrity and pay due regard to the interests of customers.
16. Firms meet regularly with the various regulators to discuss developments within their business, customer impacts and how potential risks are to be managed. This can include developments relating to new use of algorithms, providing regulators the opportunity to provide comments and ask questions.
17. It is important for future developments in regulation or guidance to account for differences between sectors, in order to avoid duplication or conflicting rules, while still providing an equivalent level of protection for equivalent risks.

ENDS