

Emailed to: algorithmsprogramme@cma.gov.uk

12 March 2021

Dear Sir/Madam,

CMA Algorithms, competition and consumer harm: call for information

I write in response to the Competition and Market Authority's consultation on Algorithms, Competition and Consumer harm: call for information.

Ombudsman Services is the sole Energy Ombudsman and one of two alternative dispute resolution (ADR) providers in the Communications Sector. We investigate complaints that remain unresolved between consumer and supplier and seek to use our broader insight to reduce consumer detriment across our markets. Although the use of algorithms is not typically in itself a direct cause for customers to complain, that is because the use of algorithms is largely unknown to consumers in our markets. They do, though, have the potential to cause consumer harm and we hope that we can support the CMA in assessing how their use can (or could) manifest as issues for consumers.

We think it is right that the CMA should play a role in scrutinising the use of algorithms. Algorithmic systems can be a force for good, helping companies to provide products and services more efficiently and drive down costs. But as more businesses begin to use algorithms to produce specific offerings for customers, it will be important to understand if they are being used in ways that dampen competition or lead to worse outcomes for some consumers. The misuse of algorithms may be a particularly important issue for those in vulnerable circumstances who may already be disadvantaged or otherwise disengaged in markets.

Potential harms

We think that the identified harms - pricing personalisation, choice architecture, unfair ranking and design and potential discrimination - are the right ones and what you could expect to see in digital markets. As well as potential direct harm to individual consumers, certain activities which are identified as markers of functioning competitive markets such as switching may be impacted negatively if consumers no longer trust search results or the prices they are being offered as a result of algorithms. In other words, we think that algorithms have the potential to erode trust in markets, which could have broader consequences.

It may be challenging to identify all potential consumer harms but it might be useful to look as a starting point at where there are currently perceived to be poor consumer outcomes in markets and investigate whether these may be connected to the use of algorithmic systems. We would be more than happy to share with the CMA our view of types of harm we identify that might warrant investigation as part of this process. **(Q1/2)**

Vulnerable consumers

For a variety of reasons, consumers can find it difficult to engage in markets and for those in vulnerable circumstances, this may be even more of a challenge. A number of reasons, including those of vulnerability, may impact the amount of time and effort a consumer can invest in searching for the best deals and finding appropriate products or services. For instance, consumers with less time or less familiarity with digital services may be affected



by choice architecture more than someone who is digitally-savvy, or similarly algorithms could be used to push higher prices on individuals whose profile suggests they are less likely to switch (or seek a better deal). So, while algorithms may help consumers to engage with the market, they may also exacerbate detriment experienced by those in vulnerable circumstances.

Transparency

To tackle unfair outcomes, we think regulators and consumers should be able to identify where harms occur or have the potential to occur, and that means more transparency about how algorithmic systems work. It makes sense for there to be a requirement on organisations to maintain appropriate records of algorithmic systems they use and, where necessary, for regulators to provide guidance and set necessary standards. It is reasonable to expect a toolkit that features monitoring, audits and assessments to make improvements and ensure positive consumer outcomes.

(Q7/8)

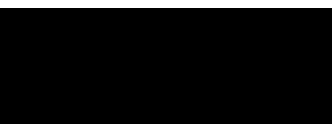
We think transparency in the use of algorithms is also important given the potential difficulty of identifying direct harm. Prompting questions like why algorithms are being used in certain ways could shed light on whether they are resulting in good outcomes for consumers or not, rather than looking directly for harm and then working backwards

Working together

We think there might be a broader opportunity to use data and insight across markets to help build a picture of the potential harms of algorithms. For instance, though it is likely to be difficult for us and other ADR providers to identify direct harm caused by algorithms, we could use our data to support investigations in particular areas. For example, if there was a concern that algorithms were being used in a way that led to poor pricing outcomes, it might be that complaints data on pricing could be used to support such an investigation as evidence of broader consumer harm. We anticipate seeing more complaints from customers who have, knowingly or otherwise, been affected by companies' uses of algorithms and we would welcome the opportunity to contribute to the CMA's work in this area.

I hope the above is helpful and please do not hesitate to contact us if you would like to discuss anything further. Our response is not confidential.

Your sincerely,



Ed Dodman
Director of Regulatory Affairs

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Appendix A

About Ombudsman Services:

Ombudsman Services is a not-for-profit private limited company established in 2002 which runs a range of discrete national ombudsman schemes across different sectors including energy, communications and an appeals service in private parking. Each scheme is funded by the companies under our jurisdiction and our service is free to consumers. In 2019 we received 157,808 initial contacts from complainants and resolved 88,840 complaints. In the energy sector we received 116,700 initial contacts and resolved 58,034 cases, and in the communications sector, we received 40,184 initial contacts and resolved 17,426 cases. We also received over 84,000 appeals in our private parking appeals service.

We are:

- to our consumers, the people they can turn to for impartial advice and solution that's fair;
- to our partners, the people they look to for knowledgeable and insightful ways to help them reduce complaints by enabling them to make the changes they need to deliver better customer services;
- to our regulators, champions in protecting rights as well as partners in information sharing, we share our analysis so that regulators and business partners can make improvements; and
- to our people, here to enable them to deliver clarity to consumers and partners through meaningful work.