

COMPETITION AND MARKETS AUTHORITY ISSUES A CALL FOR INFORMATION ON THE COMMERCIAL USE OF CONSUMER DATA

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As part of a project to understand how firms collect and use consumer data, the Competition and Markets Authority (CMA), which took over the functions of the Competition Commission competition and certain functions of the Office of Fair Trading in April 2014, issued a call for information on 27 January 2015 on the commercial use of consumer data.

Consumer data is widely construed for the purpose of the call for information and includes data more readily identifiable as personal data such as consumption habits, where consumers work and live, demographics and interests as well as other information like opinions and also metadata which reveal online browsing patterns but do not necessarily always reveal the identity of the individual doing the browsing.

Background

Technological advancements in the last decade have seen consumers generating more data than ever, as they live their day to day lives through their mobile and smart devices; browsing the web, shopping, watching TV, listening to music and find useful tools for everyday activities - 'there's an app for that'. In addition, the Internet of Things and wearable devices stash away data about everything from our fitness to heating and eating habits.

Firms in many sectors are becoming increasingly aware of the potential "gold" in this avalanche of data, which will enable them to learn much more about their own customers and consumer behaviour allowing them to develop, target and sell their products. Many new companies, and even whole markets, have sprung up to deal in data and act as

collectors, aggregators, analysers or intermediaries, which is driving innovation even further.

On the one hand, the collecting and analysing of consumer data has delivered benefits to consumers. Generally, it has boosted the wider UK economy with the birth of new businesses driving innovation; cheaper insurance (e.g. if you can show you regularly go to the gym); and more accurate energy pricing (e.g. via smart meters).

It has also allowed for better quality, targeted products designed to answer the needs of consumers; smarter procurement through identifying consumer needs; and the provision of services that are customisable or which learn your habits and recommend other things you may like, plus better service of coupons to customers at the right time and the right place.

On the other hand, "big data" may give rise to potential down-sides. For example, there have been reports of websites increasing their advertised prices based upon the number of times consumers re-visit them. At a macro level, there is currently concern about consumers' understanding of how their data is being collected and used, and therefore fundamentally whether organisations are complying with data protection obligations. On an even larger scale, experts are querying whether firms' access to, and possession of, "big data" could give rise to competition risks.

Concerns that processing techniques applied to big data could lead to discriminatory outcomes were voiced in 2014 in various global fora by entities including the Article 29 Working Party, the European Data Protection Supervisor, and the Executive Office of the US President.

Against this backdrop, the CMA has now opted to consider these issues for itself.

What is the call for information?

The call for information is a fact-finding exercise being conducted by the CMA (pursuant to its general review function under the Enterprise Act 2002) to further its understanding of the benefits arising from the collection and use of consumer data, as well as the potential competition and consumer protection issues that may result from the collection and use of such data. Through parties' responses, the CMA is seeking to understand:

- the extent to which consumer benefits from the use of consumer data arise in practice and the types of data that can generate them;
- how consumer data is collected, the level of consumer understanding about this and

whether this is being done fairly (including the impact of consumer protection legislation);

- how firms generate value from and use consumer data;
- how consumer data is aggregated, bought and sold (including licensing, commercial use and re-use);
- how the collection and use of consumer data can generate value for the wider economy (such as adding value to existing sectors and creating new markets in the UK economy);
- whether access to consumer data is limited such that it constrains new entry or growth by new, potentially innovative, providers;
- whether low levels of awareness or understanding among consumers of the data collected and its uses, together with limited tools for them to control what data they provide, could mean that it is hard for consumers to have sufficient control of how information is used.

Following the call for information, the [CMA](#) intends to meet with key stakeholders so as to hold roundtables and commission research to explore how consumer data is collected, bought, sold and used in specific UK markets. The [CMA](#) is planning to publish its findings in summer 2015.

What is the scope of the fact-finding exercise?

The scope of the fact-finding exercise covers consumer data which:

- relates to UK consumers and is collected inside and outside the UK;
- is collected directly by firms as well as by appliances, applications and cloud services;
- is collected at any time, both with and without the knowledge of consumers;
- includes data on specific transactions for goods and services as well as data not specific to such transactions; and
- is used by:
 - firms dealing directly with consumers (for instance to target groups and individuals with offers); and
 - third parties (using data sourced from firms dealing directly with consumers) who analyse this data to provide commercial services to other firms.

The scope excludes:

- data on consumers resident outside the UK;
- spam, phishing, and other forms of non-targeted marketing;

- data collected by the public sector; and
- data collected for management information and logistics only and academic and research purposes.

Joined-up thinking

The responses to this call for information may begin to enable the CMA to consider some of the more difficult questions that go to the heart of privacy in a data-driven age and the competitive advantage enjoyed by those companies in possession of significant volumes of consumer data. For example, in what circumstances can "big data" be expected to generate sufficient economic benefits, thereby justifying increased data sharing and the possible impact upon individuals' rights to privacy?

Are there situations in which "big data" potentially risks creating insurmountable barriers to entry, with the result that companies owning this data could be insulated from the full forces of competition in their markets?

Will protecting privacy drive competition? Or, is data now such a fact of life that to seek to limit or restrict how it is used is to remove the life blood of twenty-first century innovation and risk stunting economic growth? For our update on how the proposed new Data Protection Regulation could potentially put a stop to profiling and behavioural targeting activities, see our alert "[Big Data: Big Elephant in the Room](#)".

While the CMA and Information Commissioner's Office (ICO, the UK regulator for data protection) do not currently act jointly in addressing competition/data protection issues, the responses to the call for information are likely to help both the CMA and ICO better understand the level and sophistication of data sharing and analysis, as well as any current issues as regards transparency and consumer awareness in relation to data collection and usage.

What does this mean for me?

In its call for information, the CMA asks 14 specific questions covering what businesses should consider in their own collection, analysis and use of consumer data, including:

- how consumer data is collected, bought, sold and its value;
- how consumer data is used and the restrictions in gaining access and controls available to consumers;

- what the benefits and risks from using consumer data; and
- what are the policy implications and possible future developments for the collection and use of consumer data.

If your business collects, analyses and/or uses consumer data, you may also wish to respond to the CMA's call for information either by completing the online form or by e-mail to consumerdata@cma.gsi.gov.uk by **5pm on Friday, 6 March 2015**.

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