

# Compare and contrast

## The CMA has launched a market study into digital comparison tools

by *Caroline Hobson and Jacqueline Vallat\**

As trailed in its annual report and recent speeches, the UK Competition and Markets Authority (CMA) has announced the launch of a competition market study into digital comparison tools (DCTs) to assess whether they are functioning well for consumers.

The review was triggered by the in-depth probes of sectors such as private motor insurance, retail banking and energy, which highlighted the importance of these types of tools in the decision-making process of consumers in a variety of sectors. The CMA recognises the “powerful role” they can play in improving consumer engagement and competition.

In its statement of scope published with the market study notice on 29 September 2016, the CMA provided further details of the scope of the market study and its proposed approach. These are explored below.

### What are DCTs?

The CMA’s working definition of DCTs is “web-based, app-based or other digital intermediary services used by consumers to compare and/or switch between a range of products or services from a range of businesses”. DCTs include price comparison websites (PCWs). However, the CMA says that while the term “PCWs” has been useful shorthand to describe players in this sector, it is not fully accurate in 2016, given the growing role of apps for such services and that DCTs compare much more than just price. Comparison parameters include price, product characteristics or various measures of quality – and consumers increasingly want other measures of quality.

DCTs are intermediaries between consumers and suppliers that present a range of products or services available to consumers. They often gather (detailed and personal) information from consumers to allow for tailored quotes, which has given rise to some cause for concern and consumer distrust as explained further below. The way consumers choose the products or services varies between DCTs: some may simply present the quotes available and redirect the consumer to the supplier for fulfilment of the order, or they may also offer to complete the transaction or switch supplier on behalf of the consumer by issuing instructions to the new and/or existing supplier.

There is a range of DCT business models. Although they can in theory generate revenue from both consumers and suppliers, generating revenue from consumers is uncommon. It is most typically generated from suppliers on a commission basis when the customer is referred to the relevant supplier: either when a customer clicks to see information on a specific product (pay per click); when the customer transfers to the supplier’s website (pay per introduction); or when the customer actually completes the purchase (pay per acquisition).

Additional streams of revenue for DCTs include hosting advertising or charging for increased prominence of a product, as well as selling consumer data to suppliers or third parties. Further, certain operators specialise in providing what are

called “white-label” services to DCT operators, such as comparison engines and/or data.

Experience from other sectors has given the CMA insight into the potential for DCTs to improve outcomes for consumers, by facilitating comparing and switching, as well as to improve competition. DCTs were particularly instrumental in improving competition in the private motor insurance market – “the big success story for DCTs” according to the CMA – and the regulator notes that they may also reduce barriers to entry for new suppliers, by providing a cost-efficient route to market that avoids the substantial fixed costs of major advertising campaigns.

### Concerns with DCTs

The potential benefits of DCTs turn on consumer trust in DCTs as well as effective competition – and politicians, the media and consumer bodies have all recently expressed concerns about the way DCTs operate. These concerns have mostly centred on issues of consumer trust arising from a lack of transparency and/or information asymmetry but there have also been questions about effective competition.

■ **Consumer trust concerns.** These have included questions about whether DCTs should reveal their commission rates and/or be required to display products of all suppliers in the marketplace – the latter highlighting the risk of conflicting objectives and approaches of various stakeholders. For instance, in the energy market investigation, the CMA recommended that Ofgem remove the “whole of the market requirement” – requiring all domestic tariffs to be included as standard – from its accredited confidence code for PCWs. The CMA’s concerns seek to address issues of free-riding on PCW platforms by suppliers and to bolster competition between PCWs. Ofgem is currently considering this recommendation. However, in July 2016, the Energy and Climate Change Select Committee urged the government not to implement this specific remedy due to concerns that this would mislead consumers and harm competition to the detriment of smaller suppliers.

■ **Warning about weakening competition.** Regarding competition, the UK Regulators Network (UKRN) – led in this instance by the Financial Conduct Authority, Ofgem (the UK electricity and gas regulator) and Ofcom (the UK communications regulator) – published a final report on PCWs in September 2016, which noted the potential for agreements or commercial relationships between PCWs and product suppliers to weaken competition between PCWs, suppliers or both. It published an open letter to the CMA which included a number of recommendations to consider in the market study, all of which have implicitly or explicitly been reflected in the statement of scope. The CMA’s own private motor insurance investigation noted that certain contracts between DCTs and suppliers contained terms which limited price competition and innovation and could restrict entry.

\* *Caroline Hobson is a partner in – and Jacqueline Vallat is an associate at – CMS Cameron McKenna LLP*

The CMA is proposing to consider these issues with the aim of producing an authoritative assessment of the role of DCTs which all policymakers and stakeholders can use and with the overall purpose of maximising the benefits that DCTs can deliver.

### The CMA's proposed approach

The CMA is proposing to look at four key "themes" with a number of specific questions set out in the statement of scope.

■ **What consumers expect from DCTs, how they use them and their experiences.** As part of this, the CMA intends to consider the concerns around transparency highlighted above, as well as understand the issue of "hollowing out" (whether, by using DCTs, consumers risk focusing excessively on price to the exclusion of other factors and to consumers' overall detriment), which was one of the recommendations set out in the UKRN's open letter.

■ **The impact of DCTs on competition between suppliers listed on them.** DCTs have the potential to improve competition, in particular by reducing search costs, and to increase consumer engagement. The CMA wants to gain a better understanding of this process and the effect of DCTs on suppliers' behaviour and offering.

■ **How effectively DCTs compete with each other.** The assumption that DCTs can deliver consumer benefits by improving engagement and competition assumes there is effective competition between them. The CMA is proposing to scrutinise this as well as how DCTs facilitate competition between suppliers. The CMA will consider competition between DCTs both in relation to consumers and suppliers, reflecting the two-sided nature of the market. One of the key questions the CMA is asking is what factors influence how effectively DCTs can compete, including access to the necessary data – a concern which has for instance been raised both in the UKRN report and HM Treasury's report, *A better deal: boosting competition to bring down bills for families and firms*, of November 2015.

■ **The effectiveness of existing regulatory approaches to DCTs.** The CMA will assess whether anything can be learnt from comparing different regulatory approaches and will work closely with the UKRN. One of the CMA's key questions relates to compliance with consumer and competition law – enforcement action is a common outcome of market studies and recent comments by the CMA's executive director (enforcement), Michael Grenfell, at a speech of 9 November 2016 confirmed this possibility, saying in relation to DCTs and PCWs that "there may also be scope for competition law enforcement in this area".

Given the variety of sectors in which DCTs are active, the CMA intends to focus on common themes to develop insights which apply generally across sectors. However, it recognises that it will need a greater understanding of specific sectors to be able to draw useful conclusions and, in light of this, has determined a methodology for identifying the sectors to include in the scope of the study. The starting point will be to look at sectors where it has experience of DCTs from recent market investigations, adding sectors which share key characteristics or which can be useful comparators. The CMA considers that it can add value by focusing on sectors which have high search costs (eg pricing or product complexity) and

where significant benefits can be gained from greater engagement and switching (eg high annual expenditure).

This methodology has led the CMA to include the following areas in the scope of the study: (1) utilities, in particular energy and broadband; (2) financial services, in particular personal current accounts, private motor insurance, home insurance, credit cards, home credit, payday lending and extended warranties; and (3) travel and other elements, including flights, hotel online booking and legal services.

From looking at these areas, the CMA considers that it will be able to draw general conclusions applicable across sectors. However, it invites views on important issues in other areas.

It has specifically excluded the following from scope: shopping DCTs; DCTs for SMEs and non-UK consumers; individual retailer sites; sharing economy and review/feedback driven-websites; and offline comparison services (such as telephone-based services).

### Next steps and possible outcomes

The consultation on the market study notice and statement of scope closed on 24 October 2016. On 8 November, the CMA indicated that it would be holding two workshops in early December to discuss the scope of the study as well as issues raised in responses to the consultation. It has issued invitations to a range of DCTs and suppliers with the aim of ensuring that a cross-section of relevant market players is captured in its study. The CMA intends to use the wealth of existing materials as well as new information from research, engaging with stakeholders and information requests. The interim report is expected by 28 March 2017 and the final report by 28 September 2017.

The market study could result in a range of possible outcomes, which include a clean bill of health, or, where markets are not found to be working well, actions which improve the quality and accessibility of information to consumers; encouraging businesses in the market to self-regulate; making recommendations to government to change regulations or public policy; taking competition or consumer law enforcement action; and making a reference for a more in-depth market investigation or accepting formal undertakings in lieu of such a reference.

### Concluding thoughts

The CMA has the ambitious aim of producing an authoritative assessment of the role of DCTs and its view of how best to maximise their potential benefits. Given the increasing interest in such tools shown by the CMA itself, other regulators including within the UKRN, the government and parliament, it is likely that its study will be closely scrutinised. Stakeholders will have an opportunity to frame this analysis and it is important that they engage at an early stage with the CMA. They should also note Michael Grenfell's recent comments that the CMA is "concerned about anticompetitive practices that might weaken the stimulus to competition that comes from price comparison websites and other digital comparison tools". This follows an investigation, initially opened by Ofgem and transferred to the CMA, into potential anticompetitive behaviour relating to bidding for online keyword-search advertising. Although the CMA closed this investigation in October 2016, it noted that it would have the opportunity to look at such issues more closely in the study, and possibly reconsider enforcement action.