

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Quality considerations in the zero-price economy – Note by the United Kingdom

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This document reproduces a written contribution from the United Kingdom submitted for item 2 of the joint meeting between the Competition Committee and the Committee on Consumer Policy on 28 November 2018.

More documentation related to this discussion can be found at:

www.oecd.org/daf/competition/quality-considerations-in-the-zero-price-economy.htm

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1. Summary

1. This UK submission provides an overview of the CMA's experience of assessing quality in its competition and consumer work in the zero-price economy. It also sets out the importance of consumers being able to adequately observe quality in order to make informed decisions and gives examples of remedies to ensure consumers are able to do this.

2. In well-functioning and competitive markets, businesses innovate and compete by offering lower prices and better quality products and services in order to attract customers. Consumers are able to make informed choices between different suppliers. This drives further competition and innovation in a 'virtuous circle.'

3. Quality is therefore a key parameter on which firms compete. The CMA will consider quality, as well as price, competition when assessing the effectiveness of competition in a market. For example:

- Our Merger Assessment Guidelines¹ note that competition creates incentives for firms to improve product quality as well as to cut price, increase output, enhance efficiency or introduce new and better products. Our approach to considering non-price effects of mergers was considered in a previous OECD submission.²
- Our Market Investigation guidelines³ note that firms with market power may be able to maintain quality below competitive levels without the consequent loss of sales becoming unprofitable.

4. Quality is also an important focus of the CMA's consumer work. In particular, consumer protection laws can be used to reinforce competition by ensuring consumers are able to make informed decisions between providers, as well as to safeguard minimum standards of quality. For example:

- As set out in the CMA's unfair contract terms guidance⁴, the Consumer Rights Act 2015 blacklists various terms in contracts for a trader to supply goods, digital content and services to consumers. The kind of terms covered include those which aim to relieve traders from their ordinary obligations under the Act to ensure their products are of satisfactory quality and that their services are provided with reasonable care.

5. This submission outlines practical examples of where the CMA has considered quality in both its consumer and competition work. This includes taking enforcement action to ensure consumers can trust online reviews which are key in helping consumers compare the quality of goods and services, as well as imposing a remedy in the retail banking market to help consumers better assess the quality of their bank account and provider.

¹ OFT, 2010, Adopted by the CMA: [Merger Assessment Guidelines](#)

² CMA submission to OECD roundtable on [non-price effects of mergers](#), 2018.

³ Competition Commission, 2013, Adopted by the CMA: [Guidelines for Market Investigations](#)

⁴ CMA, 2015, [Unfair Contract Terms Guidance](#)

6. Quality is a particularly important dimension of competition when products and services are provided ‘free’ of charge. This is often the case in two-sided markets such as platforms operating in the digital economy. In such markets, considering quality is likely to be key in assessing the effect of competition on consumer welfare.

7. The challenges for competition and consumer authorities, as well as for consumers in assessing quality are, on the whole, not new and, although particularly key in the zero-price economy, are not significantly different from those which exist in other markets. The exception is in relation to considering privacy as an aspect of quality which is increasingly important in the zero-price economy.

8. The CMA is keen to better understand how consumers perceive quality in the digital economy and believe there would be benefit in further research in this regard, particularly that which draws on behavioural insights. We also see merit in exploring remedies which enable consumers to better assess quality, in particular those which make aspects of quality such as privacy more transparent for consumers.

2. Identifying dimensions of quality competition in zero price markets

9. There can be challenges for competition and consumer authorities in all markets in identifying and, in particular, in measuring the dimensions of quality on which firms compete.

10. Where goods and services are largely homogenous or are perceived as such, identifying differentiation between providers on quality grounds can be challenging. Common quality dimensions include product functionality, reliability and/or durability as well as broader elements such as customer service or range of products available. Customer ratings and reviews often play an important role in measuring quality.

11. As set out earlier, in the zero-price economy quality is likely to be particularly important. It may also be less apparent. Examples of factors the CMA has considered when assessing competition on the basis of quality in the zero-price economy include:

- In our markets work we conducted a market study into the use of digital comparison tools (DCTs).⁵ These tools comprise services such as comparison websites and apps and enable consumers to shop around and compare products and services listed on their site. Use of DCTs is typically provided ‘free of charge’ to consumers, whilst the provider makes money by charging a commission to suppliers. The CMA considered the effectiveness of competition between DCTs and the extent this was delivering benefits for consumers. As well as considering competition on the commission charged to suppliers (which can feed into lower prices for the products and services listed on the DCT), the CMA also considered competition on quality. Here a key factor on which DCTs compete is the quality of their results – that is their relevance, comparability and accuracy. The CMA concluded that in order for the benefits of DCTs to be fully realised by consumers, DCTs need to offer a relevant and accurate service and a smooth consumer journey.

⁵ CMA, 2017, [Digital comparison tools markets study: Final report](#).

- In our mergers work we considered a merger between two food ordering digital platforms, Just Eat and Hungryhouse.⁶ These food ordering businesses enable consumers to search for local takeaway restaurants, compare menus, prices and reviews, place orders online and pay online or by cash on delivery. Use of such food ordering businesses is typically provided ‘free of charge’ to consumers with the provider making money by charging a commission to restaurants. As well as considering whether the merger could lead to higher prices for consumers (for example through the introduction of fees or pass-through to consumers of commission charged to restaurants), the CMA also considered whether the merger would lead to a reduction in quality in the form of a lower number and/or choice of restaurants being available on the platform, worse platform functionality and user experience.

12. Another important aspect of quality in the zero-price economy is the amount of information a consumer exchanges for use of a good or service, for example a website, search engine or social media platform. Players in the digital economy now collect enormous amounts of information about individuals – from personal information to browsing history and location data. The amount of information a consumer exchanges for use of a good or service, for example a website, search engine or social media platform, may be seen as an element of both its ‘price’ and/or its quality.

13. The use of consumer data can lead to important benefits for the consumer, for firms and for the economy. Firms can create more value for their customers by responding directly to customer feedback (explicitly through comments and implicitly through what they buy) to improve the services and products they offer as well as to make their operations more efficient. At its simplest, this transaction offers a potential ‘win-win’ scenario where consumers, firms and the economy benefit.

14. However, these benefits will only be realised if consumers continue to provide data and this relies on them being able to trust the firms that collect and use it. In particular, the regulation of the collection and use of data should ensure the protection of essential rights such as privacy.

15. Levels of privacy are likely to be difficult to assess. Individual consumers will have different tolerances and attitudes to the exchange of personal data for services and these may change depending on context or circumstance. Whereas it can generally be assumed that high quality in terms of levels of customer service or product durability are likely to be beneficial for a consumer, high quality in terms of privacy may not always be, given consumers may value services which rely on the sharing of their data. In addition, consumer preferences can sometimes appear to be paradoxically opposed, for example consumers will often say they are concerned with privacy whilst at the same time sharing a great deal of personal information online (although they may also feel they have little option but to do this).

3. Addressing demand side concerns in the zero price economy

16. The CMA’s role is to promote competition in the interests of consumers. Key to effective competition is consumers’ ability to drive competition between suppliers, that is to compare different products and services and choose the one which best suits their needs.

⁶ CMA, 2017, [Just Eat and Hungryhouse](#).

When assessing products and services, consumers should be able to effectively compare different elements of both price and quality.

17. As for competition and consumer agencies, it can be difficult for consumers themselves to assess quality. Information asymmetries mean it is often difficult for consumers to assess the quality of a good or service. Again such challenges on the whole are not new, and are not unique to digital markets or the zero-price economy.⁷ However privacy is an increasingly important dimension of competition for consumers in the zero-price economy.

18. Assessing quality in the zero-price economy may be further complicated where a platform is facilitating the sale of another good or service. Although platforms can play an important role in helping identify and measure the quality of goods and services listed on their sites, for example by enabling customer feedback, the quality of service provided by the platform itself may be less obvious and in some cases harder to assess.

19. In considering consumers' ability to assess the quality of a good or service, it is helpful to distinguish between two scenarios:

1. where the level of quality is inherently unobservable; and
2. where a lack of information and/or firms' practices make assessing quality more difficult.

20. In some situations, it may be near impossible for consumers to assess the degree of quality a good or service affords them and they may not be able to learn it through experience. Such goods are often referred to as 'credence goods.' For example in relation to privacy, it may be impossible to properly assess the quality of the cyber-security and encryption measures taken by a firm which will ensure that private data is adequately protected. Where consumers cannot assess quality, it is more likely that firms will have incentives to degrade quality, underlining the need for interventions to guarantee minimum standards.

21. In others, it may in principle be possible to assess the degree of quality provided, but a lack of information and/or firms' practices may make it difficult. For example, consumers may not have readily available information on the proportion of the market listed on a platform, the accuracy of information listed or on how search results are ordered. This could make it harder for a consumer to assess the level of quality provided by a platform, in terms of the range of choices, accuracy and relevance of results.

22. In relation to privacy, unclear terms and conditions, including privacy policies may obfuscate the degree of privacy provided. If terms and conditions including privacy policies are unclear or 'notice and consent' mechanisms are inadequate, then a consumer may be unable to make a properly informed decision and may provide their data being unaware what they are allowing firms to do with it and the implications of this. This may be particularly relevant in situations where it is difficult for consumers to assess the implications of forgoing their privacy. This could be because it is unrealistic to expect them to understand how the information could or will be used or they cannot envisage how it might be used in the future with subsequent technological change.

⁷ The OFT conducted a literature review in relation to '[competing on quality](#)'. This emphasised the challenges around the objective and robust measurement of quality and found that the literature can provide only limited insights into the relationship between competition and quality.

23. Privacy therefore plays a key role in the competitive assessment. Consumers being able to exercise choice on their preferred level of privacy is key to effective competition. An absence of competition over privacy may indicate data markets failing to deliver what consumers want. This may occur where the implicit price of data used by firms is unclear, and where consumers are unable or unwilling to drive competition and incentivise firms to improve the degree to which consumers' privacy is protected. These issues were explored in the CMA's report on the commercial use of consumer data.⁸

24. The CMA can intervene to help consumers better compare the quality of goods and services.

25. One example of where we have done this is in relation to retail banking.⁹ This is particularly relevant given that in the UK, bank accounts are typically provided on a 'free-if-in-credit' model, meaning assuming a consumer is in credit, a bank account is usually provided to the consumer 'free of charge.'

26. In this market study we found that many consumers consider all banks to deliver similar levels of service, but there was a lack of comparable data to enable them to make well-informed comparisons. To address this we required banks to publish service quality indicators showing the willingness of their customers to make recommendations about their different brands' personal and business current accounts.¹⁰ Further, we required the banks to make the underlying survey data available to third parties using open, standard APIs, so as to facilitate entry and the emergence of new product offerings, for example to help consumers better compare different bank accounts available.

27. Another area where the CMA has acted is in relation to online reviews. Here the CMA took enforcement action¹¹ using its consumer powers following concerns of potentially misleading practices such as fake reviews being posted onto review sites, negative reviews not being published and businesses paying for endorsements in blogs and other online articles without this being made clear to consumers. It is an example of where the CMA has taken action using its consumer powers, to further competition, by ensuring consumers can trust the opinions they read online which help them effectively compare the quality of goods and services. As set out above, product reviews and feedback are often an important measure of quality. A report published by the CMA estimates that more than half of UK adults (54%) use online reviews before making purchases.

28. The CMA is interested in further exploring tools which might help consumers better assess the quality of goods and services, including those in the zero-price economy. In particular, we are interested in exploring interventions which make aspects of quality such as privacy more transparent for consumers.

29. In considering interventions around privacy, it is important to recognise that there are some difficult trade-offs between a consumer's essential right to privacy and competitive markets which, as set out above, often function most effectively the more data there is available, including personal data. For example, when a consumer elects not to

⁸ See CMA: [The Commercial use of consumer data](#), June 2015.

⁹ [Retail Banking Market Investigation Final Report](#).

¹⁰ The core service quality metrics for personal current accounts are: to recommend to friends and family i) the brand, ii) the brand's online and mobile banking services, iii) the brand's branch services and iv) the brand's overdraft services.

¹¹ [CMA takes enforcement action in relation to fake online reviews](#).

have a browser track their behaviour, they are exercising their essential right to privacy. However, this has implications for the browser who no longer has access to this data source to improve their products and services.

30. In considering the possible approaches agencies could take to ensure consumers are able to effectively assess and exert control over their privacy, it is therefore vital to recognise their possible wider implications.

31. Tools which agencies could explore further in this regard are now briefly explored. Most of these tools rest on improving some element of transparency for consumers. This might include for example:

- Measures to ensure firms set out clearly, concisely and in simple and easy to understand language what information they require from consumers and what, if anything, the firm will do with it.¹² Under existing UK consumer protection law, firms need to be transparent about practices where this will enable consumers to take informed transactional decisions about matters which they care about. At a minimum we already expect firms to be transparent with consumers about what data about them is being collected, who it is shared with, and the use to which it is put.
- Providing consumers with tools to easily identify those firms which afford them a higher or lower degree of privacy, for example through the development of standard metrics, a rating system or certified standard for products and services offering a minimum degree of privacy. In regulated sectors, the providers themselves could also require approval from a regulator, indicating to consumers that such providers can be trusted with consumers' data.
- Measures to give consumers the ability to exercise meaningful control over their data and how it is used, for example by improving consent options and/or by improving their ability to 'port' their data between providers, building on the existing requirements contained in GDPR.

32. The CMA is keen to discuss the relative pros and cons of such remedies further, as well as discuss wider approaches which could be considered to enable consumers to better assess dimensions of quality such as privacy.

¹² [The CMA has taken enforcement action against an online dating website provider](#) following concerns about misleading claims and how it used people's personal data.