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Client Alert Commentary

Latham & Watkins Antitrust & Competition Practice

1 February 2021 | Number 2854

UK CMA: Can Algorithms Harm Competition?

The CMA's new programme of work will examine whether algorithmic systems can be used in ways that create anti-competitive effects and consumer detriment.

Key Points:

- The CMA's research will focus largely on exclusionary harm, consumer protection, and "fairness" across all economic sectors.
- For now, the CMA appears to be prioritizing information-gathering, which is likely to be extensive. Enforcement action may follow at a later date, depending on the results of the CMA's research.
- The research project will also support the work of the CMA's newly created Digital Markets Unit (DMU), which is charged with implementing a pro-competitive regime for digital markets.
- The CMA invites comments on how it may improve its understanding of the issue and assess potential harms. The call for information closes on 16 March 2021.

The UK Competition and Markets Authority (CMA) has launched a new programme of work — "Analysing Algorithms" — to explore whether and how algorithms might create anti-competitive effects and consumer detriment. The project will be led by the CMA's Data, Technology and Analytics (DaTA) unit, which applies data engineering, machine learning, and artificial intelligence techniques to assist the CMA with its competition and consumer protection enforcement work. On 19 January 2021, the CMA and the DaTA unit published a research paper detailing the themes that the programme of work intends to explore.

Background

The paper describes ways in which algorithms could lead to anti-competitive effects and consumer harm, and how to potentially address such harms. The paper recalls the CMA's 2018 economic working paper,[1] which examined the potential collusive and discriminatory effects of pricing algorithms. The CMA noted at the time that further research would be beneficial. Andrea Coscelli, Chief Executive of the CMA, restated this view in October 2020, noting that the DaTA unit was "increasingly focused" on "scrutinising how digital businesses use algorithms and how this could negatively impact competition and consumers".[2]

Potential Competition Harms

The CMA's research observes that algorithms are at the "heart" of major international technology companies' business models, and are also increasingly being deployed by small businesses to improve efficiency. The paper acknowledges the wider benefits of algorithmic systems, including individualised recommendations for consumers and streamlined work processes for businesses.

The CMA considers, however, that as algorithmic systems become more sophisticated, they begin to lack "operational transparency", making it challenging to identify when they cause harm. The CMA suggests that consumer harm is likely to be more acute if the systems relate to decisions involving employment, credit, and housing. Further, the paper notes that harm is likely to be greater if a "single algorithm or model is applied on a large scale" by market participants or a firm with significant market power.

The paper describes the use of algorithmic systems for choice architecture, such as the positioning of purchase icons on websites and default payment methods. While reduced search and transaction costs can benefit consumers, the paper raises the concern that firms may exploit these features contrary to consumer interests. The paper provides examples of possible adverse effects, including exploiting consumers' limited attention, inertia, and susceptibility to default options. The paper points out that the way in which personalised pricing operates may lead to consumer harm; for example, if there is insufficient competition or complex pricing and lack of transparency for consumers. The paper also states that potential consumer and exclusionary abuses may be caused by self-preferencing, in which a dominant firm favours its own products and services at the expense of competitors.

The paper discusses more briefly the potential for algorithmic price collusion — a topic that has generated significant academic and economic literature in the last several years. The CMA's paper lists three principal competition concerns:

- Competitors could use public pricing data and automated pricing systems to engage in price collusion on a particular market.
- Firms using the same software for their algorithmic system to set prices could facilitate the exchange of competitively sensitive information.
- Rapid adaptation to competitors' behaviour could lead to tacit collusion, without explicit information sharing or coordination.

While algorithmic collusion is within the scope of the CMA's research, the CMA will likely devote greater resources to assessing the above issues relating to exclusionary conduct and "fairness" of outcomes, which have not been explored at length.

Intelligence Gathering and Enforcement

At this early research stage, the CMA has not signalled an intention to engage in related enforcement activity. The paper instead indicates that the CMA will focus on deploying its extensive intelligence-gathering powers to improve its understanding of the issues — a process that is likely to be extensive. The DaTA unit may seek direct access to companies' data and algorithms. If such access is unavailable, the paper suggests that the DaTA unit will instead examine a system's inputs and outputs.

Organisations within scope of the CMA's project may, therefore, expect detailed information requests. The paper suggests that prior to inspecting data and code, the CMA will seek relevant documentation (e.g., design materials and Key Performance Indicators) and general explanations from a firm in order to understand the context for the development and deployment of an algorithm. The CMA offers a caution to firms, stressing that it is "incumbent" for firms to "keep records explaining their algorithmic systems, including ensuring that more complex algorithms are explainable". The CMA notes that, if appropriate, firms should have "design documents that record system goals, assumptions about sociotechnical context, and other important considerations before development even commences" — placing a potentially high burden on firms. The CMA's paper considers whether companies should bear responsibility for anti-competitive market outcomes of algorithms, even if unintended.

Next Steps

The CMA's consultation page provides a call for information alongside its research paper. The call for information invites views on methods that the CMA may use to investigate algorithms and assess potential harms. The call for information closes on 16 March 2021.

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Endnotes

1 CMA economic working paper: "Pricing algorithms: Economic working paper on the use of algorithms to facilitate collusion and personalised pricing" 8 October 2018.

2 CMA Speech: Digital Markets: using our existing tools and emerging thoughts on a new regime.