

Written evidence submitted by Ofcom (ADM0028)

Ofcom is the regulator for the UK communications industries, with responsibilities across television, radio, on demand, postal, telecommunications and wireless communications services. Ofcom was established as a body corporate by the Office of Communications Act 2002 and operates under a number of Acts of Parliament and other legislation. These include the Communications Act 2003 in particular, and the Wireless Telegraphy Act 2006, the Broadcasting Acts 1990 and 1996, the Digital Economy Acts 2010/2017 and the Postal Services Act 2011.

Ofcom must act within the powers and duties set for it by Parliament in legislation. Ofcom does not have regulatory responsibilities in relation to online service providers like search engines and social networks who use algorithms, for example in relation to the targeting of online advertising, or to target pricing of online retailers.

Ofcom does not currently have a direct regulatory role in overseeing the use of algorithms in decision-making within our sectors, however we can look at the use of algorithms when this is relevant to our regulatory duties more generally and/or compliance with the regulatory conditions that we set.

We recognise that use of algorithms (for example, AI and machine learning) are becoming increasingly common in the way firms analyse data they have about their customers. In a speech earlier last year, our CEO noted the challenges that algorithms present for regulators - "Technology holds the power to change the competitive landscape in ways that are hard to predict. Consider the algorithms that have come to dispense daily news to millions. Regulate too slowly, and the market may face changes that are hard to unwind. Regulate with haste, and we risk stifling innovation and the incentive to invest."

We closely monitor market developments to spot new sources of consumer detriment and are conducting work on empowering consumers. For example, late last year we put out a call for inputs on helping consumers to engage in communications markets. We sought to understand why some consumers were not shopping around for better deals and what we or industry could do to address this.

To the extent that consumer engagement with the market is affected by use of data analysis and algorithms, we are interested in finding out more. There is the potential in theory for both benefits to consumers, for example through more targeted or bespoke services, as well as issues that might arise from targeted price discrimination for people in more vulnerable circumstances.

To date, and given our limited role, there is nothing to suggest that our existing powers are not sufficient to deal with consumer detriment resulting from the use of algorithms in decision-making within the sectors we regulate. Companies have wide-ranging obligations under our General Conditions, and general consumer law. We have the powers to investigate breaches of the General Conditions and to take enforcement action as appropriate. Our existing information gathering, investigation and enforcement powers enable us to require operators to provide us all such information as we consider necessary for the purposes of carrying out our functions, which might include underlying algorithms, depending on the circumstances.

In relation to the EU General Data Protection Regulation and the Data Protection Bill we are not aware of any impacts that this would have on the sectors we regulate that are particular to the use of algorithms. Companies have obligations to comply with the GDPR in all of their handling of data, whether that is by employees or automated processes like algorithms.

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