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UK CMA Launches Initial Review Which Could Help Shape Nation's AI Sector Landscape

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On 4 May 2023, the United Kingdom's Competition and Markets Authority (CMA) announced the launch of an initial review of the market for artificial intelligence foundation models. Through this initial review, the CMA aims to establish an early understanding of the competition and consumer protection principles that could best guide the development of the market for AI foundation models in the UK.

The launch of the review follows the CMA's instructions from the UK government to consider how the innovative development and deployment of AI can be supported against five overarching principles:

1. Safety, security and robustness.

2. Appropriate transparency and 'explainability'.

3. Fairness.

4. Accountability and governance.

5. Contestability and redress.

Depending on the CMA's findings, the initial review may be a precursor to a more in-depth 'market investigation' into the UK market for foundation models. Any findings also may be used by the CMA to feed into its recommendations to the UK government concerning future legislative and regulatory changes affecting this sector.

What are foundation models?

Broadly speaking, foundation models are a class of AI system which are trained on massive unlabelled datasets and require significant compute resources to enable such training. These models can be fine-tuned or trained within specific contexts to serve as the basis or 'foundation' of various potential deployed AI applications. Prominent examples include:

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- Open AI's ChatGPT-4 and other large language models, which can be used to generate natural language responses to user prompts and engage in dialogues with users in a coherent and conversational manner.

- Stability AI's Stable Diffusion and other text-to-image models, which can be used to generate hyper-realistic images based on users' text prompts.

Scope of CMA's initial review

The three core areas of focus for the CMA's initial review are:

1. Competition and barriers to entry in the development of foundation models – e.g., in respect of accessing the requisite data and compute resources necessary to train these models, access to talent and funding, and the ways in which these foundation models could disrupt or reinforce the position of the largest firms.

2. The impact foundation models may have on competition in other markets – e.g., the implications of certain foundation models and associated capabilities, which may be controlled by a limited number of large organisations, becoming necessary for companies to compete effectively in other markets.

3. Consumer protection – e.g., in respect of risks arising from the use of foundation models in products and services made available to consumers, including in relation to false and/or misleading information generated as outputs from technologies supported by such models.

The relatively narrow scope of this review is consistent with the CMA's mandate as the UK's competition and consumer protection regulator. However, the CMA's announcement emphasises that the review is intended to operate in line with the UK government's March 2023 white paper on AI, which sets out the government's policy plans for the development of a pro-innovation approach to AI regulation in the UK.

CMA's next steps – and how you can be involved

In addition to collating and evaluating existing research in the area, the CMA will rely on various sources of evidence to perform its analysis in the focus areas noted above, including:

- **Voluntary submissions:** The CMA has invited interested parties to make submissions on the review.

- **Stakeholder information requests:** The CMA plans to issue information requests to key stakeholders, including developers, researchers and suppliers of inputs such as compute and data, as well as customers and investors.

- **Meetings:** The CMA also plans to hold bilateral meetings with key interested parties.

The evidence and analysis will inform a written report which will set out the CMA's findings. The report may include recommendations to the UK government on implementing the legislative and regulatory aims set out in its recent white paper, as well as guidance to suppliers, developers, businesses and end users.

Potential impacts and outcomes

Any outcomes from this initial review could help shape the UK's burgeoning AI sector and determine the UK's and UK businesses' role in the global AI landscape. It also could have a material impact on any UK and international businesses looking to do business in the AI sector or leveraging AI-enabled technologies or solutions in the UK.

If the CMA identifies any competition or consumer protection issues in respect of the UK's market for foundation models or related industries, it may investigate these further (e.g., through a lengthier market investigation).

If the CMA receives evidence that entities active in the sector have breached competition and/or consumer

requirements, it also could launch enforcement action into suspected breaches.

The UK's focus on AI – as evidenced by the launch of the initial review, the government's white paper and recent guidance from other regulators, such as the UK Information Commissioner's Office – is consistent with large-scale regulatory scrutiny and activity in this sector across the globe. Despite the UK wishing to set itself apart as a pro-innovation AI hub, the CMA's recommendations and UK government's policy in this area may well end up being shaped (to a greater or lesser degree) by the policy and regulatory approaches adopted by authorities in other key markets (notably, the United States and European Union).

Timings

There are several key milestones to keep in mind.

- **Submitting responses:** If you would like to respond to the CMA's invitation to comment and submit responses on the review, the window to do so closes on 2 June 2023.

- **CMA report:** The CMA plans to publish its findings in early September 2023.

How can we help?

If you receive an information or meeting request from the CMA, or want to submit a response to the review, please contact one of the Cooley lawyers listed below for assistance.