

Linklaters

Regulating the Digital Economy Series  
Digital Advertising Highlights





# Introduction

Across the globe digital advertising spend continues to grow and the AdTech industry is under continued scrutiny from competition and privacy regulators in the EU, the U.S., and the UK. There have been calls for fundamental change to the way the industry operates, and new legislation is coming. Businesses need to stay on top of the shifting regulatory environment and adapt their strategies.

This publication highlights:

- > Key issues in AdTech and the primary policy objectives,
- > Market developments – six key AdTech trends, and
- > Practical takeaways – what your business can do to stay ahead of the curve.



Learn more by watching our [Regulating the Digital Economy – Digital Advertising webinar](#)

## What do we mean when we say “AdTech”?



**Personalised ads:** Advertisers can micro-target users with adverts based on intricate profiles of their behaviours and preferences – often based on information gathered via cookies on the user’s device.



**Processing of personal data:** When a profile is linked to an individual user’s phone, even a single device ID can constitute personal data. Significant amounts of personal data about users and their online footprint can be used by multiple companies to deliver these ads – including inferences of more sensitive information (like health data). Many people may not be aware of this data use, or the scale and complexity of some of this processing.



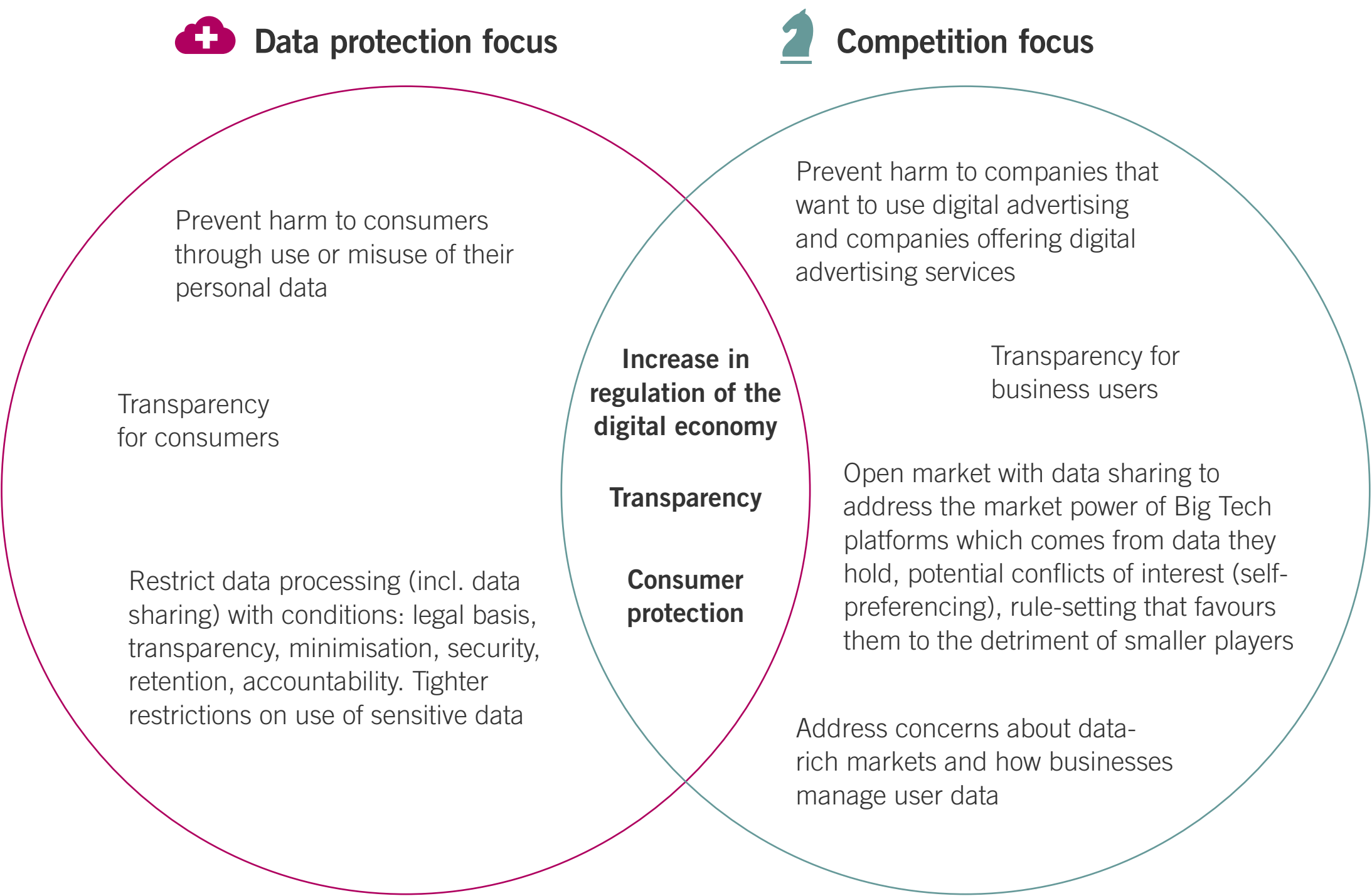
**Complex ecosystem:** The ecosystem has a significant number of participants, spanning the larger digital platforms and publishers who have a direct interface with users, small and large AdTech companies that orchestrate the background processing, and the companies seeking to advertise.



**Data protection law:** The key objective is protecting people’s right to privacy. This includes restrictions on how and why organisations can use personal information, safeguards for sharing it with others, and obligations to keep people informed about how their data is being used.



**Competition law:** The key objective is to protect competition. The concern is the market power of large technology companies in the AdTech ecosystem and whether their conduct could exclude competitors or exploit customers.



# Digital advertising highlights

## Market developments – six key trends

### 1. Legislative change

There is an increasing shift towards regulation of advertising technology. The EU continues to set a benchmark for global regulation with the proposed Digital Services Act, e-Privacy Regulation and Data Governance Act. Its proposed Digital Markets Act seeks to regulate “gatekeeper” platforms and activities.

Equivalent regimes are emerging in Germany and the UK. The U.S. has its own antitrust legislative initiatives at a formative stage, and on the privacy side, the CCPA is already in force, and the CPRA (with more GDPR-like principles), will come into effect in January 2023.

### 2. Evolving industry

Industry initiatives are also driving change – such as Apple’s decision not to track without user consent, and Google’s intention to stop third party cookies in its browser.

### 3. High number of investigations

Antitrust and privacy regulators in the EU, the UK and the U.S. have identified digital advertising as a key regulatory focus and have launched a significant number of investigations in this space. The regulators’ approach is not surprising given digital advertising is the money machine of the digital economy – regulators prioritise industries where their intervention can make the biggest difference.

### 4. Tension between competition and privacy

Regulatory priorities are driving an increased interaction between competition and data privacy rules, focusing attention on their conflicting requirements. For competition policy, free flow of data is to be encouraged because it lowers barriers to entry, but at times, this is contrary to the principle of data minimisation under privacy law. Competition regulators need to take account of privacy considerations when designing antitrust remedies, and vice versa.

### 5. Regulatory cooperation

This area is hugely complex, requiring cross-sector and cross-practice knowledge. It has triggered new institutions like the UK’s Digital Markets Unit and the proposed U.S. combined Digital Task Force. We are also seeing closer collaboration between existing regulators such as through the UK’s Digital Regulation Cooperation Forum (ICO, CMA, Ofcom and FCA).

### 6. Global solutions needed

Digital advertising is a global industry which requires global solutions. In the past, the European Commission was effectively the global regulator. However, three rivals have emerged: the U.S. is now playing a more active role; Brexit has given the UK’s CMA an independent role which it is keen to use; and China is playing an increasingly active role in antitrust and in tech. The degree to which their efforts align is likely to dictate whether we see a relatively consistent regulatory framework emerge – inconsistent decisions will present significant challenges for multinational companies.

## Addressing AdTech regulations – practical takeaways

### Market assessment

Understand the role of your business in the AdTech ecosystem and watch as the industry develops. Identify the opportunities and risks from those developments.

### Compliance

Consider adopting a harmonised approach across your business. Address the privacy fundamentals – including having a clear notice and user journey on your website/app, re-examining your third-party contracts, and reviewing your data minimisation and retention policies. Be mindful of profiling activities that include sensitive data.

### Regulatory strategy

Develop your regulatory strategy as the market evolves, mapping your points of exposure to global regulation and enforcement. Consider a pro-active engagement strategy and pre-empt disruption to future-proof your business model.





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