

# The Information Commissioner's response to Ofcom's cloud services market study call for inputs

## About the ICO

1. The Information Commissioner's Office (ICO) has responsibility for promoting and enforcing data protection and information rights. This includes responsibilities under the UK General Data Protection Regulation (UK GDPR), the Data Protection Act 2018 (DPA 2018), the Freedom of Information Act 2000 (FOIA), the Network and Information Systems Regulations 2018 (NIS), the Environmental Information Regulations 2004 (EIR) and the Privacy and Electronic Communications Regulations 2003 (PECR).
2. The ICO is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The ICO provides guidance and support to individuals and organisations, aimed at helping organisations to comply, and it takes appropriate action when needed.

## Introduction

3. The ICO aims to support the digital economy by empowering responsible innovation and sustainable economic growth. This includes supporting the lawful use and transparent sharing of information to drive innovation and economic activity.
4. We cooperate and collaborate with our regulatory counterparts and other stakeholders, to provide regulatory coherence and maximise certainty for businesses and for individuals.
5. To this end, we support the overall objective of Ofcom's market study, which is to explore whether competition concerns exist in the cloud services market and whether that market is working well for consumers. A well-functioning, competitive market that allows for consumer choice and makes it easy to move between services can also be positive for privacy and security.
6. Conversely, a poorly functioning market that does not create incentives for firms to improve their services, or that makes it hard for consumers to move between services, is unlikely to encourage good privacy and security practice.

7. The ICO therefore welcomes the opportunity to respond to the call for input on Ofcom's cloud services market study.

## The role of cloud services in the digital economy

8. Cloud services are intrinsically data-based services. As Ofcom notes, they have been widely adopted by businesses across the UK economy and are now a key part of our national infrastructure, underpinning many of the services that consumers have come to rely on in everyday life, including those in the telecoms and broadcasting sectors. These services rely on data, and the infrastructure that allows it to flow and be accessed across the digital economy.
9. As noted by the call for input, a small number of very large firms are the main providers of cloud infrastructure in the UK (the "hyperscalers"). These large firms are hugely influential players in the wider digital economy, often also functioning as operators of key digital platforms, like app stores, browsers and online marketplaces. As such, they are often able to set the terms by which smaller firms engage with their customers, handle personal data and uphold cybersecurity.
10. The unique challenges posed by the regulation of these large firms means effective engagement and cooperation between digital regulators (such as the ICO and Ofcom), and between regulators and the industry, is vital. This is reflected in the Digital Regulation Cooperation Forum (DRCF) 2022 – 2023 workplan, which names cloud services as one of the topics requiring knowledge sharing between digital regulators<sup>1</sup>.
11. The ICO is committed to working with our counterpart regulators and with industry to ensure citizens are able to enjoy the benefits of a vibrant, competitive, secure and privacy-oriented digital economy.

## The role of the ICO in regulating cloud services

### **Data Protection Law**

12. The ICO oversees and enforces data protection law in the UK, in particular the UK GDPR and the DPA 2018. We are committed to

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<sup>1</sup> [Digital Regulation Cooperation Forum: Plan of work for 2022 to 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/108444/drcf-plan-of-work-2022-to-2023.pdf)

working with our regulatory counterparts to help achieve the aims of both competition and data protection law<sup>2</sup>.

13. The nature of cloud technologies means that their use by organisations (including those defined as data controllers under data protection law) and individuals introduces particular data protection and privacy considerations. These include the security of personal data processed in the cloud, and the fact that it may not always be obvious

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where data is being processed (including in other jurisdictions). Data protection principles concerning “integrity and security” and “transparency” are particularly relevant to cloud services, and individuals’ ability to exercise their data protection rights should be at the forefront of service design considerations.

14. The fact that cloud services are often provided by third party organisations means that it is also important for all companies in the cloud computing chain to understand their respective roles and responsibilities with regards to any personal data that is being processed. The scale of firms that provide such services means that aspects of those roles can be inverted when compared to the normal business-service provider relationship, as the power can seemingly rest with the service provider.
15. Large companies can use their size, resources and expertise as selling points to help smaller organisations meet their legal obligations, including those under data protection law. However, this makes it all the more important that such firms ensure that their own services are compliant because others often rely on them. Effective competition in cloud services markets, with high standards of data protection practice acting as a selling point, can therefore support data protection compliance across a broader range of organisations.
16. We have produced specific guidance for organisations on the use of cloud computing services for processing personal data<sup>3</sup>.

## **The Network and Information Systems Regulations 2018**

17. The ICO is the competent authority for “relevant digital service providers” (RDSPs)<sup>4</sup> under NIS. Cloud service providers are considered to be RDSPs for the purposes of NIS.

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<sup>2</sup> [Competition and data protection in digital markets joint statement \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/674442/competition-and-data-protection-in-digital-markets-joint-statement.pdf)

<sup>3</sup> [Guidance on the use of cloud computing \(ico.org.uk\)](https://ico.org.uk/for-organisations/cloud-computing-guidance/)

<sup>4</sup> NIS also applies to “operators of essential services” (OES). Ofcom is the competent authority for Digital Infrastructure.

18. NIS is intended to establish a common level of security for network and information systems. These systems play a vital role in the digital economy and wider society, and NIS aims to address the threats posed to them from a range of areas, most notably cyber-attacks. NIS primarily concerns cybersecurity measures, as well as covering physical and environmental factors. NIS requires these systems to have sufficient security to prevent any action that compromises either the data they store, or any related services they provide.

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19. As the competent authority for RDSPs (including cloud services), the ICO has powers to ensure that cloud services comply with NIS requirements. These include information notices, enforcement notices and monetary penalties (up to a maximum of £17 million in the most serious cases). The call for input notes that weakened competition could result in cloud customers experiencing lower security. We recognise that a competitive cloud services market and effective network security regulation can be self-reinforcing.

20. Our guide to NIS provides more information on the obligations that RDSPs are subject to and the ICO's role in regulating them<sup>5</sup>.

### Next steps

21. We are keen to engage further with Ofcom in relation to the market study. We look forward to exploring where the synergies are between our two regulatory regimes and where we can work together to mutually reinforce our respective regulatory objectives relating to cloud services.

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<sup>5</sup> [The Guide to NIS | ICO](#)