Digital Markets Competition Regime Guidance - Consultation Ecosia Response

Ecosia is a search engine dedicated to planting and protecting trees. We allocate 100% of our surplus revenue to environmental causes, creating simple ways for people to engage in climate action daily. Collaborating with local communities, we have planted over 200 million trees worldwide. Based in Berlin, Ecosia employs approximately 100 people across various teams including product, engineering, marketing, operations, and tree planting. As a steward-owned company, Ecosia ensures that no one can sell the company or extract profits, locking our mission into our business model. In 2014, Ecosia became Germany's first B-Corp.

The CMA's proposed approach commendably aims to promote fair competition and protect consumers in the digital market. Ecosia welcomes the CMA's approach and the opportunity to respond to the CMA's Regime Guidance which is set out below:

1. Feedback on Strategic Market Status (SMS) assessment:

- a. As an alternative search engine that has consistently called for better and more comprehensive regulations of critical digital activities such as search, search syndication, sub-syndication and online advertising, we believe the first critical step which will define whether the DMCC is to be a success, is the effective designation of SMS firms with substantial and entrenched market power, along with their services and digital activities. This is essential for ensuring fair competition and curbing monopolistic practices in the digital marketplace.
- b. As large tech companies control vital digital ecosystems and can influence market dynamics rapidly, significantly disrupting the ability of business users to compete, access users or critical infrastructure that allows them to participate in key digital markets, full and effective must designation ensure that these entities adhere to regulations that prevent abuse of their dominant position if a truly open and competitive market landscape is to emerge.
- c. We therefore welcome the CMA's broad and flexible approach in applying both quantitative and qualitative evidence in its initial SMS assessment.
- d. In our view, SMS firms often fail to provide necessary data, analytics, and reporting to give regulators and the wider industry a clear and accurate picture of market dynamics. The CMA should ensure effective reporting and data collection from potential SMS firms and ensure that this information is provided in a timely manner and transparently in order to effectively monitor and respond to competitive constraints faced by market entrants and participants.
- e. The proposed approach to defining thresholds for SMS firms should include a clear range of metrics relevant to the online search and browser market, such as the number of users, usage time, data gathered, and revenue generated. Defining these ranges with smaller competitors can help to present a clearer picture of the competitive landscape.
- f. In our view, the criteria for identifying digital activities should be detailed and include examples for grouping activities to consider industry-specific nuances and impacts on competition - again, stakeholder consultation during the grouping process is essential, especially in areas such as advertising, search, and syndication.
- g. We understand that the CMA aims to deliver up to four designations of digital activities in its first year. We urge the CMA to prioritize including online search into the scope of its new digital markets regime, starting with search engines funded by digital advertising and encompassing all activities related to web crawling, indexing, algorithms, serving results, and selling and serving ads alongside organic results.

- h. This designation should extend to search syndication, which involves providing search results and ads to third-party websites.
- Including search syndication is essential because it amplifies the SMS firms' reach and influence, impacting competition across a broader range of digital services. Ads in this context should also be regulated, alongside fees to prevent circumvention and ensure that the full opportunities of the DMCC are available for smaller competitors.
- j. Addressing these areas is crucial as they represent significant control points in the digital market, affecting consumer access to information and the competitive landscape and is essential to ensure fair competition and curb the dominance of major tech players.
- k. We have seen that when this process is not effective, where substantial and entrenched market power across one or multiple digital activities are not captured by the legislation, it leads to unchecked abuse of dominance, which can have disastrous effects on the ability of smaller competitors to access new users, service existing users, negotiate fairly on fees and contract terms and ultimately harm consumers through reduced choices and higher prices.
- To prevent SMS firms from leveraging their existing market power and extending their dominance into new markets, the CMA should closely monitor acquisitions and new product launches, enhance scrutiny of vertical integrations, and impose stricter merger controls.
- m. For this reason and due to rapid market developments, we recommend regular reviews of designated SMS firms who meet the substantive SMS conditions to ensure the DMCC can impose designations on both new and emerging firms and services. This will prevent the abuse of newly gained or previously underrepresented market power.
- n. Finally, the significance of a firm's digital activity to other businesses, and particularly business users, should include qualitative impacts on business operations. <u>Changes in terms of service, fees or other contractural adjustments by SMS firms on business users can harm and disrupt smaller firms' operations significantly</u>. Therefore, clear rules ensuring transparency and fairness and establishing independent oversight mechanisms can address the concerns of smaller firms.
- o. For the above mentioned reasons, in our view ensuring a truly participative process from industry stakeholders, as the CMA has sought to do, is fundamental to the success of the DMCC.
- p. As mentioned above, engaging with industry stakeholders is essential for gathering valuable qualitative insights and data points into market dynamics and identifying whether an SMS firm has substantial and entrenched market power and strategic significance as well as the definition of digital activities, the design and implementation of pro-competition interventions (PCIs) and enforcement.
- q. In our experience, failing to effectively consult market participants can lead to a skewed understanding of the role of input markets and digital activities such as syndication, advertising and fee structures, key areas which the CMA should seek to capture in its efforts to not only prevent anti competitive practice in the digital market but reverse years of entrenched market power.

2. Feedback on Conduct Requirements (CRs):

- a. The proposed framework for imposing Conduct Requirements on SMS firms in the digital sector is a significant step towards ensuring fair competition and protecting consumers.
- b. By incorporating clear definitions, promoting interoperability, enhancing transparency, and maintaining a flexible combined qualitative and quantitative regulatory approach, the CMA can create a robust and effective system that fosters a competitive and fair digital marketplace.
- c. However, what is most important here is the effective implementation of Conduct Requirements (CRs). As we have learned from exercises brought about by regimes in other jurisdictions, in order for CRs to work, they must not only be designed to address each SMS firm's practices but be

effectively implemented and firms should be required to engage and foster pro competition behavior in the digital market.

- d. In our view, the framework should include
 - i. clear definitions and implementation of fair, reasonable and non-discriminatory (FRAND) terms - defining revenue shares cost to serve and other miscellaneous fees in a way that prevents circumvention of the rest.
 - ii. deliver fair choice that facilitates smaller competitors to be able to prompt users to switch between services with a one click switch.
 - iii. rules which ensure users do not lose data or functionality, effectively punishing users for having switched to an alternative search engine or browser;
 - iv. additionally gatekeepers should be prevented from prompting users across their core platform services to switch back when a user has chosen an alternative;
 - v. improved interoperability standards and end practices like dark patterns and lock-in effects.
 - vi. choice screens that appear on regular intervals or with every major update;
 - vii. SMS firms that provide clear, regular and easily accessible information about their services. Transparency in algorithms affecting user experience and content delivery is essential to help users understand how their data is used. For example daily information and feedback on selection rates, progress of the roll out of choice screens across devices, the timings of choice screens, be made public including those of the SMS firms.
 - viii. establish regular audits and mandatory reporting by SMS firms.
 - ix. a robust and accessible complaint mechanism can help identify and address potential issues promptly.
 - x. We also encourage the CMA to consider ways to educate consumers about their new options, right to fair choice and engaging with consumer groups to do so as a key exercise in this regard.
- e. Ultimately, the DMCC will be judged on its ability to regulate the activities and services of SMS firms and mitigate harm on competitors and consumers. This is crucial for improving the competitive landscape for smaller search engines like Ecosia.
- f. We encourage the CMA to adopt lessons learned from recent regulatory developments and exercises in other jurisdictions such as the EU's recent Digital Markets Act (DMA). where over 120 days after it came into effect, nearly all of its key provisions in the online search market are yet to be implemented by the gatekeepers.
- g. In this case the EC was correct in identifying a number of digital activities related to search but despite initially identifying the importance of syndication the most important point of entry into the search market without which there is no competition build up in the search market it failed to designate it alongside costs, fees, terms and conditions and revenue share deals.
- h. The EC did identify the value of default settings but the CMA should be aware that one choice screen roll out will not solve years of gatekeeper dominance.
- Well-designed and fair choice screens are essential for ensuring users are able to access alternative browsers and their functions. For this reason it is paramount that the <u>CMA ensures the swift</u> re-introduction of an improved choice screen regime within the <u>UK</u> at the earliest possible opportunity - which <u>Ecosia</u>, together with <u>DuckDuckGo</u> and <u>Which have called for in recent</u> weeks.
- j. For this reason the choice screen must be updated regularly. Only existing gatekeeper users must see the choice screen - respecting the choices of consumers who have already picked an alternative choice screen

k. We urge the CMA to develop a robust and firm approach which focuses on implementation and holding SMS firms to account by continuously engaging with stakeholders and measuring the impact of remedies in order to refine and improve

3. Feedback on SMS Investigation Procedure

- a. Given how much the outcomes of SMS investigations significantly affect alternative and smaller market participants, the CMA should take care to ensure clear communication, simplified processes for smaller firms, and provide adequate support during investigations will help create a more balanced perspective of the true nature of SMS market power.
- This could include, for example, mechanisms for smaller firms to propose investigations, ensuring broader perspectives and early identification of anti-competitive behaviors for launching an SMS Investigation.
- c. Such a process could take place separate to public consultations, whereby the CMA could establish an anonymous submission process to protect small businesses from potential repercussions when providing candid feedback about larger competitors as part of its information gathering and stakeholder engagement exercises.
- d. We would also urge the CMA to ensure equity not only in terms of participation but in disclosure of confidential information throughout the enforcement process.
- e. Many researchers and regulators have talked about the inevitability and importance of structural measures. We don't have anything original to add here however as citizens one could point to other sectors where this has had positive impacts competitiveness in critical infrastructure.