



11 July 2024

Kelkoo Group's response to the CMA's consultation on digital markets competition regime guidance

1.0 Kelkoo Group and its relevant experience

Kelkoo Group is a comparison shopping service (CSS) and advertising network operating in 41 markets, including the UK. Headquartered in the UK with around 50 staff, and 190 globally, Kelkoo Group consists of three brands (Kelkoo, LeGuide and Ciao) which, at their peak, were valued at around £1bn. As a hugely successful company and a market leader in shopping comparison, we helped consumers to make great shopping choices and helped online retailers to reach those consumers – until Google began its systematic market abuse which decimated our business and we had to close offices and make redundancies.

Our view on the guidance is rooted in our experience of Google's approach to competition regulation in Europe over 14 years. Its *smoke and mirrors* strategy to mislead regulators about the true market picture, providing masses of information without appropriate context, has succeeded in slowing down antitrust and regulatory action and progress to restoring fair and contestable digital markets. Google continues to seek to create false conflicts between other stakeholders to divert attention away from its own anti-competitive behaviour, and the only way to avoid this issue is through appropriate processes which bring all views to the table and allow the CMA to sort through the misdirection and get to the true picture.

2.0 Our overarching view on the guidance

We applaud the CMA on its robust and forward looking guidance on digital markets competition and believe the proposed guidance will ensure that the Digital Markets Unit is well-equipped to create a pro-competition and pro-innovation regime – in turn growing the UK economy. The focus on proportionality, the structured nature of the guidance with flexibility built in and practical timescales allows ample opportunities for swift intervention in fast moving markets.

Perhaps, more importantly, we are encouraged by the CMA's proposed commitment to continuous consultation which is woven throughout the guidance, and we are also supportive of the multi-party dialogue approach. We view the consistent approach to consultation and engagement throughout the process as a gamechanger. It will enable relevant stakeholders including affected third parties and consumer groups vital opportunities to feed in and offer a broader range of evidence-based perspectives to enable the CMA to a) see through the smoke and mirrors it will inevitably come across from SMS firms and b) consider the broader market impact.

Whilst a balance must be struck between public and private meetings, based on objectives and desired outcomes, we believe that the CMA is well placed to ensure that this balance is achieved - and that stakeholders on all sides are pushed towards efficient and effective engagement towards the goal of improving the competitive landscape in digital markets.

Finally, we wholeheartedly support efficient processes which seek to avoid delay and make real progress towards improving competition. We see this, in particular, in the ability to run processes concurrently and to get multiple stakeholders together for informal discussions to short circuit

misunderstandings and disagreements. These sorts of improvements from past practice will make a real difference.

3.0 Specific comments:

3.1 Strategic Market Status designation process

As a business that has been impacted by Google's business model (alongside consumers who have been denied access to and choice of CSSs), we support the proposed approach to SMS designation. We agree with the characterisation in 2.10 which is sufficiently broad to capture those firms with substantial and entrenched market power. We consider it important that no formal market definition exercise is necessary – the inflexibility of that approach and its significant resource requirements have been a key blocker for regulators seeking to improve digital markets and one of the main reasons why the DMCC Bill was necessary.

Furthermore, a forward looking 5 year view is a sensible timeframe over which to look. Regulatory certainty is important and will be a key driver for investment in competitors and Big Tech alike. Equally, if an SMS position is expected to be fleeting, a designation may be unnecessary. However, in respect of those firms likely to be designated initially, we have seen decades of entrenched power and therefore a 5 year period is a sensible middle ground.

To conclude, the SMS designation process is not only robust but includes well defined criteria, thorough market analysis and suitable stakeholder consultation as highlighted in 2.0 of our response.

3.2 Conduct requirements

We are encouraged that the three statutory objectives (open choices, fair dealing and trust and transparency) are clearly enshrined in the guidance (as well as primary legislation) and as noted in a previous response, they ensure clarity of scope and predictability at the beginning of a new regime.

Again, we applaud the CMA's commitment to obtaining evidence through various avenues including evidenced submissions and consulting with stakeholders and maintain that multi-party dialogue is essential to creating the right framework for effective enforcement. We are particularly supportive of the option to include interpretative notes to accompany a CR. By doing so, room for ambiguity and loose interpretation can be avoided and clarity and certainty can be ensured.

Similarly, we agree with the option to ask the SMS firm to provide a written plan of how it intends to comply with the CR. From our experience, Google has consistently sought to find ways to circumvent any requirements which are not highly specific, and in doing so avoided solving the problem and prolonged the harms to competition. Stringent oversight of compliance plans will therefore be necessary, leveraging the vast expertise of the DMU, especially that of data scientists.

This also ties into 3.67: *'The CMA may amend compliance reporting requirements.....including where the nature and extent of information provided by an SMS firm in previous compliance reports...had not been adequate to allow the CMA to effectively monitor compliance with the CR.'* Once again, we welcome the opportunity to engage informally especially around providing regulatory certainty.

Compliance is everything and the bedrock of effective enforcement. As such we believe that compliance reports relating to specific CRs are essential and we would welcome the CMA consulting on the substance of the compliance reporting as proposed in 3.64 and that the CMA will publish the compliance reporting notice along with the CR notice and the interpretative notes on its website as per 3.66. We welcome this transparency that we believe is much needed.

Another encouraging aspect of the guidance is the desire to move quickly when required and not be hampered by process. Therefore, we welcome conducting consultations on a proposed CR in parallel with a consultation in relation to the proposed SMS designation as noted in 3.45. There will be obvious cases where this will be the correct approach to adopt (because the SMS designation is likely to be little in doubt), thereby ensuring swift intervention which is essential in fast moving markets in which investment and innovation are sorely lacking.

Overall, the conduct requirements are robust in several ways including their clarity, proactive nature, stakeholder engagement, adaptability, and enforcement mechanisms. However, the CMA must ensure continuous evaluation and adaptation of the CRs to maintain their effectiveness.

3.3 Pro-competition interventions

We welcome the robust approach and process of making and designing PCIs. We have one observation to make and that is for the CMA to provide clarity around CRs vs PCIs, to avoid ambiguity. What is the criteria for choosing one over the other, or can they work in tandem? We would welcome clarification so that all stakeholders know what to expect.

3.4 Investigatory powers

We welcome the requirement to name a senior manager within a firm to ensure compliance with the information notice. Moreover, we believe the tough stance of being able to impose penalties on not only the firm but also the named individual/senior manager could act as both a solid deterrent and a clear indicator when firms are trying to circumvent or avoid their responsibilities.

3.5 Monitoring compliance

Further to our comments in 3.2 under Conduct Requirements regarding compliance, we would like to draw your attention to a recent quote in the Financial Times from EVP Vestager summing up Big Tech's attitude to compliance in Europe when she said she found it *'surprising'* that some of the world's largest companies *"do not take compliance as a badge of honour."*

She said: *"We are dealing with the biggest and most valuable companies on the planet. The DMA is not an excessive task. It is plain vanilla to ask for a fair, open, and contestable marketplace."*

[Brussels follows up Apple charges with Meta 'pay or consent' case \(ft.com\)](#)

We are advocates of participative resolutions as proposed in 6.59 and believe, in theory, that there may be instances where this could be effective. However, the key to success from our experience is rooted in 6.59 (a) "the extent to which the firm has engaged in **good faith** with its users/ or other stakeholders in relation to the concerns." So far, we have not seen such engagement from Google in relation to our industry, and the experience in Europe highlights the scale of the task faced by the CMA in bringing about such good faith engagement.

Of course, resolution without requiring formal enforcement can achieve meaningful change more quickly – however in Europe, Google has done its utmost to appear to be cooperating on a strategic high level whilst, behind the scenes, attempting to subvert the process and avoid changing its behaviour in any meaningful way.

4.0 Contact details

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