

CMA consultation on its guidance document under the Digital Markets, Competition and Consumers Act

Response from Match Group, Inc.

12 July 2024

This is the response of Match Group, Inc. (“**Match Group**”) to the CMA’s consultation on the draft guidance document published on 24 May 2024, which sets out the CMA’s proposed approach to exercising its new powers under the Digital Markets, Competition and Consumers (“**DMCC**”) Act.

Match Group’s portfolio companies provide dating services in over 40 languages to its users across more than 190 countries via mobile applications and websites. Match Group’s portfolio of brands includes Tinder, Match, PlentyOfFish, Meetic, OkCupid, OurTime, Pairs, and Hinge, as well as other brands.

Match Group is a member of the following associations, which it understands have also responded to, or intend to respond to, the CMA’s consultation:

- The Coalition for App Fairness (“**CAF**”), which urges regulators and legislators around the world to ensure a fair marketplace for app developers who rely on the digital gatekeepers to reach their customers. Match Group supports the more detailed by-chapter observations made in CAF’s response to the CMA’s consultation.
- The Online Dating & Discovery Association (“**ODDA**”), which acts as the voice of the online dating and social discovery sector, with a strong focus on increasing trust and safety for the benefit of consumers. Match Group supports the brief observations made in ODDA’s response to the CMA’s consultation.

Match Group supports the CMA’s important work in ensuring markets work well for consumers and, in particular, we are great advocates of the UK’s new digital markets regime. We are pleased that the DMCC Act has now received Royal Assent and, in terms of timing, we support a prompt approval of the CMA’s guidance from the Secretary of State after the summer break.

Match Group sets out below some non-exhaustive comments on the CMA’s draft guidance. We generally support the approach taken by the CMA, which we consider strikes an appropriate balance between providing clarity for stakeholders and flexibility for the CMA. We also support the CMA’s decision not to provide preliminary assessments in the guidance document prior to conducting the required investigations.

Market definition

Match Group supports the CMA’s proposal not to define formal markets when conducting its assessments of substantial and entrenched market power. It would be much more beneficial for the CMA to conduct a more nuanced analysis of closeness of competition and dynamic market developments rather than reach a formal decision on a market definition for the sake of it.

Jurisdiction and turnover

We welcome the CMA's approach that recognises the cross-border nature of digital services. To the greatest extent possible, the DMCC regime should minimise the importance of physical location so that it mirrors the nature of the tech sector.

SMS activities and non-SMS activities

Match Group suggests that the CMA should group together activities into a single designation wherever possible. It would be a shame if a conduct requirement was justifiable in its own terms, but was not possible due to a narrowly-drawn definition of the relevant activity in a prior designation decision. The regime should focus on substantive discussions about desirable interventions rather than legal arguments about the scope of a designation.

Match Group would also welcome some additional wording in the CMA's guidance to mitigate the risk that SMS firms could "move" conduct from SMS activity to non-SMS activity, as well as employ other tactics to obstruct the regime. This has been our experience of the implementation of the EU's Digital Markets Act, and the DMCC's activity-based designation framework makes it a particular risk in the UK.

One potential mechanism to enable this could be for the guidance to make it clear that the leveraging principle (section 20(3)(c)) can act as an anti-avoidance measure. The discussion of enforcement could talk about following the spirit rather than the letter of rules. The CMA can also include anti-avoidance provisions in each set of conduct requirements.

Conduct requirements and pro-competitive interventions

Match Group would welcome further clarification of the difference between conduct requirements ("CRs") and pro-competitive interventions ("PCIs"). We would support the CMA having a preference for CRs over PCIs where they can be effectively imposed as CRs will be quicker to implement.

Match Group would also welcome clarification that PCI remedies and CR remedies are not mutually exclusive. In the current draft, which gives examples of PCI remedies but not CR remedies, there is a risk that the guidance implies that, for example, separation remedies are not intended to be used as CRs. Match Group does not believe that is appropriate as many forms of separation remedies including data separation, operational separation and accounting separation would indeed be appropriate CRs. The CMA should avoid giving the appearance that CR remedies are meant to be somehow softer or less intrusive.

Non-SMS firms

Match Group would like to ensure that non-SMS firms are given every opportunity to contribute to the CMA's analysis at every relevant stage. We would therefore support the inclusion of broad principle of equal rights in terms of consultation, access to decision-makers, and the disclosure of data and other evidence.

In relation to this, we consider that the use of terminology that suggests the non-SMS firms are "*third parties*" is unhelpful. Such terminology is more relevant to merger investigations where there are the merging parties and third parties.

Confidentiality

Match Group suggests that the guidance document should include stronger provisions to protect respondents' identities. As the CMA knows, companies in the tech sector risk commercial retaliation from SMS firms, and confidentiality is therefore often a key concern. Match Group believes the guidance could go further in guaranteeing anonymity except where the CMA is forced to disclose their names by law (which would be rare in any case).

We also suggest there should be stronger provisions included in the guidance concerning the protection of commercially sensitive data.

Statutory timetables

Match Group notes that the statutory deadlines under the DMCC Act are short. As a business without the same scale of resources as SMS firms, we encourage the CMA to engage with non-SMS firms in the period leading up to the clock starting and not just the relevant SMS firm.

International coordination

Match Group believes that international coordination will be an important factor in the success of the DMCC regime. There is a great benefit in key jurisdictions such as the EU, Japan, Korea, Australia, India and Brazil all enacting digital markets laws around the same time.

We would therefore support an increased emphasis on international cooperation in the guidance document, which is barely mentioned in the current draft. Of course, the CMA has a duty to make up its own mind on issues, but we would welcome more explicit statements that the CMA will work with like-minded agencies across the world to deal with the common issues faced across globalised markets.