



Newsbrands Scotland response to the Competition and Markets Authority consultation on the Digital Markets Competition Regime Guidance

Newsbrands Scotland (formerly the Scottish Newspaper Society) is the trade association which represents the news publishing sector in Scotland, from small independent titles such as The Orcadian, the main Scottish dailies like the Herald, Scotsman and Press & Journal, and the Scottish editions of the major UK titles like The Sun, Times and Daily Mail.

We welcome the opportunity to respond to this crucial consultation. The new digital markets competition regime is vital for our members, who increasingly rely on digital distribution channels controlled by a small number of gatekeeper firms to reach their audiences.

It is therefore important that the powers granted to the Competition and Markets Authority under Part 1 of the Digital Markets, Competition and Consumers Act (DMCCA) come into force swiftly and effectively to level the playing field between publishers and large tech platforms.

Newsbrands Scotland is an associate of the News Media Association (NMA) and having seen its detailed response we support its conclusions, a summary of which is set out below.

The Guidance is drafted in a manner entirely appropriate to a forward-looking regime, with flexibility, adaptability, and responsiveness at its heart. This is essential if the CMA is to effectively regulate fast-moving digital markets, and to apply its new powers to the diverse range of business models employed by potential Strategic Market Status (SMS) firms.

We strongly encourage the CMA to maintain this flexible, adaptable, and responsive approach as it finalises the Guidance. Narrowing the scope of the powers given to the CMA by the DMCCA, tying the regulator to unnecessary procedural activities, or applying an unduly rigid approach to its regulatory tasks would severely hamper the regulator's ability to drive innovation and growth in digital markets for the benefit of consumers.

Whilst we broadly agree with the approach taken in the Guidance, there are some areas where useful clarifications or alterations could be made so the new regime is as effective as possible. The most important of these changes are:

1. In several areas, it will be essential to seek and account for third party views in the CMA's decision-making processes, which must have as much transparency as possible. This will ensure the CMA prioritises interventions with the most impact for consumers, and that the participative approach favoured by the CMA is successful.



2. When considering consumer benefits as Conduct Requirements (CRs) are created, the Guidance should make clear that the interests of citizens more broadly can and will be considered. Many CRs could both directly benefit the consumer of a service in economic terms, whilst also having substantial synergies with benefits to citizens.
3. In determining the appropriate form of a CR, whilst we appreciate that an outcomes-based CR may be preferable, the CMA should consider all options – including a more prescriptive, action-based CR – as a matter of course. The implementation of the EU Digital Markets Act has demonstrated that broad high-level requirements can give SMS firms the scope to evade the spirit and letter of the law. It is better to set a more specific CR in the knowledge that it may need to be updated more regularly, than set something so flexible that it will give agency to SMS firms to evade compliance.
4. When a CR has an implementation period, the CMA should state it will make short term interim CRs – to be included in the main CR – that prevent an SMS firm taking any action which will impede the effectiveness of a CR before it comes into force.
5. It should be clearly stated that behavioural remedies applied through a Pro-Competition Intervention (PCI) overlap with the remedies that could also be applied through a CR. This is important, as CRs will be a more agile and swift tool, and the CMA should not be limited in its ability to use CRs to place significant behavioural requirements on SMS firms.
6. The CMA should not delay enforcement unduly in the expectation that SMS firms will directly engage in good faith with third parties and recognise that in many instances a participative approach will simply not be appropriate.
7. With regards to the Final Offer Mechanism (FOM), given that a CR of the type allowed under 20(2)(a) is unique in having the FOM as a backstop, the Guidance should make clear that the CMA will sometimes expedite its standard enforcement processes for 20(2)(a), for example if an SMS firm is simply refusing to engage with a third party.
8. When considering if a breach of an Enforcement Order related to 20(2)(a) could be satisfactorily addressed within a “reasonable timeframe” by exercising one of its digital markets functions other than the FOM, the Guidance should – given that the FOM has a six month time limit – make clear that the CMA will generally not consider a timeframe significantly longer than six months to be reasonable.
9. When considering if third parties should be allowed to negotiate collectively under the FOM, the CMA should also have regard – and this should be the principal consideration – as to whether the third parties wish to be ‘joined third parties’/’grouped third parties.’

In conclusion, we welcome the Guidance and the approach the CMA has taken to consult quickly following Royal Assent of the Act.

We hope that the CMA continue to move at pace to finalise the Guidance after consultation, and that Minister’s support this approach so the new regime can begin to deliver for consumers and businesses dependent on SMS firms.



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