



UK digital markets regime

Yelp's response to the CMA consultation on draft guidance

Introduction

Yelp looks forward to working with the CMA as it implements the digital markets regime under the new Digital Markets, Competition and Consumers ('DMCC') Act. We are therefore happy to provide our comments on the CMA's draft guidance document, which was published for public consultation on 24 May 2024.

We applaud the CMA's thoughtful and thorough approach to its new powers. Parliament has entrusted the CMA with broad powers to improve competition in digital markets, and we believe it is important that the CMA uses these powers to their fullest extent to mitigate and ultimately reduce the gatekeeping power that exists in the sector. The guidance document lays down a good framework for doing so.

This brief submission therefore aims to highlight some key issues rather than doing a line-by-line commentary of the guidance document.

About us

Yelp operates a local search service that helps users find the best places to eat, shop, drink, relax, and play. Yelp has invested substantially in fostering a community of people who contribute informed opinions about a variety of local businesses. Many millions of consumers around the world routinely use Yelp to find and share information about the best local businesses.

Yelp operates its platform in 27 countries, including a significant presence in the United Kingdom. We launched our first European operations in the UK in 2009, and expanded into other European countries in the years that followed. However, due to poor performance post-2014, exacerbated by Google's self-preferencing, we withdrew our operations from the UK (and the rest of Europe) in late 2016. Yelp now only monetises our services in the USA (accounting for over 90% of Yelp's revenue) and Canada. Yelp maintains its UK-directed website (yelp.co.uk) but has stopped investing in marketing, community management, and sales teams in the UK. We continue to have over 800,000 app users in the UK. We maintain an office in London and have over 300 UK-based employees (including multiple senior employees who are based in the UK, including our Chief Technology Officer.)

Grouping activities together in a single designation, avoiding formal market definition, and the treatment of competition law precedent

We agree that the CMA can group activities together into a single designation (paras 2.13-2.15). In fact, we believe this is an important strategy for the CMA to adopt. For example, when designating Google Search, the CMA should ensure that the legal boundaries of the designation include both general search and the various specialised search products. Vertical search services, including local search services like Yelp, are an important complement to general search. Local search represents a significant proportion of all Google searches. It would be impractical for the CMA to attempt to investigate each vertical search activity separately, and doing so would open up more possibilities for lengthy debates about leveraging between designated activities, rather than treating them all as

intrinsically linked. The DMCC regime is a new type of regulation that should not be constrained by competition law precedents. We therefore agree with the CMA's proposal in para 2.43 not to conduct formal market definition exercises and instead conduct a more nuanced analysis that takes into account how competition is developing and the closeness of competition between different products and services.

We also agree that competition law precedent is only of limited use under the new DMCC regime (para 2.45). The high-profile European Commission investigations into Google, for example, contain useful evidence but the legal findings would not materially help the CMA to reach a successful outcome under the DMCC regime. To the contrary, given the novel nature of the DMCC framework, irrelevant legal arguments concerning past competition law cases are likely to lead the CMA down rabbit holes and delay its work.

Leveraging principle

We believe the leveraging principle described in paras 3.13-3.15 is an important safety net where the CMA is unable to include a product or service within a given designation. A firm's conduct in the non-designated activity may often cause harm to competition, especially when it is closely related to the designated activity. A firm's market power does not stop neatly at the edge of a designated activity. We therefore urge the CMA to use the leveraging principle wherever that would help to deliver better outcomes for consumers and the businesses who wish to serve them. Wherever there is a link between a non-designated activity and a designated activity, the leveraging principle should be treated as being applicable to conduct relating to the non-designated activity.

Conduct requirements

We support the CMA's approach to conduct requirements, in particular the broad range of possible rules (para 3.7) and the intention to use both action-focused and outcome-focused rules (para 3.26). We agree that the CMA should consider what it is trying to achieve, then which rules will be effective, and finally whether they are proportionate (para 3.17). This seems to be an effective framework for designing its rules. We believe the CMA should be entitled to favour rules that are more likely to make a significant difference quickly (para 3.28).

Consultation opportunities

We welcome the way in which the guidance document seeks to ensure that the non-designated firms like Yelp will play a full role in contributing their views to the CMA. We ask the CMA to ensure that these opportunities for informed consultation are never curtailed due to the short statutory deadlines for some of the CMA's new processes.

It will be particularly important for the CMA to balance the need to make decisions quickly with the need to allow all affected parties to see the data they need in order to make helpful submissions. The temptation may therefore be to focus on the designated firm's rights of defence to the detriment of the other affected parties. We encourage the CMA to bear in mind that it will often receive very useful information from the other parties, whose incentives are to assist the CMA's understanding of the relevant activities and who may have unique information unavailable from other sources, which can result in streamlining inquiries. The CMA may not need to conduct large, formal document disclosure exercises in all cases. It might be more efficient, and more successful, to disclose key pieces of information for feedback in a relatively informal manner throughout the case.

If data is sensitive and therefore needs to be disclosed in a confidentiality ring (paras 5.90 and 7.28(c)), the CMA could potentially organise an ongoing set of obligations for frequent stakeholders rather than needing to set up a fresh confidentiality ring for each case. Agreeing to a confidentiality ring ahead of time will avoid delays during a time-pressured case.

International co-operation

We believe an important element of the new regime will be the way in which remedies in different jurisdictions will interact with each other, and therefore also the CMA's willingness to work with agencies in other countries. In the guidance document, the only mention of this issue is the final sentence of para 3.29, which says: "In addition, the CMA may take into account actions by other regulators or legislators internationally". We would welcome further information about how the CMA will work with other agencies. For example, does the CMA believe there is a potential benefit in aligning its remedies with the EU's Digital Markets Act in appropriate cases? Would the CMA ever consider undertaking an investigation jointly with another agency so that they could share the workload involved in gathering evidence and conducting analysis? What factors will the CMA take into account when deciding how to proceed in its own case while another agency is investigating similar conduct?

Confidentiality

The protection of commercial secrets will be important to the success of the DMCC regime (paras 5.85-5.91, 6.15-6.19, 7.26). We ask the CMA to ensure that it has appropriate processes in place to achieve this. We also ask that additional wording is included in the guidance document that will help in-house lawyers and their external counsel to reassure a company's management that their secrets (including their identity) will always be protected. For example, the document could explain in what narrow circumstances the CMA would need to disclose a company's identity so that they can be reassured that such an event is rare. That would also help companies who fear commercial retaliation from the designated companies to design their submissions to make sure they do not fall within those circumstances.

Conclusion

We thank the CMA for its work on digital markets over the past five years, and wish it well for the next stage. We have no objection to the CMA publishing this response alongside other stakeholders' responses if it needs to do so.

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