

CONSULTATION RESPONSE

Consultation on markets regime guidance

Overall, are the changes proposed in the draft Markets Regime Guidance sufficiently clear and useful?

In many areas companies continue to face considerable uncertainty over the process and standards to be used. We therefore do not believe the changes are *sufficiently* clear and useful.

In general, the CMA should prioritise:

- Proportionate action which reflects the Government's priority on promoting investment and economic growth.
- Avoiding open-ended or vague powers where stakeholders cannot respond to a clear framework for implementation.
- Procedural clarity and protecting rights of defence.

What, if any, aspects of the draft Markets Regime Guidance do you consider need further clarification or explanation, and why?

There are several areas where more clarification or explanation is needed:

Assessment of evidence (4.80) should provide more clarity over how different kinds of evidence are weighted. This would allow external stakeholders to respond more usefully to CMA consultations and other requests.

Remedy reviews should provide more clarity over the criteria with which the CMA might take the view that remedies have become ineffective and require review. While examples are given (9.36) many of those reflect factors that will be seen to some extent with most remedies. More clarity would help stakeholders understand the point at which such shortcomings will typically be seen as amounting to a remedy being ineffective.

One potential outcome from market investigations is now an **SMS investigation** under the Digital Markets, Competition and Consumers (DMCC) Act 2024, versus the kind of measures envisaged in the guidance (8.57). The guidance should provide more clarity over how this will be considered versus other options. This should reflect the uncertainty that comes with ex ante regulation versus more defined interventions (not simply assuming any risks or trade-offs will be addressed through consideration of conduct requirements at a later date) otherwise there is a risk this becomes a default for any "digital" activity.

Appendix 6 should make clear that any **trials** should only take place after a full consideration of the risks of a trial, which might include: risks to consumer privacy and security; loss of trust in the service concerned; fragmentation of global services where UK-specific trials are imposed. There should be more clarity over the timelines for a trial

and the criteria for assessing both whether they go ahead and how the results will be considered.

Network effects are treated very differently to other factors and singled out to be considered based on whether they are “possible” and on the basis purely that their importance might raise the potential for market power (4.10j). To the extent that network effects are more than an aspect of consumer behaviour (4.10f), the guidance should take a more balanced view. This should make it clearer that the relevant question is whether network effects have a material *net* effect on the expected user response to a material change in quality-adjusted prices.

This would encourage proper consideration of factors that often receive insufficient attention at present, including:

- Negative network effects - where larger platforms are less attractive. This could include the attractions of smaller platforms in themselves (direct network effects) and increased competition on one side of a multi-sided market (indirect network effects).
- Network effects accelerating loss of market share - unlike other market features, network effects are endogenous and can enhance the impact of an increase in quality-adjusted prices (as the loss of some users reduces attractiveness to other users).

Do you agree with the proposal to update and consolidate the relevant guidance?

Yes, subject to the proposed amendments described above.