



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

Response from Vetted Limited, trading as Checkatrade

3 July 2024

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document is the response of Vetted Limited, trading as Checkatrade (“**Checkatrade**”) to the CMA’s consultation on the draft guidance document published on 24 May 2024, which sets out the CMA’s proposed approach to exercising its new powers under the Digital Markets, Competition and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

Checkatrade is a 25-year-old British business which to date has served as an online and print directory recommending approved, checked tradespeople to homeowners searching for quality work on their home - from builders and carpenters to plumbers and electricians. Over 50,000 such tradespeople rely on Checkatrade to grow and run their small and medium-sized businesses and homeowners instruct and complete around three million jobs per year through our platform. This means we have delivered over £7 billion of work to UK SMEs in the last year alone.

Our business model is now evolving to become a technology-enabled, two-sided marketplace seamlessly connecting tradespeople and consumers across our entire platform, using streamlined engagement tools, to ensure a safe and better-quality experience and outcome for both sides of the transaction. Our apps for tradespeople and for consumers are available on the Apple App Store and the Google Play Store.

Checkatrade supports the strong, effective use of the CMA’s powers and particularly the digital markets regime under the DMCC Act. The future of UK tech depends on an open and competitive marketplace where business can innovate and scale up, driving growth, innovation and productivity; and ensuring UK businesses and consumers can reap the benefits of competitive markets such as lower prices and consumer choice.

Checkatrade supports the approach taken by the CMA in the guidance document. We believe the guidance strikes the right balance between providing certainty for stakeholders on how the various processes will be conducted, while also avoiding any temptation to pre-judge future cases and give views on substantive assessments that have not yet been investigated. Checkatrade supports a prompt approval of the guidance from the Secretary of State after the summer break.

Checkatrade sets out below some non-exhaustive general comments on the guidance. Checkatrade notes that, as an active member of the Coalition for App Fairness (“**CAF**”), it supports the more detailed observations made in CAF’s response to the CMA’s consultation.

Non-SMS firms

Checkatrade is keen to ensure that the non-SMS firms are given every opportunity to contribute to the CMA’s analysis. It would welcome a broad principle of equal rights in terms of consultation, access to decision-makers, and the disclosure of data and other evidence.

Checktrade also suggests that the use of terminology that suggests the non-SMS firms are “*third parties*” is unhelpful and confusing. Such terminology is more relevant to merger investigations where there are the merging parties and third parties.

SMS activities and non-SMS activities

One of the more significant risks to the effectiveness of the DMCC regime will be the SMS firms’ ability to “move” conduct from SMS activity to non-SMS activity and use other tactics to obstruct the regime. Checktrade notes that the DMCC’s activity-based designation framework makes this a particular risk.

Checktrade would welcome any wording in the CMA’s guidance that seeks to mitigate this risk. For example, the guidance could 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, as we have seen elsewhere, for example with the anti-circumvention provisions of the EU’s Digital Markets Act.

More generally, Checktrade agrees that the CMA should group together activities into a single, overarching 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 be razor-sharp in its focus on substantive discussions about desirable interventions rather than interrogating legal arguments about the scope of a designation.

Market definition

Checktrade supports the CMA’s proposal not to define formal markets when conducting its assessments of substantial and entrenched market power. There would be little benefit in the CMA coming to a final decision on a market definition when it would be much more useful to conduct a more nuanced analysis of closeness of competition and dynamic market developments.

Conduct requirements and pro-competitive interventions

Checktrade would welcome further clarification of the difference between conduct requirements (“**CRs**”) and pro-competitive interventions (“**PCIs**”). Checktrade believes the guidance document should state that the CMA prefers CRs where they can be effectively imposed because they will be quicker to implement.

Checktrade 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, unhelpfully, not CR remedies, there is a risk that the guidance implies that (e.g.) separation remedies are not intended to be used as CRs. Checktrade does not believe that is appropriate as many forms of separation remedies (data separation, operational separation, and so on) would indeed be appropriate CRs. The CMA should avoid giving the appearance that CR remedies are meant to be somehow softer or less intrusive.

Confidentiality

Checktrade would welcome further reassurances about the protection of commercially sensitive data and respondents’ identities. As the CMA knows, companies in the tech sector risk commercial retaliation from the SMS firms, and confidentiality is therefore often a key concern. Checktrade

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).

Statutory timetables

The statutory deadlines under the DMCC Act are short, so the CMA will clearly find itself under time pressure during its various processes. Checktrade expects this means that the CMA will seek to prepare thoroughly in the period leading up to the clock starting. As a business without the same scale of resources as SMS firms, Checktrade encourages the CMA to engage with non-SMS firms in this period and not just the relevant SMS firm.

We appreciate your consideration of our points and would welcome the opportunity to discuss further in person at your earliest convenience.