

**Digital Markets, Competition and Consumers Bill**  
Match Group Written Evidence Submission to  
Public Bill Committee

**Summary**

- Match Group wholeheartedly welcomes the introduction of the Digital Markets, Competition and Consumers (DMCC) Bill, and we support its passage through Parliament.
- Passage of this pro-competition measure will benefit UK citizens by encouraging lower fees, greater choice and flexibility, and increased accessibility.
- For some time, there was robust competition in the digital sector. It produced new cutting-edge technology and reshaped how UK consumers accessed and interacted online. However, after years of consolidation and abuse of market power, two app stores now dominate the marketplace.
- We believe that robust competition will only occur if the Digital Markets Unit within the Competition and Markets Authority (CMA) is given the proper tools to tackle the market dominance unfairly exercised by Apple and Google over their respective mobile ecosystems. The CMA has already conducted detailed research into mobile ecosystems and must be granted sufficient regulatory powers and organisational resources to address the significant issues that exist in the digital sector.
- Unfortunately, evidence and precedent has shown that the largest tech companies will not change their behaviour unless forced to do so by strong governmental regulatory action. The “Big Tech” firms have obstructed the legal processes and regulatory action in jurisdictions including India, the Netherlands and South Korea. This cannot be allowed to continue. To ensure the CMA can do its vital work without delay or obstruction, the Bill must not be diluted or its passage delayed.
- The Judicial Review appeal standard, which is set out in the Bill, reflects a tried and tested system of oversight for regulators in the UK. The stakeholders who are arguing for a “Merits” appeal process are simply trying to undermine the effectiveness of the regime and enable protracted legal battles that will fail to deliver good outcomes for consumers.
- While Match Group strongly supports the EU’s Digital Markets Act and looks forward to its implementation, we believe the UK approach has a more flexible approach. The strategic market status (SMS) regime would result in a robust UK regulatory regime with the potential to dynamically address the behaviour of entrenched monopolists. We applaud this approach. The creation of bespoke requirements for specific activities within SMS firms, which are tailored to each firm’s business model, allows the CMA to use its expertise appropriately. Ex-ante, principles-based regulation is needed to ensure the long-term success of the UK’s digital economy.

**Introduction to Match Group**

Match Group is a leading provider of dating services across the globe. Match Group’s portfolio companies operate trusted brands including Tinder, Match, PlentyOfFish, OkCupid, OurTime, Meetic, and Pairs. Through our portfolio of trusted brands, we provide tailored services to meet the varying preferences of our users. Our portfolio companies currently offer their dating services in 42 languages across more than 190 countries including in the United Kingdom where some of our main brands are widely used.

Match Group is proud to have engaged closely with the Digital Regulation Cooperation Forum (DRCF) and its individual regulatory member bodies, including the Competition and Markets Authority (CMA). In addition to this, Match Group has liaised on several occasions with the Government, policymakers and relevant parliamentary committees to discuss vital issues facing the digital ecosystem ranging from online safety to digital competition and innovation.

Match Group is a member of the Coalition for App Fairness (CAF), a collection of more than 70 app developers including Spotify, Deezer and Epic Games that advocates for a holistic digital ecosystem that fosters fair competition and innovation. Like our fellow CAF members, Match Group has eagerly anticipated the introduction of the Bill.

### **Strengthening the competitive landscape is critical to foster innovation and improve consumer outcomes across the digital sector**

Apple and Google have substantial and entrenched market power over their mobile ecosystems. For example, the CMA report on mobile ecosystems in June 2022 found “Apple’s and Google’s control over their respective mobile ecosystems allows them to set the ‘rules of the game’ for app developers, who rely on their app stores to reach customers and have little or no ability to negotiate over terms.” There are also ongoing CMA antitrust investigations into both Apple and Google for alleged anti-competitive app store practices.

These (and many other) reports and investigations reflect legitimate concerns from consumers and industry stakeholders that Apple and Google, through their strongholds on the distribution layer of mobile ecosystems, are acting as ‘bottleneck monopolists’ to the detriment of the digital ecosystem. By exerting the power that they enjoy as gatekeeper firms, Apple and Google can restrict competition, artificially spike prices for consumers, and impose arbitrary and self-interested rules for the rest of the digital ecosystem to follow. This reduces businesses’ ability to innovate and keep consumer prices down.

In the app store context, they discriminate between “digital” (e.g., Tinder) and “non-digital” (e.g., Uber) apps, and impose an arbitrary 30% tax only on the former. They block app developers from speaking to their own customers, telling them how to get a cheaper deal, or even from knowing who they are. They block consumers from downloading our apps from a website or a competing app store. They give special preferences to their own apps. They operate capricious and opaque app review processes (for example, Match Group’s portfolio brands have had important app updates held up by Apple).

These issues are being addressed by new legislation in jurisdictions such as South Korea, Germany and Australia, and regulatory action in jurisdictions such as the Netherlands, India and the US, but to date they have not succeeded in changing behaviour. The DMCC Bill will make a significant contribution to these efforts globally.

Match Group believes the DMCC strikes the right balance between regulating digital markets and encouraging innovation by focusing the new regulatory regime on the following principles:

- **Pro-competition measures** – aimed at creating a more level playing field and addressing the market power of a small number of tech firms and promoting competition. Enforcement of these measures will create opportunities for innovative start-ups and other businesses to compete with powerful tech firms, encouraging innovation and entrepreneurship.

- **Data access and interoperability** – granting the CMA the power to require designated firms to allow greater data access and interoperability. This can potentially enhance innovation by enabling smaller players to access data and build innovative services or products using existing platforms or ecosystems.
- **Consumer choice and control** – including measures to increase choice and control for consumers, such as allowing consumers to choose not to share their data for personalised advertising. This can incentivise businesses to develop alternative models and innovative solutions that prioritise privacy or offer unique value propositions to consumers.
- **Open and fair market conditions** – establishing conduct requirements to ensure fair treatment of consumers and other businesses. By setting rules for how firms should treat consumers and operate in the market, the Bill seeks to create an environment that encourages fair competition and provides incentives for innovation.

Match Group believes that those who characterize the Bill as an attempt by over-zealous regulators to impose a regulatory structure that is long out of date and no longer effective are wrong. Rather this Bill is a smart, strategic approach that will enable open markets to competition and work how they should. By removing artificial barriers to competition, businesses will have more freedom to innovate and consumers will benefit. We believe that this approach will incentivize developers to operate and grow their businesses in the UK.

### **The Bill's principles-based approach ensures the regulatory framework is effective, responsive, and future-proofed**

Match Group welcomes the introduction of the DMCC Bill, and we urge Parliament to pass this vital pro-competition measure for the benefit of both UK citizens and app developers.

An appropriate degree of regulator discretion is being given to the CMA. The provisions of the Bill as it is drafted will enable the CMA to investigate effectively and address competition concerns in the digital marketplace. In particular, the Bill gives the CMA the tools needed to address the market dominance of Apple and Google over their mobile ecosystems and the resultant stifling of innovation.

The principles-based approach adopted by the Bill helps to ensure the new regulatory regime is future-proofed and able to respond to dynamic markets, laying the foundation for more detailed rules and duties to be introduced and adopted. We have all witnessed how technology has reshaped our world. From social media, to dating, to online commerce, technological innovating has fundamentally changed our lives. We are seeing that even now with generative AI. Generative AI has the potential to even more radically bring about change and we applaud the Prime Minister for taking a leading role in this area. Passage of the DMCC Bill will help to ensure that the UK will continue to be a global leader in this area and to ensure that new AI monopolies do not come to be.

The legislation will enable the CMA to equalise the opportunities in the digital ecosystem across all businesses and developers through measures like opening app stores to competition in app distribution and in-app payments. Consumers will benefit from lower prices (for example, the excessive 30% app store commission will be competed down) and greater innovation (for example, new tech companies with good ideas can thrive when they have a level playing field on which to compete).

The judicial review standard for appeals is the right one. It is a tried and tested system of oversight for regulators in the UK. The CMA is the right body for making the decisions – it will be staffed by digital markets experts and be subject to detailed internal checks and balances. The CMA will need to consult fully on its decisions and expose every step of its reasoning to scrutiny. The Courts can then overturn a decision that is not supported by the evidence or has not followed a fair process. A judicial review standard will also deliver outcomes within a reasonable timeframe. We may not agree with every outcome, but we do need a prompt final decision on an issue so that we can get on with running our business.

Match Group will continue to support the CMA as it conducts vital work to ensure digital markets work for the benefit of developers and consumers.

### **Simple amendments to the Bill will protect the new pro-competition regulatory framework from being undermined**

The DMCC in its current form creates a powerful shield to anti-competitive practices in the form of the CMA. However, Match Group has identified a few shortcomings in the text of the Bill that may enable Apple and Google to obstruct attempts to promote a fair and competitive digital ecosystem.

Working with CAF, we have listed these considerations below, alongside recommended solutions to ensuring a comprehensive and empowered CMA.

#### ***Deadline for Conduct Requirements***

As it stands, there are no prescribed deadlines for the CMA to implement its initial set of conduct requirements. Match Group has concerns that the absence of a concrete timeline may embolden Apple and Google to maintain anti-competitive habits even after the passing of legislation. The urgency of action must not be understated: every day that Apple and Google are permitted to continue acting in monopolistic tendencies, businesses and consumers suffer from high prices and inflated barriers to entry for developers. As the CMA will be able to consider the conduct requirements in parallel with conducting its SMS designation, it should not require long after the designation decision to finalise the first set of conduct requirements for the SMS firm.

The deadline should only apply to the initial set of requirements, as the CMA should be able to revise its rules as required in the future within a timeline appropriate for the circumstances.

As the CMA will have been working on the conduct requirements alongside the SMS designation, we believe 3 months would give them a short period to finalise them after the SMS decision but without causing significant further delays.

***Proposed remedy:*** Match Group suggests 3 months following the SMS designation decision as a suitable deadline for the introduction of an SMS firm's first set of conduct requirements. An additional sub-paragraph could be inserted at in clause 19(10).

### ***Leveraging Principle***

The Leveraging Principle at Clause 20(3)(c) empowers the CMA to challenge the conduct of an SMS firm that is “likely to increase the undertaking’s market power materially, or bolster the strategic significance of its position, in relation to the relevant digital activity”.

This leveraging principle is vital because the regime will apply only to specific activities rather than the whole SMS firm, and the CMA may find that SMS firms can simply move their conduct to a non-SMS activity to evade the regime. Further, the market power of the SMS activity may allow the firm to hinder competition in non-SMS activities, and this risks not being caught by the regime. In the example of the 30% app store tax, Apple or Google could simply redesign this policy as an operating system licence, or something similar attached to an activity that has not been SMS-designated, with the same outcome of stifling app developers and creating a steep barrier to entry for start-ups. Apple or Google may then argue that the tax does not increase its market power in the SMS activity, and would therefore not be covered by the leveraging principle as it is currently drafted. The drafting is therefore too narrow and gives the SMS firm too many opportunities for circumvention.

***Proposed remedy:*** Match Group would like to see this principle strengthened and expanded to include not only existing practices but similar practices that may be used to achieve the same objective and that may damage innovation and competition without necessarily increasing the SMS firm’s market power in the designated activity.

### ***Consultation and Transparency Provisions and Strategic Markets Status***

Match Group supports the thorough legal processes in the Bill that will ensure SMS firms have appropriate opportunities to contribute their views to the CMA. However, there are elements within the Bill that potentially give preferential treatment to the SMS firms compared to the non-SMS firms. For example, in the consultation and transparency provisions of the Bill, SMS firms under investigation are given detailed consultation provisions but other affected parties may only see a ‘summary’ of the proposed action. Similarly, the non-SMS firms often receive information about a case at a later stage than the SMS firm, for example at the time of the public consultation rather than the launching of the case.

***Proposed remedy:*** Match Group recommends the Bill be amended to ensure non-SMS firms are given equal status (in terms of the level of information and also the timing of it) to SMS firms in this regard and are therefore included in processes like the SMS designation process mentioned above.

### ***Appeals and Legal Considerations***

Match Group is a strong supporter of the judicial review standard as it is currently written in the Bill. This is a well-established standard in the UK that allows courts to exercise oversight over CMA actions without negatively impacting underlying regulatory regime. It allows the CMA to utilize an appropriate level of discretion as an expert regulator that is asked to make forward-looking assessments.

Every effort must be made to prevent SMS firms from exploiting legal loopholes to disarm the CMA, as recently demonstrated by Apple’s recent appeal against the CMA whereby Apple took the CMA to court for its decision merely to open a market investigation into

mobile browsers and cloud gaming. This is an example of how the potential SMS firms may use procedural arguments to undermine the regulator's work. We would prefer the regime to focus on debating the important substantive issues between the CMA and the affected businesses, rather than lengthy court proceedings that undermine the regime's objective of being fast-moving.

A judicial review appeal ensures that the CMA's reasoning and process is thoroughly examined and it also produces a prompt final outcome so that all sides can focus on running their businesses for the benefit of their customers. A "merits" appeal would allow a disappointed party to attempt to re-run a case in the hope of a better outcome second time around, and this would not benefit the overall functioning of the regime.

**Proposed remedy:** The judicial review standard should be retained. A thorough scan of the Bill should therefore be conducted to identify potential loopholes and possible delays.

### ***Timelines***

The CMA could be given the tools required to quickly implement a new regime as expeditiously as possible. Delay only serves to harm UK consumers and app developers while allowing "Big Tech" companies to further entrench and grow their market control. In particular, the CMA must be given the explicit ability to rely on its recent market study investigations and reports rather than being compelled to repeat the work. For example, there is no reason for the CMA investigation into mobile ecosystems which resulted in the landmark market study published in June 2022, to be repeated. Doing so would result in delay and force UK taxpayers to bear these unnecessary costs.

**Proposed remedy:** Adding a provision to allow the CMA to act upon its analysis of the previous few years would prevent Apple or Google building a legal argument against the CMA forcing the Agency to duplicate past work.

### ***Initial rules***

One of the strengths of the CMA regime is its flexibility. The CMA must have the ability to strategically and smartly make and revise its rules to reflect what is actually occurring in the marketplace. This is a distinctly different approach than that taken by the DMA in the EU. We support this approach but believe the CMA must use this authority in an expeditious way and not allow it to slow its oversight.

**Proposed remedy:** Ensure that relevant recent past work be used as the basis for forward looking regulation.

### **Addressing anti-competitive practices will have wide-reaching positive outcomes**

The DMCC Bill serves as a strong, transparent statement from the UK government that it will not allow tech monopolies to operate unchecked and harm UK consumers. The UK has historically been an incubator for new, transformative technology and innovation. For that to continue and grow, the UK marketplace must embrace competition and foster the growth of the next Google, the next AI, the next Tinder.

Government should take a similar approach when considering other tech legislation. We are very encouraged by the debate on the Online Safety Bill recognizing that monopoly tech companies are harming the cause of user safety and that this will no longer be allowed.

The DMCC Bill sends a strong message that it is the UK government, not tech companies, that are establishing the rules of the road. As the CMA wrote about this matter:

*“Private companies such as Apple and Google adopt a quasi-regulatory role. For example, in relation to data protection law, there are risks that these companies face conflicts of interests, as their own profit-driven incentives may not always be fully aligned with those of their users.”*

**The CMA must ensure the new regime is implemented with urgency**

Match Group believes the CMA will be well-placed to foster competition and consumer choice in the tech sector so companies with the best products and services can thrive and incumbents can be dislodged if they fall behind the pace. The CMA has already shown itself to have the expertise necessary by publishing nearly 3,000 pages of excellent analysis through its two market study reports into the tech sector. And it has shown it is not afraid to take on the tech companies by opening multiple antitrust investigations into them. The Government should ensure that the CMA is sufficiently funded to be able to deal with the most powerful companies in the world on an equal footing. It may also require some flexibility on its salaries to ensure the CMA can compete with the leading law firms and economics consultancies for talent.

However, the main risks are:

1. The regime may be too slow or burdensome for the CMA to operate efficiently.
2. The regime could be subject to further increasing legislative delays.

The Government should streamline the design of the new regime to ensure the regulated firms cannot obstruct and delay by using the relevant processes to their advantage. There is a long history of competition law processes being used by well-resourced firms to delay authorities' decisions and the implementation of remedies to the detriment of competitors and consumers. The Government's understandable desire to limit the powers of the CMA to those strictly necessary risks inadvertently result in a regime that is too slow and narrowly drawn to achieve its objectives.

Match Group also believes that the CMA will benefit from cooperation between UK regulators. In this regard, Match Group welcomes the moves made to set up the Digital Regulation Co-operation Forum between the CMA, the Information Commissioner's Office (ICO), Ofcom and the Financial Conduct Authority (FCA).

As stated above, Match Group strongly supports passage of the DMCC Bill. We also supported and advocated for passage of the EU's Digital Markets Act and are working to help pass the Open App Markets Act in the US. Each represents a unique approach designed to tackle anti-competitive online conduct, but all share the same goal – namely to open the online marketplace which has become dominated by a few huge online companies which now operate as monopolies harming users and developers alike. It is this unified purpose that we believe is key and we applaud the UK for continuing its leadership in this area.