

Classified Directory Advertising Services Market Investigation

Clarification of remedies proposals

Introduction

1. On 7 September 2006 we published our proposed remedies. We received written responses from and held discussions with the main CDAS providers. As a result of these responses and further analysis we posted our revised remedies proposals on our web site on 3 November 2006 and invited comments by 10 November 2006. This paper is intended to clarify and modify some aspects of these proposals in the light of the responses that we received to these. The CC's remaining conclusions, as set out in our revised remedies proposals, are unchanged.

Themed Guides - definition

Our proposal

2. We proposed the following definition of a themed guide:

"Themed Guide" means a printed periodic guide which:

- *Provides in-depth and context based information to consumers including, without limitation, editorial material, mapping, advertorials, third party endorsements, non-classified advertising [a Themed Guide is not intended to provide a comprehensive directory of suppliers of goods and services which are unconnected by a particular theme]; and*
- *Is distributed either directly or indirectly wholly or mainly to consumers (within the meaning of section 183(1) of the Enterprise Act 2002).*

Response of the parties

3. Two parties submitted that the definition was drafted too loosely and would potentially encompass any local directory that was not comprehensive. One party proposed that the CC should define a themed directory as one that is

limited to one or two classifications, in line with the CC's interpretation of the scope of its reference.¹

The CC's modified proposal

4. We considered these submissions. The main aim of the qualitative test is to establish that the content of the directory is focussed on a particular theme, rather than, for example, comprising a very loosely related set of classifications. We now propose a more specific definition:

'Themed Guide' means a printed periodic guide:-

- (i) *with content relating wholly to a specific coherent topic; and*
- (ii) *which is distributed either directly or indirectly wholly or mainly to consumers (within the meaning of section 183 (1) of the Enterprise Act 2002).*

For the purpose of this definition, "content" includes editorial material, mapping, advertorials, third party endorsements, non-classified advertising and classified advertising and a "specific coherent topic" may be any topic which links one or more goods or services, other than a topic that links such goods or services on the basis of geography alone.

Themed guides – role of the OFT

Our proposal

5. In the revised remedies proposals we recorded that Yell had offered, in its response to our remedies proposals, to give an undertaking not to publish specifically identified themed guides without first obtaining the CC's consent to publication. (This offer related to themes such as 'my house' or 'emergency' type guides.) We stated in the revised remedies proposals that it would be preferable to establish a benchmark against which such proposals could be judged, following pre-notification, by the OFT.

Response of the parties

6. A party asked the CC to confirm that Yell would have to obtain prior permission from the OFT for every proposal it may have for a themed directory, irrespective of the classifications that directory may include.

¹ <http://www.competition-commission.org.uk/inquiries/ref2005/classdirec/index.htm>

The CC's clarification

7. It is the CC's intention (as was stated in the revised remedies proposals) that each themed directory that Yell wishes to publish should be notified to the OFT prior to publication. The OFT will then apply the tests that we have proposed to decide whether the proposed directory falls within our definition. If the proposed directory does not fall within our definition it will be subject to the restrictions that we have proposed on second-tier directories.

Themed guides – the two part test

Our proposal

8. We proposed that the test applied by the OFT in judging whether a directory fell within our definition of a themed directory should be in two parts: qualitative and quantitative. A proposed directory would have to fit within the relevant definition (see paragraph 2 above) and the classifications encompassed by the directory would not account for more than 10 per cent of Yell's advertising revenue in its main printed directories in the UK.

Response of the parties

9. One party asked us to clarify whether a themed guide would need to meet either or both tests in order to avoid the second-tier directory restrictions.

The CC's clarification

10. The CC considers that any proposed themed guide would have to pass both the revised qualitative and the quantitative tests that we have proposed; otherwise it would be treated as a second tier directory. (Note that the qualitative test proposed has changed since the revised remedies proposals – see paragraph 4 above.)

Bundling and tying

Response of the parties

11. A party asked the CC to clarify the coverage of our proposed restrictions on bundling and tying.

The CC's clarification

12. The CC proposes that bundling and tying be prohibited between: main directories and second-tier directories; second-tier directories and themed directories; main directories and themed directories. We had previously indicated that bundling and tying within the categories of second-tier and themed directories would be prohibited, but no longer propose this.
13. We have proposed that Yell be permitted to operate a volume discount scheme provided it is transparent and available to all advertisers across all classifications. We propose that any volume discount scheme operated by Yell for a given directory type may only take account of volume related to that directory type. Otherwise the inclusion of advertising expenditure across main, second-tier and themed directories would frustrate our measures to prevent bundling and tying between types of directory. Thus advertisers who may obtain volume discounts in Yell main directories will not as a result of these volume discounts be entitled to discounted rates in second-tier or themed directories.
14. As a general principle, Yell should not be permitted to contract with individual advertisers in relation to its main directories on terms other than those published in accordance with our package of remedies, after the deduction of any discount arising from any discount schemes that Yell may publish.

Overlapping main directories

Response of the parties

15. We were asked by one of the parties whether restrictions were to be placed on overlapping of Yell main directories as part of our package of measures on second-tiering.

The CC's clarification

16. The current undertakings contain restrictions on overlapping Yell main directories. We propose that these should continue. We have proposed

certain restrictions on the distribution of second tier directories and we consider that, as an aspect of these, restrictions should be placed on the distribution footprints of Yell's main directories, as in the present undertakings, such that overlaps between main directories are limited. In the absence of this provision it would be possible for Yell effectively to circumvent restrictions on second-tiering and re-scoping by overlapping distribution areas of main directories.