



DIGITAL MARKETS, COMPETITION AND CONSUMERS ACT 2024

The Digital Markets, Competition and Consumers Bill proposes a new regulatory regime to address growing concerns over the competitiveness of digital markets.

These concerns include that larger players may have substantial and entrenched market power which allows them to act in ways which stifle innovation or disadvantage consumers or competitors.

The Competition and Markets Authority (CMA) has published an overview of its provisional approach to the new regime. This is designed to, amongst other things, ensure consumers can make informed choices and companies retain access to rapidly developing digital markets.

STRATEGIC MARKET STATUS

The bill will enable the CMA to designate particularly significant players in digital markets as holding Strategic Market Status (SMS). The rules introduced by the Bill will only apply to what the CMA refers to as these "SMS firms".

The CMA plans to take a "targeted approach" and anticipates that only a small number of businesses will receive SMS designation. The CMA will undertake a "thorough, evidence-based investigation" of any relevant businesses - including a public consultation - before making designations, and must reach its decision within nine months.

In order to be designated, an SMS firm must have:

1. Substantial and entrenched market power in a digital activity which is linked to the United Kingdom
2. A position of strategic significance
3. Global turnover of more than £25bn or UK turnover of more than £1bn

The CMA anticipates commencing three to four investigations within the first year of the regime, and will apply strict criteria before designating an SMS firm. A designation as an SMS firm is not itself a finding of misconduct, but instead enables the CMA to take the following measures.

CONDUCT REQUIREMENTS

First, the CMA can guide the behaviour of an SMS firm by setting Conduct Requirements (CRs), to ensure its activities do not harm the relevant digital market or exploit consumers.

A CR can only be imposed if it proportionately meets an overarching legislative objective – such as fair dealing - and a more specific permitted purpose, such as obliging SMS firms to have effective complaints handling procedures. CRs should ideally specify a desired outcome, giving the SMS firm flexibility in how to achieve it, but if necessary the CMA may specify actions that must be taken. For example, if the CMA has identified "clear and persistent existing harms" within the market, an SMS firm may be barred from certain activities to protect the interests of consumers.

If the CMA sets a CR, it must publish a notice stating its reasoning, why it is proportionate to place it on the SMS firm, and the anticipated benefits.

PRO-COMPETITION INTERVENTIONS

Additionally, the CMA may make pro-competition interventions (PCI) in relation to SMS firms. Unlike CRs, which in broad terms require SMS firms to trade fairly, PCIs are intended to address structural issues and promote greater competition on digital markets – the CMA intends to use them to "tackle the factors that are the source of a firm's market power", and in the process "create longer-term dynamic changes" to promote competition and innovation.

If the CMA opens a PCI investigation it will investigate the SMS firm to determine which factors of its digital activity adversely affect competition, and will only intervene if doing so would be effective and proportionate.

MERGER REPORTING

Special merger rules will also apply to SMS firms, requiring them to report certain transactions where:

1. The total consideration is £25m or more
2. There is a "UK connection"

This will enable the CMA to investigate the merger if it poses potential problems for competition. This provision in effect provides an exception to the voluntary nature of the UK's merger control regime.

OPERATING PRINCIPLES

The overview also lists 11 principles which the CMA will follow when exercising its new powers. In an address recently given in the US, these were summarised into four broad themes:

1. A "targeted, evidence-based and proportionate approach" will be taken to respond to rapid market developments
2. The focus should be on improving competition, but if necessary the CMA will "take direct action to prevent the abuse of market power"
3. The new regime should be used in a way that "complements the CMA's existing tools"
4. Going forward the CMA will "continue to engage widely with a range of stakeholders"

PROPOSED APPROACH

When exercising its new powers, the CMA intends to take a "participative approach" to SMS firms which is "complemented by formal enforcement action where needed".

To help accomplish this, the CMA has spent time building relationships with major players in digital markets to enhance its understanding of the industry, and has "appointed nine digital experts and independent advisors" to assist with the regime going forward.

The CMA will also continue to engage with a variety of different stakeholders to "understand the concerns businesses and consumers have about (potential) SMS firms" and ensure any CRs or PCIs enacted adequately address the problems raised.

Collaboration with other regulators will also be essential to success, so that the regime does not unnecessarily diverge from the approach taken by other competition authorities (such as the European Commission) or duplicate the work performed by other domestic regulators.

TIMESCALES

The CMA has issued a provisional timeline for the rollout of the regime, with royal assent for the Bill projected for spring 2024. Following this, it will publish draft guidance on how to approach the CRs, PCs and the SMS criteria, which will be finalised once the CMA's responsibilities commence in autumn 2024.

This will enable the CMA to commence investigations into select firms, and if these timescales are met, then the first SMS designations may be made in summer 2025.

For more information on how:

- Penalties for breaches of consumer protection law will be enhanced by the bill, see [here](#).
- The bill will change the thresholds for merger investigations and the CMA's investigation process, see [here](#).
- The bill will affect companies in the life sciences sector, see [here](#).

KEY CONTACTS

For further information about any of the issues raised in this guide, please contact:



Gustaf Duhs

Partner

T: +44 (0)1483 734217

M: +44 (0)7725 912385

E: gustaf.duhs@stevens-bolton.com



Jeremy Kelly

Senior Associate

T: +44 (0)1483 406423

M: +44 (0)7977 808697

E: jeremy.kelly@stevens-bolton.com



George Harrington

Paralegal

T: +44 (0)1483 406420

M: +44 (0)7581 067218

E: george.harrington@stevens-bolton.com

STEVENS&BOLTON

Wey House, Farnham Road
Guildford, Surrey, GU1 4YD
Tel: +44 (0)1483 302264
Fax: +44 (0)1483 302254
DX 2423 Guildford 1
www.stevens-bolton.com

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