

UK Enacts a New Digital Regime Regulating the Conduct of Major Tech Platforms

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The Digital Markets, Competition and Consumers Act (DMCC or the Act), adopted on 24 May 2024, empowers the Competition and Markets Authority (CMA) to regulate the conduct of major tech platforms.

The CMA can designate companies with “Strategic Market Status” (SMS) if:

- their turnover exceeds certain thresholds,
- their digital activity is linked to the UK, and
- they have substantial and entrenched market power and a position of strategic significance.

The CMA has indicated that it is likely to begin the designation process for three to four digital companies during the first year of the Act.

SMS status companies are subject to additional conduct rules to ensure fair dealing, open choice and transparency for end-users. The conduct obligations are intended to prevent self-preferencing and guarantee interoperability, fair data access and equal treatment for business users.

There are many similarities to the European Union’s [Digital Markets Act \(DMA\)](#). But the DMCC is more targeted in identifying qualitatively which companies have SMS status, and it enables the tailoring of conduct obligations to the platforms’ operations.

Companies will need to consider:

- whether they are likely to be subject to SMS designation and the potential conduct obligations that may flow from designation, and
- how the new rules governing major tech platforms may impact their business.

The Act will enter into force following the establishment of a new UK government. The UK general election is on 4 July 2024.

Objective

The Act aims to limit the consolidation of market power in the hands of a few tech companies. The CMA has indicated that it will focus its initial investigations on three to four companies. Sarah Cardell, the chief executive of the CMA, has emphasized that these investigations will be “evidence-based, targeted and proportionate.”

Designation Criteria

A company may be designated as having SMS if it meets certain qualitative and quantitative criteria:

- It engages in “**digital activity**,” *i.e.*, provides services by means of the internet or digital content (Sections 2(1) and 3 DMCC).
- Its activity is **linked to the UK**, either by user or business presence, or because it is likely to have an immediate, substantial and foreseeable effect on trade in the UK (Sections 2(1)(a) and 4 DMCC).
- It has **substantial and entrenched market power** forecast over at least five years (Sections 2(2)(a) and 5 DMCC).
- It has **strategic significance**, as determined by its relative size or scale, a significant number of business users, the ability to leverage its digital activity in favor of

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other activities and the ability to determine or substantially influence the conduct of other undertakings (Sections 2(2)(b) and 6 DMCC).

- Its **turnover** must be either above £1 billion in the UK or above £25 billion globally (Sections 2(3) and 7 DMCC).

These criteria differentiate the Act significantly from the DMA by providing for automatic designation based on user number and financial thresholds. The Act's approach seeks to avoid false positives by focusing on qualitative considerations.

Conduct Requirements

A company with SMS status must fulfill certain conduct obligations, including equal treatment, assurance of interoperability and guarantees of effective user choice, to enable informed decision-making and fair commercial terms (Section 20.3 DMCC), similar to those applicable to designated gatekeepers under the DMA. The CMA will tailor these obligations to each SMS firm's case and position.

Companies are required to self-assess their business practices and identify the actions necessary to achieve compliance with the obligations imposed (Section 8.2 of the overview).

The CMA will monitor compliance and provide a number of guiding principles concerning, particularly:

- Fair dealing (Section 19.6 DMCC): Consumers and business users must be treated fairly and offered reasonable terms.
- Open choice (Section 19.7 DMCC): Consumers and business users must be able to choose freely and easily among the company's and rivals' services or content.
- Trust and transparency (Section 19.8 DMCC): The undertaking must provide consumers and business users with such information as to enable them to understand the service and its terms and conditions, and make informed decisions.

Mergers Reporting

Under the Act, all SMS firms and their groups will be required to report to the CMA any acquisitions with a transaction value of at least £25 million (Section 57.2(b) DMCC) and involving the acquisition of at least a 15% interest in a target company connected with the UK. Closing is prohibited until a period of five working days (the standstill period) has passed from submission of a complete notification.

Upon receipt of the report, the CMA must notify the SMS firm whether the report provides sufficient information on the

transaction (Sections 62(1), 63(1) DMCC). If the CMA decides to initiate a merger investigation during this period, it may issue an interim enforcement order to hold separate the acquirer and target businesses pending its investigation.

In this respect, the Act contrasts the DMA, Art. 14, which merely requires the European Commission (EC) to be informed of an acquisition relating to specific types of digital businesses prior to closing.

The Act also implements a new merger control threshold allowing the CMA to review mergers where:

- either party has at least a 33% share of supply or purchases of goods/services in the UK,
- that party's turnover exceeds £350 million in the UK, and
- the other party meets a UK nexus test.

For more on the merger control aspects of the Act, see our related client alert "[UK Revamps Merger Control, Expanding CMA's Jurisdiction and Making Procedures More Flexible.](#)"

Pro-Competition Intervention

In addition to the conduct requirements, Section 46 DMCC empowers the CMA to investigate a platform's adverse effect on competition (AEC) and issue orders (or accept commitments) to remedy any concerns (Section 56 DMCC).

Noncompliance

The CMA will possess broad enforcement powers, including the right to issue fines of up to 10% of a company's worldwide turnover (Sections 85(3), 86 DMCC). It may even enforce criminal offenses against executives who are found to fail to comply with investigative requirements or who obstruct the CMA's investigations, including by providing false or misleading information (Section 87 DMCC).

Appeals

Decisions adopted by the CMA under the Act — including SMS designations, the imposition of conduct requirements or a finding of noncompliance — will be subject to appeal before the Competition Appeal Tribunal (CAT) (Section 103 DMCC).

The standard of judicial review has been a highly debated topic throughout the legislative procedure. As passed, the Act provides for a standard of judicial review (that queries whether the public body acted rationally, within its powers and in line with proper, established procedures).

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These grounds may be narrow, but as the [Court of Appeal ruled earlier this year](#), the standard of review is still intensive, and the CAT must undertake a detailed examination of the evidence.

A fining decision may, however, be appealed on the merits, which means that the CAT would review the substantive appropriateness of the fine (Section 6.12 of the DMCC overview).

Next Steps

It is not yet clear when the Act will take effect. This will depend, to a large extent, on the priorities of the new government that will take office following the UK's general election on 4 July 2024. However, companies should prepare for the possibility that the Act may enter into force later this year.

We expect the CMA to designate companies incrementally, given that each designation process may take up to nine months. The first three to four companies may even be designated as early as the summer of 2025.

[The CMA is consulting on draft guidance](#) on its new powers and on the merger reporting requirements for SMS status companies. It has requested comments by 12 July 2024.

Finally, the CMA's Digital Markets Unit (DMU) has expressed its intention to communicate with the EC on certain provisions of the DMCC that overlap with the DMA to ascertain how to most effectively enforce compliance, for instance the requirement to submit compliance reports.

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