

Overview of the CMA's provisional approach to implement the new Digital Markets competition regime

© Crown copyright 2024

You may reuse this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Contents

	<i>Page</i>
1. Summary	3
2. Context and purpose of this document	5
3. The purpose of the new Digital Markets competition regime	6
4. Target outcomes	7
5. Key elements of the Digital Markets competition regime	11
6. How the CMA's actions will be reviewed and it held to account	17
7. How we will carry out our Digital Markets competition functions: operating principles ..	20
8. How we will work with SMS firms and other stakeholders	24
9. Operational readiness to take on our new role	26
10. Indicative timeline	27

1. Summary

- 1.1 This document sets out the CMA's provisional thinking on how we will implement Part 1 of the Digital Markets, Competition and Consumers Bill (the DMCC Bill). Our preparations will evolve as the DMCC Bill progresses through Parliament.

Purpose and target outcomes

- 1.2 The Government has set out that the DMCC Bill will provide the CMA with new, more effective tools to address barriers to competition in digital markets. The DMCC Bill will give us the power to designate firms as having Strategic Market Status (SMS) in relation to a digital activity. Strict criteria ensure designations will be targeted at a small number of firms. We will then be able to set requirements for how these firms should conduct themselves in relation to that activity. We will also be able to investigate whether there are factors undermining competition that we could remedy through 'Pro-Competition Interventions' (PCIs).
- 1.3 Our new role supports the CMA's overall purpose – to help people, businesses and the UK economy by protecting competition and tackling unfair behaviour. The positive outcomes we will pursue in digital markets are that people can be confident they are getting great choices and fair deals; that competitive, fair-dealing businesses can innovate and thrive; and that dynamic competition stimulates investment and competitive innovation, driving economic growth and productivity.
- 1.4 Our digital markets work to date has highlighted potential harms we may need to prevent or address in order to assure these benefits, including prospective SMS firms blocking innovation, exploiting their market power, or seeking to reinforce and extend their market power. Which harms we tackle will be driven by the CMA's prioritisation principles.

Accountability

- 1.5 The CMA Board is directly accountable to Parliament and receives a Strategic Steer from the Government. We will also continue to provide evidence to, appear before, and engage with Parliamentary committees and Parliamentarians interested in our work.
- 1.6 The DMCC Bill includes five mechanisms to hold the CMA to account for our decisions under Part 1. Significant decisions must be taken by the Board itself or a Board Committee with at least half of its members being non-executives or members of the CMA's panel. We will consult publicly on guidance on how we will exercise our digital markets functions, as well as on our decisions. Firms will be able to appeal our decisions under judicial review standards, as they are under our existing markets and mergers functions. Designated firms will be able to appeal on

the merits the imposition and size of any fines we decide to impose for breaches of the requirement placed on them.

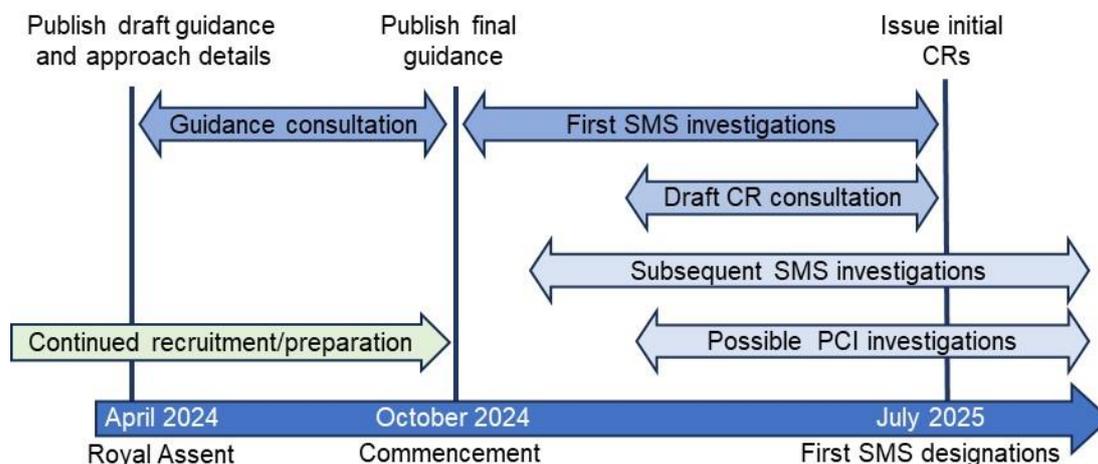
How we will carry out our Digital Markets functions: operating principles

1	We will tailor our actions to the specific problems we identify, considering their proportionality and likely effectiveness.
2	We will focus our actions where we can have the most impact for people, businesses and the economy.
3	We will measure our impact, outcomes and outputs. We will learn from experience and use this to inform future decisions.
4	We will stay abreast of developments and seek to deal with harm quickly.
5	We will promote competition as the primary lever to deliver better outcomes for users.
6	Where steps to improve competition alone will not deliver the outcomes to the extent or pace we seek, we will prevent abuses of market power more directly.
7	We will seek to intervene in a technology-neutral way.
8	We will ensure the Digital Markets competition regime complements other CMA tools.
9	We will engage throughout with a wide range of stakeholders who are affected by or have an interest in our work.
10	We will operate with transparency.
11	We will work with our domestic and international counterparts to minimise unnecessary duplication.

Readiness for our role

1.7 We have built up considerable experience and expertise in digital markets in recent years and are continuing to recruit. We will have around 200 people working on our digital markets functions by commencement. This includes data scientists and data engineers, technologists, behavioural scientists, digital forensics specialists, economists, lawyers, and policy officials. In addition, we have appointed nine Digital Experts as independent advisors.

Indicative timeline (subject to Parliamentary process)



2. Context and purpose of this document

- 2.1 The Parliamentary Under Secretaries of State at the Department for Business and Trade and the Department for Science, Innovation and Technology requested on 4 January 2024 that the CMA publishes a high-level plan for implementing the proposed new Digital Markets competition regime. They asked us to include indicative timelines for certain milestones such as consulting on guidance as well as how we envisage working with stakeholders.
- 2.2 This document responds to that request. Its purpose is to support scrutiny of Part 1 of the Digital Markets, Competition and Consumers Bill (the DMCC Bill) by Parliamentarians, as well as assist stakeholders preparing for the new regime. It is based on the latest draft of the DMCC Bill, the insights we have gained from our extensive work in digital markets to date and our engagement with a broad range of stakeholders.
- 2.3 However, the DMCC Bill may be further amended through the Parliamentary process. This document, therefore, represents a provisional overview and we will refine and detail our approach as we engage further with stakeholders and continue to prepare for our new responsibilities. We will publish a more detailed document setting out our intended approach following Royal Assent. At that point we will also consult on our draft guidance for the regime covering each of the key provisions in Part 1 of the DMCC Bill. While this document does not cover other Parts of the Bill, we will separately consult on guidance for our new functions within the direct enforcement model of consumer law created by Part 3, as well as on new or revised guidance for our wider competition functions as necessary.
- 2.4 This document therefore covers:
- the purpose of the new Digital Markets competition regime
 - the positive outcomes we will seek to achieve and the types of harms we will seek to prevent or address
 - the key elements of the Digital Markets competition regime
 - how the CMA will be held to account for its actions
 - how we will carry out our new Digital Markets competition functions
 - how we will work with potential SMS firms and other stakeholders
 - our operational readiness to take on our new role
 - an indicative timeline, as we prepare for the start of the Digital Markets competition regime.

3. The purpose of the new Digital Markets competition regime

- 3.1 The new powers under Part 1 of the DMCC Bill complement our existing powers and together enable the CMA to fulfil its statutory duty to promote competition, both within and outside the UK, for the benefit of consumers.
- 3.2 While recognising the many benefits digital markets bring to people and businesses, the Government has set out that the new pro-competition regime should address the far-reaching market power of a small number of technology firms by enabling the CMA to proactively drive more dynamic digital markets and prevent harmful practices that hold back innovation and growth. It has recognised that there are specific features of fast-moving digital markets that can lead to a small number of firms establishing entrenched and substantial market power, which the existing competition framework is not set up to address.
- 3.3 Across the world, other jurisdictions are also recognising the need for competition authorities to have additional tools to enable the positive benefits of digital markets while addressing harms. For instance, the EU, Germany and Australia have taken or are taking similar steps to the UK.

4. Target outcomes

4.1 The CMA’s purpose is to help people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour. We do this by delivering outcomes where:

- people can be confident they are getting great choices and fair deals;
- competitive, fair-dealing businesses can innovate and thrive;
- the whole UK economy can grow productively and sustainably.

Benefits we will seek to enable in digital markets

4.2 As set out in Table 1 below, this aligns with the positive outcomes we will deliver under the Digital Markets competition regime.

Table 1: CMA purpose and desired outcomes for the Digital Markets competition regime

Purpose	
To help people, businesses and the UK economy by promoting competitive digital markets and ensuring fair behaviour by those firms we designate as having Strategic Market Status (SMS).	
Outcomes and benefits	
People can be confident they are getting great choices and fair deals	<ul style="list-style-type: none"> • People can make informed choices, with defaults and choice architecture aiding decision-making. • People can use the products and services that best meet their needs regardless of what other products and services they use and who they are provided by. • People can easily switch providers, without losing access to their data and content. • People are protected from exploitation and unfair or misleading practices.
Competitive, fair-dealing businesses can innovate and thrive	<ul style="list-style-type: none"> • Businesses that rely on SMS firms do not face exploitation or anti-competitive behaviour by the SMS firm. • Businesses have a fair chance to compete with SMS firms, including through having appropriate access to data and functionality.
The whole UK economy can grow productively and sustainably	<ul style="list-style-type: none"> • Dynamic competition in digital markets stimulates investment, and competitive innovation, driving economic growth and improved productivity.

Potential harms we will seek to prevent or address

4.3 Through our work to date on digital markets we have identified several features of digital markets that can lead to substantial and entrenched market power, for example:

- Digital products and services are more valuable the more users they have;
- Switching costs mean users tend to use one version of a product or service because if they switch to another one they lose their data, for example their contacts;
- Costs fall as output rises;
- Access to lots of data is disproportionately valuable for improving products and services.

4.4 In some circumstances, firms with such market power can act in ways that make it harder for other innovative firms to compete and grow effectively, and as a result further reinforce or extend their market power. And firms with such market power can, in some cases, engage in behaviours that cause harm directly to consumers. We have identified several categories of potential harm that can arise from market power in digital markets as summarised in Table 2:

Table 2: Categories of potential harm in digital markets

Categories of harm	Examples
Behaviours that reinforce core market power	<ul style="list-style-type: none"> • Sophisticated use of online design to lock in customers. • Firms restrict competitors' access to data in a way which stops the smaller firms being able to compete fairly. • Firms prevent different services from working together e.g. users can't access digital content outside the platform they bought them on.
Behaviours that extend market power into related markets	<ul style="list-style-type: none"> • Promoting a platform's own products/services ahead of competing firms, in a way that disadvantages competitors. • Selling products and services in a bundle to prevent rivals competing on one product/service. • Using data in an anti-competitive way to disadvantage competitors.
Behaviours to block or restrict new markets and innovation	<ul style="list-style-type: none"> • Preventing competitors' access to the software needed to create complementary products/services. • Preventing competitors' access to hardware e.g. near-field communication chips to provide complementary services.
Behaviours that harm consumers	<ul style="list-style-type: none"> • Providing false/poor quality information which distorts consumer decision-making. • Using online design to mislead consumers into e.g. buying products they do not want or signing up for subscriptions without realising.
Exploitation of market power	<ul style="list-style-type: none"> • Charging excessively high prices (including to business users on two-sided platforms). • Collecting excessive amounts of data (particularly where users have no choice to opt out of data-sharing). • Setting exploitative T&Cs for businesses that rely on their platforms to access their customers.

4.5 Examples of what we could do to tackle market power in digital markets and associated harms include:

- **Ensure markets stay open.** For example, by (where appropriate and proportionate) preventing SMS firms from engaging in anti-competitive tying, bundling or self-preferencing of products and services, or by mandating SMS firms provide competitors with greater access to data or functionality controlled by SMS firms.
- **Seek ways to increase competition in the core platform markets where this is feasible.** For example, by (where appropriate and proportionate) requiring SMS firms to allow the products and services of other firms to interoperate with their own, or ensuring SMS firms provide their users with effective choice screens.

- **Tackle misuse of market power more directly where competition does not provide an adequate constraint.** For example, by (where appropriate and proportionate) requiring SMS firms to trade on fair terms or requiring them to increase transparency with respect to aspects of their algorithms.

4.6 Whether and how we address or prevent harms will be driven by the CMA's prioritisation principles. While we have not taken any decisions on what digital activities or harms we will tackle first, we clearly have a stronger understanding and evidence base in respect of markets and activities we have already studied, such as platforms funded by digital advertising (including search and social media) and mobile ecosystems. We therefore anticipate that our early work will include building on and leveraging that experience.

5. Key elements of the Digital Markets competition regime

5.1 The Digital Markets competition regime has five key elements: Strategic Market Status, Conduct Requirements, Pro-Competition Interventions, Enforcement, and Merger reporting.

Strategic Market Status (SMS)

5.2 The Digital Markets competition regime will apply to firms designated by the CMA as having Strategic Market Status (SMS) in relation to one or more digital activities. The DMCC Bill sets out that a digital activity is the provision of a service by means of the internet, the provision of digital content (which includes software), or any activity which is being carried out for the purposes of providing an internet service or digital content. Although this is broadly framed, in reality the CMA expects the number of firms designated as having SMS to be very limited, for the reasons set out below.

5.3 Before we designate a firm as having SMS we must undertake a thorough, evidence-based investigation with a time limit of nine months. This will involve the gathering of evidence from a range of stakeholders, analysis and consultation.

5.4 Under the DMCC Bill, for a firm to have SMS, it must have:

- substantial and entrenched market power in a digital activity which is linked to the United Kingdom
- a position of strategic significance
- global turnover of more than £25 billion or UK turnover of more than £1 billion.

5.5 Taken together, these criteria ensure the regime is targeted at a small number of firms.

5.6 Following Royal Assent, the CMA will publish draft guidance for consultation setting out how we will assess substantial and entrenched market power and how we will determine whether a firm has a position of strategic significance. The guidance will also set out how we will identify what a digital activity is and our procedural approach to SMS investigations.

5.7 Designating a firm as having SMS is the gateway into the regime but does not involve a finding of any wrongdoing.

5.8 Once we designate a firm with SMS, we will then have two key tools: Conduct Requirements (CRs) and Pro-Competition Interventions (PCIs). Through CRs we will be able to guide the behaviour of SMS firms and through PCIs we will be able to

address factors underpinning these firms' market power in a particular activity. Additional merger reporting requirements on SMS firms will ensure we have sight of mergers and acquisitions involving SMS firms that could harm competition before they are completed.

Conduct Requirements (CRs)

- 5.9 CRs will set out how the SMS firm must conduct itself in relation to the digital activity for which it has been designated. CRs are intended to guide the practices of SMS firms in ways that address not only existing issues but also prevent them from taking advantage of their powerful positions in ways that would exploit consumers and businesses or undermine fair competition.
- 5.10 We will only be able to impose CRs if we consider doing so would be proportionate for one or more of three legislative objectives. Those objectives are:
- *fair dealing*: this is to ensure users are treated fairly and able to interact with the SMS firm on reasonable terms;
 - *open choices*: this is to ensure users are able to choose freely and easily between services or content provided by the SMS firm and other firms;
 - *trust and transparency*: this is to ensure users have the information they require to understand the services or digital content being provided by the SMS firm and are able to make informed decisions about them.
- 5.11 The DMCC Bill also requires that CRs must be for one or more of the following permitted purposes:
- (a) To oblige a designated firm to:
- trade on fair and reasonable terms;
 - have effective processes for handling complaints by and disputes with users or potential users;
 - provide clear, relevant, accurate and accessible information about the relevant digital activity to users or potential users;
 - give explanations, and a reasonable period of notice, to users or potential users of the relevant digital activity, before making changes in relation to the relevant digital activity where those changes are likely to have a material impact on the users or potential users;
 - present to users or potential users any options or default settings in relation to the relevant digital activity in a way that allows those users or potential users to

make informed and effective decisions in their own best interests about those options or settings.

(b) Or to prevent a designated firm from:

- applying discriminatory terms, conditions or policies to certain users or potential users or certain descriptions of users or potential users;
- using its position in relation to the relevant digital activity, including its access to data relating to that activity, to treat its own products more favourably than those of other undertakings;
- carrying on activities other than the relevant digital activity in a way that is likely to materially increase the undertaking's market power, or materially strengthen its position of strategic significance, in relation to the relevant digital activity;
- requiring or incentivising users or potential users of one of the designated undertaking's products to use one or more of the undertaking's other products alongside services or digital content the provision of which is, or is comprised in, the relevant digital activity;
- restricting interoperability between the relevant service or digital content and products offered by other undertakings;
- restricting whether or how users or potential users can use the relevant digital activity;
- using data unfairly;
- restricting the ability of users or potential users to use products of other undertakings.

5.12 The DMCC Bill requires that, when setting CRs, we publish a notice explaining our reasoning, including why we consider it proportionate to impose the CR, and the benefits we consider would likely result from it.

5.13 Following Royal Assent, the CMA will publish draft guidance for consultation setting out our proposed approach to imposing and monitoring compliance with CRs.

5.14 The form and content of CRs that the CMA imposes on SMS firms will likely vary across firms and digital activities. A CR may specify the outcome the SMS firm must achieve (outcome focussed CR) or include actions the firm must take to achieve that outcome (action focussed CR). CRs may also be set as higher-level requirements which SMS firms may be able to comply with in a number of ways, or contain more detailed and directive requirements.

5.15 Across this potential for tailoring CRs, we recognise the importance of a coherent and principled approach across the regime. To ensure a coherent approach, we expect to apply the following four principles when setting a CR or combination of CRs on an SMS firm:

- **CR Principle 1:** We start by identifying the outcome we intend the CR(s) to achieve. This outcome will be consistent with the overarching legislative objectives (fair dealing, open choices, trust and transparency), but may be more specific. Where the outcome is measurable, and compliance with the outcome will be relatively easy for the CMA - and ideally third parties - to assess, we are more likely to impose an outcome focused CR. This will provide the SMS firm with a clear outcome it must achieve, while allowing the firm to determine for itself how to do so. This should incentivise compliance and minimise the risk of regulatory failure.
- **CR Principle 2:** Where an outcome focused CR is not appropriate or sufficient to achieve the intended aim, including because compliance against the relevant outcome cannot be clearly assessed, we will impose a CR (or CRs) specifying the actions a firm must take. In these circumstances, an action focused CR may provide greater certainty to both the SMS firm and other market participants as to what precisely the firm must do to comply with the CR. However, even where we formulate the CR based on the actions a firm must take, we will still regularly monitor and assess whether the CR is delivering the outcome it is intended to achieve.
- **CR Principle 3:** When setting action focused CRs, we will, at a minimum, generally set higher-level requirements, based on the permitted types set out in the legislation. Higher-level requirements will allow for greater flexibility in the specific steps the firm needs to take to comply, which may support innovation and involve less risk of unintended consequences.
- **CR Principle 4:** Where necessary to achieve the intended outcome, we may build on these higher-level requirements by also imposing a CR (or CRs) with more detailed requirements. This is most likely to apply where a firm has failed to comply effectively with higher-level requirements. The CMA may also impose more detailed CRs in circumstances where we have identified clear and persistent existing harms which need to be corrected and specific steps the SMS firm needs to take to do this.

5.16 In some cases, it may be that higher-level requirements need to be supplemented over time with more detailed requirements - depending on how effectively SMS firms comply with higher-level requirements. In addition, whilst in some cases it may be appropriate to move sequentially through the principles set out above, there may be situations where a more directive approach is merited from the outset.

- 5.17 While responsibility for complying with CRs will lie with SMS firms, it is crucial that the CMA is able to effectively monitor both compliance with and the effectiveness of CRs. We recognise the important role wider stakeholders will play in providing us with intelligence to help us to do this. We envisage working closely with all stakeholders from the start to build confidence in an effective, transparent, and participative regime that works with the grain of competition.
- 5.18 In situations where an SMS firm is unable to agree fair and reasonable terms with another party following a breach of a CR to trade on fair and reasonable payment terms, the DMCC Bill provides that the CMA may initiate a Final Offer Mechanism. Through this the CMA can mediate between the parties by selecting what we regard as being the most suitable best and final offer put forward by either side. This mechanism could only be initiated if the CMA considers that there is no other way to satisfactorily resolve the breach in a reasonable timeframe.
- 5.19 The draft guidance we consult on after Royal Assent will set out more information on our approach to CRs.

Pro-Competition Interventions (PCIs)

- 5.20 Pro-Competition Interventions (PCIs) will enable the CMA to address factors relating to a digital activity which are preventing, restricting or distorting competition. PCIs might include giving people the power to easily transfer their data from one provider to another, or requiring different products and services to work with each other (known as interoperability). They will therefore tackle the factors that are the source of a firm's market power in a digital activity for which it is designated with SMS. The aim of PCIs is to create longer-term dynamic changes in these activities, opening up opportunities for greater competition and innovation.
- 5.21 To make a PCI the DMCC Bill requires that we first undertake an investigation, within a 9-month timeline, to determine whether there are any factors relating to an SMS firms' designated digital activity that are having an adverse effect on competition. Through this we will build a detailed understanding as to how the market operates and the factors leading to any competition problems. We will also determine whether an intervention is required, what it should be, and whether it would be effective and proportionate in dealing with the problem. We can directly order an SMS firm to take (or not take) certain action and have the power to require them to undertake testing or trialling to help determine the most effective remedy.
- 5.22 Following Royal Assent, the draft guidance we publish for consultation will set out our how we will undertake this assessment.

Merger reporting

- 5.23 SMS firms will have to report mergers to us before their completion, where they have a value of £25 million or more and a UK connection. Where we think a merger might cause competition problems, the CMA will then be able to launch a merger investigation under our normal merger review powers.

Enforcement

- 5.24 We intend to operate the Digital Markets competition regime adopting a participative approach in which we will engage constructively with both SMS firms and other stakeholders. This will ensure we identify the most important issues to address, design the most effective interventions, and have the best insight on their impact. It will also enable us to seek to solve problems and resolve issues faster and in a more agile way than simply using our formal enforcement powers.
- 5.25 However, this must be complemented by formal enforcement action where needed. The DMCC Bill provides for a range of enforcement mechanisms where an SMS firm fails, without a reasonable excuse, to comply with CRs or PCIs. These include disqualification of directors, and financial penalties of up to 10% of the undertaking's turnover.
- 5.26 The draft guidance we publish for consultation following Royal Assent will set out our approach to enforcement.

6. How the CMA's actions will be reviewed and it held to account

- 6.1 The DMCC Bill gives the CMA significant new powers in relation to digital markets. The CMA Board is directly accountable to Parliament for all its work. However, with greater responsibility comes greater accountability and the DMCC Bill includes five important mechanisms that will hold the CMA to account for our actions.

Guidance

- 6.2 The DMCC Bill requires us to consult on and then publish guidance on how we will exercise the functions given to us under Part 1. We will consult on such draft guidance as soon as possible following Royal Assent. As with all of the CMA's guidance, we will keep this guidance under review and update where it is appropriate to do so in light of our experience operating the regime.
- 6.3 Further, before publishing our guidance or any update to it, the DMCC Bill requires that we obtain the approval of the Secretary of State.

Consultation and coordination

- 6.4 The DMCC Bill requires the CMA to undertake public consultations on key decisions, including making an SMS designation, imposing CRs, and making a PCI. These are minimum requirements. In line with our participative approach, we will undertake fair, inclusive, and transparent engagement throughout the Digital Markets competition regime. We discuss this further in the section below explaining how we will work with SMS firms and other stakeholders.
- 6.5 Competition and consumer issues in digital markets sit alongside wider issues such as security, privacy, media plurality, and financial stability. With our new Digital Markets competition responsibilities, the need for regulatory coordination will only grow. The DMCC Bill requires that we consult with other regulators when making decisions relevant to their remits. This includes Ofcom, the Information Commissioner, the Financial Conduct Authority, the Prudential Regulation Authority and the Bank of England. These are minimum requirements; we will continue to engage closely with other regulators.

Decision-making

- 6.6 The CMA Board is directly accountable to Parliament for all CMA decisions regardless of whether they are taken by the Board itself or delegated to CMA staff.
- 6.7 However, the DMCC Bill specifies that several of the decisions taken by the CMA under the Digital Markets competition regime must be made by the CMA Board or a

Committee of the Board. For the Committee, the DMCC Bill also requires that at least two members must be Non-Executive Board members and at least half of the members must be Non-Executive Board members or CMA panel members. These requirements will ensure that a range of experience and objective perspectives guide the most significant decisions in the regime to improve the quality of decision-making and further guard against the risk of regulatory capture and confirmation bias.

- 6.8 The Department for Business and Trade is in the process of appointing new CMA Non-Executive Board members with skills in a range of areas, including digital and technology. This will help ensure the CMA Board has sufficient capacity to discharge its new decision-making responsibilities.
- 6.9 We will be transparent with respect to our decisions across the regime. For certain decisions under the Digital Markets competition regime, the DMCC Bill requires that the CMA publishes a notice explaining our reasoning. This is a minimum requirement, however. We outline below that one of our principles for operating the regime is to act with transparency. We are also cognisant of the Government's recent Strategic Steer to the CMA where it sets out its expectation for the CMA to be as open as possible about the Board's priorities and decision-making.

Review by the courts

- 6.10 It is important that affected parties have access to robust, effective and timely appeal mechanisms. Part 1 of the DMCC Bill establishes that (with the exception of decisions on fines noted below) all CMA decisions taken in the Digital Markets competition regime will be subject to an appeal applying judicial review principles. This includes CMA decisions on whether a firm has SMS, the imposition of CRs, the imposition of a PCI and the decision on whether a CR has been breached.
- 6.11 Judicial reviews are a challenge to the way in which a decision has been made: that is, whether the public body acted rationally, within its powers, and in line with proper procedures. This standard is already used for the CMA's markets and mergers decisions and widely applied elsewhere in relation to decisions by other public bodies. It includes reviewing the approach to analysis and evaluation of evidence and ensuring that, in reaching its decision, the public body took all relevant factors into account (and that it did not rely on irrelevant factors). For the Digital Markets competition regime any appeal would be made to the Competition Appeal Tribunal, as is the case for most of the CMA's existing competition functions.
- 6.12 The DMCC Bill allows firms separately to challenge – on the merits – the imposition, and size, of any fines we impose following a breach of regulatory requirements. This means the Competition Appeal Tribunal can substitute its own view on the appropriate level of any fine.

Reporting and Parliamentary oversight

6.13 The CMA is directly accountable to Parliament for all its work and this is the case also for the new Digital Markets competition regime. As part of the CMA's Annual Plan, we will set out the areas where we plan to focus our Digital Markets competition work. In the CMA's Annual Report, which is laid before Parliament, we will describe our work under the Digital Markets competition regime. This will report our progress against a range of indicators to enable us to be held to account. Our provisional thinking is that these indicators will include:

- **Outputs:** This will capture the work we have undertaken in each year, for example: SMS investigations undertaken and CRs imposed.
- **Outcomes:** This will capture case-specific benefits that have resulted from our actions, for example: pro-consumer or pro-competition changes in terms and conditions; number of services available. The indicators we will track will be specified during the design process for CRs and PCIs.
- **Impact:** Each year the CMA Annual Report includes an estimate of the direct financial benefit of our work for consumers. Once established, our Digital Markets competition regime will contribute to these estimates.
- **Health of UK digital markets:** We will keep track of broader developments in UK digital markets, such as levels of growth and investment, drawing on a range of data sources.

6.14 The CMA takes its accountability to Parliament very seriously. We will, of course, continue to provide evidence to, appear before, and engage with the various Parliamentary committees and Parliamentarians with an interest in our work. This already does, and will continue to, include our Digital Markets work.

7. How we will carry out our Digital Markets competition functions: operating principles

7.1 We will have to take decisions about how we operate the regime. This includes where we focus our resources and how we undertake our role. Whilst our thinking on how best to carry out the new functions will continue to develop ahead of Royal Assent and commencement, we have developed an initial set of proposed principles to help inform our stakeholder engagement and refine our proposed approach over that period.

Targeted and proportionate

Principle 1 – we will tailor our actions to the specific problems we identify, considering their proportionality and likely effectiveness

7.2 There is great diversity across digital markets as well as the harms that can arise. We will be open-minded as to the appropriate solution and be led by the evidence, including feedback from market participants of all kinds. As part of this, we will consider the impact of any intervention on affected stakeholders, including consumers vulnerable in that context.

Focused on positive outcomes

Principle 2 – we will focus our actions where we can have the most impact for people, businesses and the economy

7.3 We will make decisions on which digital activities to prioritise for designation, and where and how to act in relation to those activities, in line with the CMA's existing prioritisation principles. This means we will consider:

- How substantial the likely positive impact of our intervention would be in each case including direct benefits for consumers as well as benefits for businesses and the economy through, for example, encouraging more competitive markets and greater innovation.
- Whether the CMA is best placed to act. In particular, we will consider the actions of other regulators in digital markets both within the UK and internationally. We will also consider how well we understand the markets, technologies and business models – the better we understand, the quicker and more likely our positive impact will be.
- The resourcing requirements of our actions and whether we have the right capacity in place to act effectively.

- The prevalence, and significance, of risks associated with each action we take.
- The balance of our portfolio of cases across firms, markets, and technologies.

7.4 In assessing the likely impact of potential action, we will take account of our impact over time, recognising there may be trade-offs between the short and long term benefits from our intervention. For instance, disrupting anti-competitive business models could entail short-term costs but lead to longer-term benefits through increased competition and innovation.

7.5 We will think broadly about consumer benefits. As well as the price of goods and services (which in some digital markets is zero), consumers may also value choice, security, privacy, innovation, and their overall experience (for example, how much advertising they are exposed to).

7.6 Harmful practices and effects may have a disproportionate impact on people that need help the most. Given that vulnerability is often context-specific, we will consider this as part of our prioritisation of digital activities to target.

Principle 3 – we will measure our impact, outcomes and outputs. We will learn from experience and use this to inform future decisions

7.7 We are an evidence-driven organisation. We will use a wide combination of quantitative and qualitative evidence to understand how we are affecting digital markets, how effective our specific actions are, and to what extent we are delivering better outcomes for users. This will inform what we choose to do in future, as well as whether and how we refine our interventions.

Address and prevent harms quickly and sustainably, primarily through competition

Principle 4 – we will stay abreast of developments and seek to deal with harm quickly

7.8 Digital markets can develop at dramatic pace. We will therefore ensure we understand how they are changing and where future problems could arise. Where we identify risks, we will consider what the most appropriate action is to avoid harms while balancing the benefits of innovation.

Principle 5 – we will promote competition as the primary lever to deliver better outcomes for users

7.9 The new Digital Markets competition responsibilities are designed for us to promote competition to improve outcomes for users. This can be on both the supply side (for example, removing barriers to entry like ensuring access to key inputs) and demand

side (for example, facilitating informed consumer choices or enabling interoperability) of markets.

Principle 6 – where steps to improve competition alone will not deliver the outcomes to the desired extent or pace we seek, we will prevent abuses of market power more directly

7.10 Effective competition leads to better market outcomes. In some digital markets effective competition may take time, and, in some cases, may be difficult to achieve to a sufficient extent or on an appropriate timeframe. Where this is the case, we will aim to ensure good outcomes by preventing abuses of market power directly.

Principle 7 – we will seek to intervene in a technology-neutral way

7.11 Where we need to take action, we will seek to adopt a technology-neutral approach. This means that the effectiveness of the interventions should not rely on the use of current technology or supply chain structures. This will help future proof our actions, allowing the market to decide what technology is best suited for achieving a particular goal.

Principle 8 – we will ensure the Digital Markets competition regime complements other CMA tools

7.12 The Digital Markets competition regime is focussed on firms with SMS, but will constitute one part of the CMA's broader toolkit to fulfil its statutory duty to promote competition. We will consider which of our tools is most suited to the issue we seek to address. We will continue to use our existing powers where they are better suited to dealing with harmful conduct by SMS firms, for instance to tackle certain types of anti-competitive agreements which may fall outside the scope of the regime. And where issues arise in digital markets as a result of behaviour by non-SMS firms, we will continue to use our existing competition, markets, consumer, and mergers powers in the best interests of people, businesses and the economy.

Participative, transparent and coherent with other regulations

Principle 9 – we will engage with a wide range of stakeholders who are affected by or have an interest in our work

7.13 We will only be able to deliver positive outcomes if we use insights and experience from a wide range of market participants. To prioritise our activity and take decisions about our actions, we will need to understand markets, technologies, business models and the impacts of particular conduct. We will also need to hear from interested parties about the effectiveness of our interventions and how they can be improved. We will ensure our engagement is wide-reaching, fair, and inclusive.

Principle 10 – we will operate with transparency

- 7.14 We will exercise our functions as transparently as possible by providing appropriate information about our activities and decisions to the range of stakeholders with an interest in and who are affected by our work, whilst working to protect the confidentiality of those who provide us with sensitive information. We will work to encourage SMS firms to be more transparent in their actions, acknowledging the far-reaching impact their actions often have.

Principle 11 – we will work with our domestic and international counterparts to coordinate and minimise unnecessary duplication

- 7.15 Some issues in digital markets cross regulatory boundaries. We will continue to work closely with a range of UK regulators, including the members of the Digital Regulation Cooperation Forum to ensure regulatory coherence, work collaboratively on areas of common interest, and jointly develop capabilities. Some aspects of digital markets, and the biggest firms, are international. We will continue to work closely with counterpart authorities around the world to share learning and align on outcomes, where possible and appropriate.

8. How we will work with SMS firms and other stakeholders

- 8.1 In implementing our new responsibilities, it is essential that we engage fully and deeply with a wide range of stakeholders and market participants. We anticipate doing this in a variety of ways, tailored to what is most appropriate for the stakeholder and the situation.

SMS firms

- 8.2 We want to build productive relationships with the firms we designate as having SMS. While we have a good level of existing knowledge about digital markets, we will need to develop an excellent understanding of how SMS firms operate in relation to the digital activity for which they are designated as having SMS, both technically and in terms of their business models. The greater our understanding of an SMS firm's digital activities, the better able we will be to design effective and proportionate interventions. In many cases it will be for the SMS firms to decide on the actions they take to comply with any requirements we place on them. Improving our understanding will make us better able to scrutinise these to ensure they deliver the intended outcomes.

Other businesses, consumer and industry bodies, and civil society

- 8.3 Input from consumers, businesses, investors and wider third parties will be crucial in helping us deliver in our role. We want to ensure we understand the concerns businesses and consumers have about (potential) SMS firms. We will need insight from such stakeholders as we design our interventions, when we monitor SMS firms' compliance, and assess whether our interventions are leading to the outcomes we want. To support this, we plan on establishing two representative panels, one for consumers and civil society, and one for businesses and investors.
- 8.4 Some stakeholders may have concerns about sharing information or experiences with us for fear of retaliation by SMS firms. The CMA is subject to various legal obligations to protect both the confidentiality of information we receive and the identity of whistleblowers. We have established processes for handling such information and maintaining the anonymity of those providing us with evidence, which we will follow for our new functions.

Regulators and other authorities

- 8.5 In addition to our interaction with other UK regulators, we also regularly interact with counterparts across the world, including the US Federal Trade Commission and Department of Justice, the European Commission, the Australian Competition and Consumer Commission, and many others. And we are actively involved in multilateral cooperation forums such as the Organisation for Economic Cooperation

and Development, the G7, the International Competition Network and the International Consumer Protection and Enforcement Network.

- 8.6 As we and other authorities continue in our efforts to promote competition in digital markets, including making use of our respective pro-competition digital markets regimes where they exist, we will continue to work closely together to maximise synergies, and minimise unnecessary regulatory divergence.

9. Operational readiness to take on our new role

- 9.1 Over the past few years, we have worked hard to develop our understanding of digital markets and to ensure the benefits they bring can continue. For example, we have undertaken in-depth market studies on [mobile ecosystems](#) and [online platforms and digital advertising](#). In September 2023 we published an [initial review of AI foundation models](#). We also have a number of competition and consumer law enforcement cases related to digital markets and firms under our existing legal frameworks. For example, we currently have open cases investigating: [fake reviews on online platforms](#); [mobile browsers and cloud gaming](#); the terms and conditions governing app developers' access to [mobile app stores](#); competition issues in [cloud computing](#); and a variety of issues in [digital advertising](#). A full list can be found on the [case page](#) of our website.
- 9.2 Alongside Ofcom, the Information Commissioner's Office, and the Financial Conduct Authority, we are part of the Digital Regulation Cooperation Forum through which we have collectively published comprehensive research on a range of topics including Online Choice Architecture, Online Safety and Competition in Digital Markets, and The Benefits and Harms of Algorithms, among others.
- 9.3 This range of activity, as well as our extensive international and stakeholder engagement, has given us deep insights and expertise in digital markets.
- 9.4 We have also grown our capacity and skills. Our specialist Data, Technology and Analytics unit now has over 60 people including data scientists and data engineers, technologists, behavioural scientists, and digital forensics specialists. Our economics and legal teams have built up significant experience working on digital market issues. And we already have around 60 people in the Digital Markets Unit we have set up to deliver the Digital Markets competition regime.
- 9.5 Overall, we have a phased recruitment plan to build up to a total of around 200 people working across the CMA to implement the Digital Markets competition regime from the point of commencement. In addition, we have appointed nine Digital Experts as independent advisors.

10. Indicative timeline

- 10.1 Our working assumption is that the Parliamentary process will conclude in Spring 2024 and that our new responsibilities will commence in Autumn 2024. The precise timing is, of course, subject to Parliament and the passage of necessary secondary legislation.
- 10.2 In advance of Royal Assent, we will carry on our preparations. This includes:
- continuing to engage with government and Parliament as helpful,
 - our ongoing engagement with stakeholders,
 - continuing to further our understanding of key markets and issues,
 - developing the guidance for the regime,
 - the next stage of recruitment.
- 10.3 Soon after Royal Assent we will consult on draft guidance relating to the main components of the regime and intend to reach a wide range of stakeholders. At this point we also expect to set out more details of our proposed approach to operating the new regime.
- 10.4 On commencement of our new responsibilities, we will publish our guidance having considered the feedback during our consultation process and having obtained the approval of the Secretary of State. We anticipate launching the first SMS investigations very soon after commencement. In the first year we would expect to initiate approximately 3-4 SMS investigations.