

19 December 2024

Memorandum of understanding between the Competition and Markets Authority and the Information Commissioner for regulatory coordination under Part 1 of the Digital Markets, Competition and Consumer Act (2024)

Introduction

1. This Memorandum of Understanding ('**MoU**') outlines the arrangements by which the Competition and Markets Authority (the '**CMA**') and the Information Commissioner (the '**Commissioner**') (together, '**the Parties**') will give effect to the provisions in Part 1 of the Digital Markets, Competition and Consumer Act 2024 ('**DMCC Act**') with regard to regulatory cooperation.
2. This MoU sits alongside and complements the existing MoU that establishes the general framework for cooperation between the CMA and the Commissioner.¹

Background

3. The DMCC Act includes certain provisions on regulatory coordination where there may be interactions between the CMA and various other regulators. There are a number of areas where there may be interactions between the CMA's statutory functions under the DMCC Act and those of the Commissioner. The CMA recognises that effective and proportionate coordination with the Commissioner will help the CMA achieve its purpose to help people, businesses and the UK economy by promoting competitive digital markets.
4. Coordination between the CMA and the Commissioner will engender a coherent approach to digital regulation in the round and enable the CMA to draw on the expertise of sectoral regulators to help effectively promote competition in digital markets.
5. The arrangements covered by this MoU are, wherever possible, set out in terms providing sufficient flexibility for the relationship between the Commissioner and the CMA to develop in the light of experience. The CMA

¹ [CMA and ICO memorandum of understanding - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

and the Commissioner may review these arrangements from time to time to evaluate their continuing fitness for purpose. Such review can be initiated at the request of the CMA or the Commissioner. This MoU may only be revised by agreement between the Parties.

6. Nothing in this MoU applies to the CMA's or the Commissioner's functions or roles other than under Part 1 of the DMCC Act nor their engagement through the Digital Regulation Cooperation Forum ('**DRCF**').²
7. The Commissioner and the CMA acknowledge the importance of maintaining the CMA's impartiality and fairness in carrying out its functions.
8. The Parties recognise the importance of due transparency with each other when performing their functions and are therefore committed to openness in their interactions whilst observing their statutory obligations in relation to information sharing.

Role of the CMA

9. The CMA is a non-ministerial department, established under the Enterprise and Regulatory Reform Act 2013 whose aim is to help people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour. The CMA has a statutory duty to seek to promote competition, both within and outside the United Kingdom, for the benefit of consumers.
10. Part 1 of the DMCC Act confers powers on the CMA in relation to the promotion of competition in digital markets. Under the DMCC Act, the CMA has the power to designate firms as having Strategic Market Status ('**SMS**') in relation to a digital activity. Once designated, the CMA will be able to set requirements on how these firms should conduct themselves in relation to that activity (Conduct Requirements ('**CRs**')). The CMA will also be able to investigate whether there are factors relating to a relevant digital activity that are adversely affecting competition and which could be addressed through Pro-Competition Interventions ('**PCIs**').

Role of the Commissioner

11. The Commissioner is responsible for promoting and enforcing data protection law in the UK and upholding information rights in the public interest. The Commissioner is the Supervisory Authority appointed under the UK General

² The DRCF is a non-statutory forum that supports cooperation between the ICO, CMA, Financial Conduct Authority and Ofcom. The framework for engagement through the DRCF is set out in the DRCF's Terms of Reference: [About the DRCF | DRCF](#).

Data Protection Regulation ('**UK GDPR**') and for the purposes set out in the Data Protection Act 2018, which supports and supplements the UK GDPR.

12. The Commissioner is empowered to take a range of regulatory action for breaches of legislation. For the purposes of this MoU, the relevant pieces of legislation are:
 - The Data Protection Act 2018 ('**DPA 2018**');
 - UK GDPR;
 - The Privacy and Electronic Communications (EC Directive) 2003 ('**PECR**'); and
 - The Network and Information Systems Regulations 2018 ('**NIS 2018**').
13. Article 57 of the UK GDPR and Part 5 of the DPA 2018 place a broad range of statutory duties on the Commissioner, including monitoring and enforcement of the UK GDPR, promotion of good practice and adherence to the data protection obligations by those who process personal data. These duties sit alongside those within the other pieces of legislation the Commissioner is responsible for overseeing and enforcing, including those listed in paragraph 11 above.
14. The Commissioner's regulatory and enforcement powers include:
 - conducting assessments of compliance with the DPA 2018, UK GDPR, PECR and NIS 2018;
 - issuing information notices requiring individuals, controllers or processors to provide information in relation to an investigation;
 - issuing enforcement notices, warnings, reprimands, practice recommendations and other orders requiring specific actions by an individual or organisation to resolve breaches (including potential breaches) of data protection legislation and other information rights obligations;
 - administering fines by way of penalty notices in the circumstances set out in section 155 of the DPA 2018; and
 - administering fixed penalties for failing to meet specific obligations (such as failing to pay the relevant fee to the Commissioner).

15. Regulation 31 of PECR also provides the Commissioner with the power to serve enforcement notices and issue monetary penalty notices as above to organisations who breach PECR. This includes, but is not limited to, breaches in the form of unsolicited marketing which falls within the ambit of PECR, including automated telephone calls made without consent, live telephone calls which have not been screened against the Telephone Preference Service, and unsolicited electronic messages (Regulations 19, 21 and 22 of PECR respectively).

Legislative requirements

Coordination with regulators

16. Section 107(3) of the DMCC Act requires the CMA to consult the Commissioner on any proposal to exercise a regulatory digital markets function in a manner that the CMA considers is likely to have a material adverse effect on the ability of the Commissioner to exercise functions under data protection legislation (the DPA 2018 and UK GDPR), the PECR and NIS 2018.
17. The CMA's duty to consult the relevant regulators including the Commissioner under Section 107 of the DMCC Act applies only to the extent that the CMA considers that compliance does not impose a burden on it that outweighs the benefits of compliance.³

Regulatory digital markets functions

18. The 'regulatory digital markets functions', to which the duty to consult apply, are defined in the legislation as:⁴
- the power to open a SMS investigation under section 9(1) of the DMCC Act or a further SMS investigation under section 10(1) or (2) of the DMCC Act;
 - the power to designate an undertaking as having SMS under Chapter 2 of the DMCC Act;
 - the power to revoke a designation under Chapter 2 of the DMCC Act;
 - the power to impose or revoke CRs under Chapter 3 of the DMCC Act;
- and

³ Section 107(6) of the DMCC Act.

⁴ Section 118 of the DMCC Act.

- the power to make, replace or revoke PCIs under Chapter 4 of the DMCC Act.

Status of this MoU

19. The arrangements set out in this document are without prejudice to other statutory requirements for regulatory coordination such as any obligation on the CMA to consult the Commissioner under Article 36(4) of the UK GDPR. This MoU is not intended to have legal effect.
20. This MoU is to be read alongside the CMA's Guidance on the Digital Markets Competition Regime (**'the Guidance'**).⁵ This MoU supplements and does not supersede that material. In the case of any conflict between the processes set out in this MoU and the Guidance, the Guidance will prevail.

General coordination

21. The Parties are committed to working closely together to ensure effective regulatory coordination across digital markets. This should support coherent regulation in digital markets such that each regulator can deliver their respective statutory objectives, maximising synergies and avoiding incoherence or duplication. This approach builds on the existing close relationship between the Parties: for example, in relation to the foundation and operation of the DRCF.
22. The Parties will take a flexible and efficient approach to implementing and operating the arrangements set out in this MoU, given the wide-ranging nature of the DMCC Act, and to ensure that coordination is manageable, given the available resources.
23. The Parties will have regular bilateral meetings to support effective coordination. Among other things, these meetings may be used insofar as appropriate and permitted by law, to share each party's respective pipeline of upcoming work related to digital markets known at the time of the meeting. This may include the CMA informing the Commissioner if it intends to exercise a regulatory digital market function relevant to the Commissioner. These meetings will exist in addition to, rather than as a substitute for, the arrangements relating to the CMA's duty to consult under section 107 of the DMCC Act, as set out below.

⁵ [Digital Markets Competition Regime guidance - GOV.UK](#)

Duty to consult

24. Consultation with the Commissioner pursuant to section 107 of the DMCC Act will engender a coherent approach to digital regulation in the UK and enable the CMA to draw on the expertise of the Commissioner to help effectively discharge its regulatory digital markets functions.
25. Where the CMA proposes to exercise a regulatory digital market function that it considers may relate to the Commissioner's functions, it will share sufficient information with the Commissioner to enable the Parties to discuss whether the proposal does fall within the scope of section 107(3) of the DMCC Act. The CMA will then take a decision whether the duty to consult under section 107(3) of the DMCC Act applies.
26. Where the CMA considers that it is appropriate to consult under section 107(3), any consultation will involve open dialogue between the Parties and the sharing of relevant information as appropriate, to the extent permitted by law.⁶ The form of consultation, including its duration, scope and objective will be agreed on a case-by-case basis by discussion between the Parties. The Parties may also discuss what information or expertise the Commissioner may have to support the CMA in discharging its functions.
27. As set out in section 107(6) of the DMCC Act, the duty to consult applies only to the extent that the CMA considers that compliance does not impose a burden on it that outweighs the benefits of compliance. Any decision by the CMA not to consult the Commissioner, including where the CMA considers that the duty to consult under section 107 of the DMCC Act does not apply, will not preclude further consultation on the same matter where the CMA considers it appropriate.
28. The CMA will give full consideration to the Commissioner's views on the consulted matter and will discuss the CMA's intended next steps with the Commissioner at an appropriate point, as discussed between the Parties.

Information sharing

29. The CMA and the Commissioner recognise the importance of sharing relevant information to fulfil the duty for the CMA to consult the Commissioner, whilst maintaining each Party's statutory obligations with respect to confidential information under the relevant legal frameworks.

⁶ See paragraphs 29–30.

30. Any disclosure of information pursuant to the exercise of functions under Part 1 of the DMCC Act provided in the context of the regulatory cooperation arrangements set out in this MoU, and any use of such information by the recipient, shall only be to the extent permitted by law, including by reference to the provisions of Part 9 of the Enterprise Act 2002, relevant sector-specific legislative provisions and any other provisions relating to the disclosure, handling and use of information. This MoU should not be interpreted as imposing a requirement on either party to disclose information in circumstances where doing so would breach the law and/or that Party's statutory responsibilities.

Other forms of support

31. In addition, and separate to, the arrangements set out above, the Parties may provide each other with more informal support to enable the CMA to carry out its functions in relation to digital markets in the UK (in each case, to the extent that it is appropriate and permitted by law, and that resources permit) and the ICO to carry out its functions where these may relate to digital markets including, but not limited to:
- answering each other's specific queries from time to time;
 - providing each other with information or views on a specific sector or market, or an area of policy; and
 - providing each other with training on a specific sector or market, or an area of policy.
32. Such support may be requested and provided in connection with the exercise of a specific function or with the promotion of competition in digital markets more generally. In this regard, both the CMA and the Commissioner will act reasonably based on the circumstances, including by providing sufficient time and information for requests for support to be responded to fully and effectively and for the relevant staff to be engaged.