

19 December 2024

Memorandum of understanding between the Competition and Markets Authority and the Office of Communications 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 Office of Communications (**'Ofcom'**) (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.

Background

2. 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 Ofcom. The CMA recognises that effective and proportionate coordination with Ofcom will help the CMA achieve its purpose to help people, businesses and the UK economy by promoting competitive digital markets.
3. Coordination between the CMA and Ofcom 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.
4. The arrangements covered by this MoU are, wherever possible, set out in terms providing sufficient flexibility for the relationship between Ofcom and the CMA to develop in the light of experience. The CMA and Ofcom 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 Ofcom. This MoU may only be revised by agreement between the Parties.

5. Nothing in this MoU applies to the CMA's or Ofcom's functions or roles other than under Part 1 of the DMCC Act nor their engagement through the Digital Regulation Cooperation Forum ('**DRCF**')¹.
6. The CMA and Ofcom acknowledge the importance of maintaining the CMA's impartiality and fairness in carrying out its functions.
7. 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

8. 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.
9. 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 Ofcom

10. Ofcom is the independent national regulatory authority for the UK's communications industries, with responsibilities in the broadcasting sector (television and radio), telecommunications, online services, video-on-demand, spectrum and postal services. It has responsibilities for online safety with respect to certain types of online service: user-to-user, search engines, video-sharing platforms and services that host pornographic content.

¹ 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 Terms of Reference: [About the DRCF | DRCF](#).

11. Ofcom is also a national competition authority with concurrent powers with the CMA to enforce competition law in relation to activities connected with communications matters.
12. Ofcom's principal duty, set out in the Communications Act 2003, is to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition.

Legislative requirements

Coordination with regulators

13. Section 107(2) of the DMCC Act requires the CMA to consult Ofcom on a proposal to exercise a regulatory digital markets function where the CMA considers the matter is a matter in relation to which the CMA and Ofcom may have concurrent functions under the Communications Act 2003.
14. The CMA's duty to consult the relevant regulators including Ofcom 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.²

Recommendations to the CMA

15. Under section 108 of the DMCC Act, Ofcom may make a recommendation to the CMA where it considers that the CMA should exercise a regulatory digital markets function in relation to an undertaking and a digital activity.³
16. The recommendation to the CMA must be: (a) in writing and describe the undertaking, the digital activity, and the regulatory digital markets function to which it relates; and (b) accompanied by a statement of reasons for the recommendation.⁴
17. The CMA is required to respond to the recommendation within 90 days, and must give notice to Ofcom: (a) setting out the action that the CMA has taken or intends to take in response to the recommendation; and (b) including reasons for its decision. The CMA must publish a summary of the notice.⁵

² Section 107(6) of the DMCC Act.

³ Section 108(1) of the DMCC Act.

⁴ Sections 108(2) and 108(3) of the DMCC Act.

⁵ Section 108(4) of the DMCC Act. The [Explanatory Notes](#) specify that, in accordance with section 113(3) of the DMCC Act, the summary of the CMA's response must also be published online.

Regulatory digital markets functions

18. The 'regulatory digital markets functions', to which both the duty to consult and the ability to make recommendations apply, are defined in the legislation as:⁶
- 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
 - 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 the arrangements for the promotion of competition in the regulated sectors under the concurrency framework.⁷ 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'**).⁸ 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

⁶ Section 118 of the DMCC Act.

⁷ The arrangements which give effect to these statutory requirements are set out in: [CMA and Ofcom memorandum of understanding - GOV.UK](#)

⁸ [Digital Markets Competition Regime guidance - GOV.UK](#)

relationship between the Parties: for example, in relation to concurrent competition powers and 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 Ofcom if it intends to exercise a regulatory digital market function relevant to Ofcom, and Ofcom informing the CMA if it has any potential plans to make a recommendation to the CMA under section 108 of the DMCC Act. 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 and the ability of Ofcom to make recommendations under section 108 of the DMCC Act, as set out below.

Duty to consult

24. Consultation with Ofcom 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 Ofcom 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 Ofcom's functions, it will share sufficient information with Ofcom to enable the Parties to discuss whether the proposal does fall within the scope of section 107(2). The CMA will then take a decision on whether the duty to consult under section 107(2) of the DMCC Act applies.
26. Where the CMA considers that it is appropriate to consult under section 107(2), any consultation will involve open dialogue between the Parties and the sharing of relevant information as appropriate, to the extent permitted by law.⁹ 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 Ofcom may have to support the CMA in discharging its functions.

⁹ See paragraphs 33–34.

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 Ofcom, 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 Ofcom's views on the consulted matter and will discuss the CMA's intended next steps with Ofcom at an appropriate point, as discussed between the Parties.

Recommendations by Ofcom to the CMA

29. Where Ofcom intends to submit a recommendation under section 108 of the DMCC Act, it will discuss this with the CMA as early as possible in advance of submitting the final recommendation. This will enable the CMA to carry out necessary resource planning to ensure it can respond appropriately within the 90-day time frame. Ofcom will inform the CMA that it intends to make a recommendation as early as possible via whichever communication route is most suitable, for example through planned meetings, or by email to a CMA official.
30. As required by section 108 of the DMCC Act, Ofcom will make any formal recommendation in writing, describing the undertaking, the digital activity, and the regulatory digital markets function to which the recommendation relates. The recommendation will be accompanied by a statement of reasons for the recommendation.
31. The CMA will engage with Ofcom as it considers appropriate, taking into account the Parties' resources and priorities, to ensure the CMA has sufficient and appropriate information from Ofcom to allow the CMA to best consider the recommendation within the statutory timeline.
32. The CMA will consider the recommendation within 90 days and give notice to Ofcom of any action the CMA has taken or intends to take in response to the recommendation including the reasons for its decision.¹⁰ The CMA will also publish a summary of its decision on its website, which may include: a summary of the CMA's decision, the reasoning behind the decision and related analysis, and the next steps the CMA intends to take (if applicable).

¹⁰ Section 108(4) of the DMCC Act.

Information sharing

33. The CMA and Ofcom recognise the importance of sharing relevant information to fulfil the duty for the CMA to consult Ofcom and ability of Ofcom to make recommendations, whilst maintaining each Party's statutory obligations with respect to confidential information under the relevant legal frameworks.
34. Any disclosure of information pursuant to the exercise of functions under Part 1 of the DMCC Act provided in the context of 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

35. 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 Ofcom 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.
36. 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 Ofcom 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.