

UK proposes major changes to digital markets regulation and its competition law regime

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On 25 April 2023, the UK government published its Digital Markets, Competition and Consumers Bill. The Bill proposes to impose additional conduct and reporting requirements on digital companies considered to have “Strategic Market Status”, update merger control rules and strengthen the Competition and Markets Authority’s ability to collect evidence and take enforcement action. Clients should be mindful of these reforms and design procedures to ensure full compliance with the revised regime.

On 25 April 2023, the UK government published its Digital Markets, Competition and Consumers Bill (the Digital Markets Bill). In addition to changes to consumer protection rules, the proposals set out in the Digital Markets Bill include:

- **Strategic Market Status (SMS):** the Competition and Markets Authority (the CMA) will gain powers to designate certain digital companies as having SMS, similar to the concept of “gatekeepers” in the European Commission’s (the Commission) Digital Markets Act (DMA). The CMA may impose one or more conduct requirements on designated companies in relation to a relevant digital activity. It may also require designated companies to report transactions above certain thresholds. The CMA will be able to impose penalties for non-compliance, including fines of up to 10% of global turnover. The exercise of these new powers will be the primary responsibility of the Digital Markets Unit (DMU), already established within the CMA.
- **Pro-competitive interventions (PCIs):** the DMU may address adverse effects on competition caused by a company with SMS, through a PCI. Notably, those adverse effects would not under current competition law rules necessarily amount to infringements. A PCI may take the form of a “pro-competition order” or recommendations from the CMA. PCIs are meant to proactively address competition concerns; they have been designed to offer a more flexible approach than the conduct rules of the Commission’s DMA, for which remedies can only be imposed after breach.
- **Updated merger control rules:** the CMA’s jurisdictional turnover test will now apply a £100 million threshold to the target’s UK turnover, revised upwards from the previous £70 million threshold. In addition to the existing target turnover and combined share of supply tests, a third alternative test has also been introduced. A new acquirer threshold will be added, allowing for review of deals where a party (individually) has a 33% or more UK share of supply and UK turnover of £350 million or more, without the need for an increment to the parties’ combined share of supply. Related changes will also be implemented to improve procedural efficiency.
- **Enhanced investigatory powers:** the CMA’s ability to collect evidence through market studies and investigations and when enforcing consumer protection laws, will be strengthened.
- **Stronger enforcement tools:** tougher penalties will be imposed for failure to comply with CMA investigations and breach of consumer protection laws. Stricter standards of review will also apply when appealing interim measures imposed by the CMA.

The legislation is expected to be enacted during the next few months and enter into force before the end of 2023. These proposals should be considered against the backdrop of the EU’s DMA, which entered into force on 1 November 2022,

as well as recent enforcement activity in the US. In particular, the Commission's application of the DMA in practice and its experience in designating "gatekeepers" will be closely monitored by the DMU when it designs its own enforcement priorities.

These recent trends evidence the intensifying appetite for significant regulatory intervention in digital markets, which has arisen in response to a longstanding perception of under enforcement in this space.

Companies will need to take account of this rapidly evolving regulatory landscape in the UK and globally, as well as the interplay of revised rules with regimes across major jurisdictions. Monitoring legislative changes and regularly updating procedures will be critical to not only ensuring continued regulatory compliance but also identifying potential filing obligations at an early stage in deal planning, to mitigate adverse timing and other execution risks.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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