

# Preparing for the upcoming UK Digital Markets, Competition and Consumer Bill

The Bill will do 3 key things – i) set up the UK’s first digital regulatory framework, ii) upgrade the competition law powers of the CMA, and iii) significantly change the UK’s consumer protection and enforcement laws.

## What are the key changes?

### New digital regulation framework

New digital markets regulation is proposed, designed to empower the CMA’s Digital Markets Unit to implement a new pro-competition regime to tackle firms with substantial and entrenched market power in at least one digital market. The DMU’s new regulatory toolkit will be exercisable where there is a sufficient connection with the UK and is designed to promote competition and protect consumers.

New powers proposed include enabling the DMU to carry out “Strategic Market Status (SMS)” designation assessments, impose Codes of Conduct on SMS firms (to manage the effects of their market power) and make pro-competitive interventions (with a broad discretion to impose remedies in a swift and agile way) to help drive up competition and innovation in digital markets.

The CMA’s powers will also include the ability to impose financial penalties of up to 10% of a SMS firm’s global turnover for regulatory breaches and up to 1% global turnover for information offences (as well as additional penalties for businesses continuing not to comply). New SMS firm merger

reform is also planned, including new mandatory reporting requirements - whereby SMS firms will be required to report significant transaction proposals exceeding certain thresholds before they can complete.

### Enhanced competition law powers for the CMA

The new Digital Regulation framework will mean significant new powers will be given to the new Digital Markets unit (in the CMA), enabling them to regulate major digital providers with Strategic Market status.

### Enhanced consumer rights

To further empower consumers, the Bill will introduce changes to tackle so-called ‘subscription traps’, which will be of relevance to many businesses/sectors and will require new processes to be put in place to comply with the new requirements. These requirements will include providing mandated pre-contract information about the nature of the subscription contract, sending compulsory reminders to consumers, and ensuring that consumers have a straightforward, cost-effective, and timely mechanism to exit a subscription contract.

We also expect to see the Bill introduce changes to better protect consumers against the use of fake reviews (requiring businesses to take active steps to verify the authenticity of reviews before they’re posted online) and championing ‘fairness by design’ principles in how online transactions are presented.

### Significantly increased consumer protection enforcement powers

The existing UK consumer protection regime was designed at a time when the economy was analogue. The Bill will introduce major change, establishing an ‘administrative model’ of enforcement and bringing the UK’s approach up to date in a digital world.

As part of these changes, the UK’s consumer regulator, the CMA, will be newly empowered to decide for itself when consumer protection law has been breached, and to take direct, swift enforcement action including the ability to issue major, turnover-based fines for breaches of consumer law (**up to 10% of annual global turnover**).



## How can you prepare?

### Digital markets and new CMA powers

If your business or a competitor's business is likely to qualify as a firm with substantial and entrenched market power, we recommend keeping a close eye on the progression of this Bill – as major market changes could impact the digital space once this new regime is in place. We can help your business with understanding how the new regime will work and guide and assist you through the relevant stages of the new CMA processes. We can also support you with monitoring the progression of the Bill and parallel relevant developments in Europe (see further below).

### Consumer-facing terms and conditions

The finer detail of the new subscription and other rules will not be known until the Bill is released (see further below for timings) but in terms of the enhanced enforcement powers, now is a good time to make sure your company's consumer T&Cs are in robust shape and fully compliant with consumer law and best practice, particularly around the use of unfair/blacklisted (and therefore unenforceable) contract terms. The complex law regulating business-to-consumer contracts isn't itself set to change – only the consequences of breach – so this is something that businesses can do now to get out ahead of the reforms and free up space to focus on the other changes that will be set out in greater detail in the Bill.

### Advertising and marketing

A renewed focus on compliant consumer communications – in particular any form of advertising & marketing – would be advisable given the significantly enhanced enforcement powers on the horizon. Also of note is the current regulatory spotlight on tackling problematic 'online choice architecture' and 'dark patterns' (i.e., digital design that exploits, misleads, or pressures consumers into making certain decisions) as well as misleading environmental or 'eco' claims.

## Is this similar to what's happening in Europe?

### In some ways, yes

The upcoming digital markets regulation, consumer and competition law changes are very similar to new European powers which have been put in place under the EU Digital Markets Act and EU Digital Markets Services Act to regulate digital markets and help promote competition and protect consumers. We are closely monitoring these (as the rules are already in place and we can expect to see developments soon).

On the consumer side, the new enforcement powers broadly align – and in a number of ways exceed – the sanctions introduced in the EU in 2022 under the so-called "Omnibus Directive". The Omnibus Directive also brought in a raft of other changes that businesses selling to consumers within the EU must comply with.

### When is this happening?

#### Soon

In its Autumn Statement, the UK Government announced that it was bringing forward the Bill in the third (i.e., current) Parliamentary session. In light of this, we expect to see the Bill published in the next few months, with full enactment possible within the year.

### How Wiggin can help

If you would like to know more about the new digital markets regulation and competition law rules, please get in touch with our **Competition and Communications Regulation** team. We are well qualified to help, as remedies are expected to be similar to *ex ante* telecoms regulation, in which we have extensive experience. We also have experts in the UK and Brussels and will be closely watching EU and international developments in this space, which could heavily influence UK developments, for example, if global remedies are implemented. Keeping up to speed with this will be important for businesses with any activities outside the UK.

Our **Consumer** and **Advertising & Marketing** teams have extensive experience advising businesses in various markets (including those with a digital focus) on their T&Cs and advertising, as well as the compliant management of associated customer processes which are coming under increased regulatory scrutiny both under the new Bill and otherwise (e.g., 'customer journeys', free trials, cancellations, and so on).

## Getting in touch

Please do get in touch if you would like to discuss further.



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