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The (soon to be adopted) regulation of Platforms in the UK

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The New Regulatory Regime ... and what happens in the meantime



A LONG WAIT...

In 2019 the UK Competition and Markets Authority made recommendations to the UK Government in relation to a range of reforms to the existing competition and consumer protection regimes, to ensure they are better adapted for the digital age.

The CMA also recommended Government introduce a new pro-competition regulatory regime to address concerns about the most powerful digital firms and promote greater competition and innovation in digital markets.



A LONG WAIT...

In 2021 the UK Government consulted on both sets of reforms.

In relation to the new pro-competition regime for digital markets, the proposals would apply to digital firms with 'strategic market status' (SMS) – defined as those with substantial, entrenched market power in at least one digital activity and where the effects of that market power are particularly widespread or significant.

SMS firms adhere to a code of conduct that would provide a set of clear principles to prevent them from abusing their position and power. They could also be subject to pro-competition interventions such as data access and interoperability.



A LONG WAIT...

The SMS regime would be overseen by a new Digital Markets Unit.

The CMA would also oversee a bespoke merger regime allowing for greater scrutiny of mergers involving SMS firms.

BUT:

The new regime will require legislation and the UK Government has committed to legislating when Parliamentary time allows.

The Digital Markets Unit (DMU), has been established within the CMA, on a non-statutory basis, to focus on preparing for the new regime.



IN THE MEANTIME...

DaTA Unit

Establishment of a Data, Technology and Analytics (DaTA) Unit, comprising around 35 data engineers, data scientists, data and technology insight advisors, digital forensics specialists, and behavioural scientists. One of the purposes of this team is to provide analytical and data management expertise to help the CMA deliver cases more efficiently and effectively, particularly as these cases become larger and more complex. For example, the DaTA Unit developed the Resale Price Maintenance (RPM) monitoring tool: a tool to help case workers to identify RPM.



IN THE MEANTIME...

ALGORITHMS

The DaTA unit are responsible for the CMA's 'analysing algorithms' programme to unpick how the algorithms used by firms work in practice, their impact on consumers and markets, and approaches regulators can use to analyse algorithmic systems and to address any harms.



IN THE MEANTIME...

MERGERS

The CMA has continued to develop its approach to digital mergers, including utilising the DaTA Unit's expertise, improving its document review capabilities and updating its Merger Assessment Guidelines at the start of 2021 to bring them up to date.

Recommendations made in expert reports on how the CMA should approach its assessment of digital mergers and to take into account recent experience and case law.



IN THE MEANTIME...

MERGERS

- Experian/Clearscore, which was abandoned following the CMA's provisional findings that the merger should be blocked because it could reduce innovation and slow product development in creditchecking services.
- Sabre/Farelogix, which was blocked after the CMA found the merger could increase prices and decrease innovation in the market if Farelogix was removed as a competitor in airline software solutions.
- Illumina and PacBio (DNA sequencing), was also provisionally blocked after raising competition concerns, before being abandoned.



IN THE MEANTIME...

ENFORCEMENT

- Google's proposals to remove third party cookies and other functionalities from its Chrome browser;
- Apple's terms and conditions governing app developers' access to Apple's AppStore;
- Facebook – dominance in social media or online advertising markets through its collection and use of advertising data.



IN THE MEANTIME...

ENFORCEMENT

Price-fixing agreement where two Amazon marketplace sellers had agreed not to undercut each other's prices and used automated pricing software to effect their agreement.

MFNs in a price comparison website in relation to home insurance products.

Fined two musical instrument makers, in two separate cases, for breaking competition law by restricting online discounting of musical instruments.



IN THE MEANTIME...

MARKET STUDIES

2019 market study into online platforms and digital advertising. The CMA recommended to the UK Government that a new pro-competition regulatory regime is needed to govern the behaviour of the major platforms funded by digital advertising.

2021 market study into mobile ecosystems, investigating whether Google and Apple's powerful position in relation to the supply of operating systems, app stores and web browsers is resulting in harm to consumers.

October 2021 market study into music streaming.



IN THE MEANTIME...

CONSUMER PROTECTION

CMA is responsible for enforcing consumer protection laws in the UK and has an active portfolio of work focused on increasing consumer trust in online markets.

Fake and misleading reviews on platforms and investigating the disclosure of paid for endorsements on social media platforms.

CMA investigations into online hotel booking sites, online gambling and secondary ticket sites to enable consumers to make informed decisions.



IN THE MEANTIME...

COOPERATION BETWEEN REGULATORS

2019 - Digital Regulation Cooperation Forum (DRCF), alongside Ofcom, the regulator responsible for the UK's new regime for online harms, and the Information Commissioner's Office (ICO), the UK's data protection regulator. The Financial Conduct Authority (FCA) has now also joined as a full member.



IN THE MEANTIME...

PRIVACY

Join my statement with the ICO setting out shared views on the relationship between competition and data protection in the digital economy.

This emphasised the strong synergies between the aims of the two regimes



IN THE MEANTIME...

CODES OF CONDUCT

Pending the new regime, Government has asked the CMA to look at how codes of conduct could work in practice to govern the relationship between digital platforms and content providers such as news publishers, to ensure they are fair and reasonable



Thank you!



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