

[GB] The Digital Markets, Competition and Consumers Bill introduced into the House of Commons

IRIS 2023-6:1/3

*Lorna Woods
School of Law, University of Essex*

The UK Government introduced the Digital Markets, Competition and Consumers Bill into the House of Commons on 25 April 2023 with the aim of “driv[ing] growth, innovation and productivity”. It is a substantial bill comprising six parts and 26 schedules and reflects proposals found in two consultation papers from 2021: A new pro-competition regime for digital markets and Reforming Competition and Consumer Policy. The Bill covers two main areas: proposed competition reforms including a specific emphasis on digital markets; and reforms of consumer law enforcement and the introduction of new consumer rights. Both areas relate to the remit of the Competition and Markets Authority (CMA).

Digital Markets and Competition

The Bill grants the CMA new powers to regulate digital businesses with "strategic market status" and impose a wide range of "conduct requirements" on those businesses – essentially ex ante requirements. In practice, these powers will be exercised by the Digital Markets Unit (DMU) within the CMA. The conduct requirements may be imposed only for one of the following objectives: fair dealing; free choice between services and trust and transparency. The Bill also envisages that the DMU can take action to "remedy an adverse effect on competition" through so-called "pro-competition interventions" through orders or recommendations. SME businesses have obligations to report mergers before they take place. The DMU's enforcement powers include the ability to levy fines up to 10% of businesses' annual global turnover.

The Bill also introduces a range of general competition law reforms, including the introduction of a new merger control threshold to catch so-called 'killer' acquisitions, and widening the extra-territorial effect of the UK's prohibition on anti-competitive agreements (the so-called Chapter 1 prohibition from the Competition Act 1998). The Bill also contains measures to improve the CMA's powers to investigate.

Consumer Rights

Consumer protection law in the UK is mainly found in the Consumer Rights Act 2015 (unfair contract terms) and Consumer Protection from Unfair Trading Regulations 2008 (CPRs) (unfair commercial practices). The Government

identified enforcement of consumer law as a main weakness, identifying procedural difficulties for enforcers, weak sanctions for breaching the law, and low uptake of alternative dispute resolution services. Currently the CMA has no powers to order the cessation of conduct but must go to the courts. Part 3 of the Bill proposes to change this. It contains two mechanisms for enforcement, crucially giving the CMA the power to determine when a breach has occurred and to impose fines of up to 10% of global annual turnover on businesses or to impose "enhanced consumer measures". These new powers have extraterritorial effect: the CMA can act against businesses whose activities are "directed to consumers in the United Kingdom". Part 3 also introduces a court-based regime which would simplify and enhance the court enforcement procedure currently provided by Part 8 of the Enterprise Act 2002. The Bill revokes and replaces the CPRs; the 2015 Act remains. The Bill largely replicates the list of unfair practices in the CPRs but, significantly, envisages that the list could be extended - the Government has indicated it would use this power to prohibit fake reviews online and a consultation on this topic is expected. There are also measures to tackle subscription traps as well as controls around the use of alternative dispute resolution.

Digital Markets, Competition and Consumers Bill

<https://bills.parliament.uk/bills/3453>

Digital Markets, Competition and Consumers Bill - Statement UIN HCWS737 made on 25 April 2023

<https://questions-statements.parliament.uk/written-statements/detail/2023-04-25/hcws737>

A new pro-competition regime for digital markets

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1003913/Digital_Competition_Consultation_v2.pdf

Reforming Competition and Consumer Policy

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004096/CCS0721951242-001_Reforming_Competition_and_Consumer_Policy_Web_Accessible.pdf

