

Digital Markets, Competition and Consumers Bill: Public Bill Committee call for written evidence

June 2023

Introduction

1. The Financial Times (FT) welcomes the opportunity to submit evidence to the committee as it scrutinises the Digital Markets, Competition and Consumers (DMCC) bill.
2. The FT is one of the world's leading business news organisations, recognised internationally for its authority, integrity and accuracy. Our journalism is exported beyond the UK to Europe, the US, Asia and the Middle East. We reach [22.5 million](#) readers all over the world every month.
3. High-quality journalism, such as the FT's, can only be produced if news organisations are able to sustainably fund it. This has become increasingly difficult in the digital era because of the dominant role of a small number of tech platforms. These few large businesses act as gatekeepers to consumers, control the mobile application ecosystems and own audience data and the infrastructure that underpins and powers the digital advertising market. The Competition and Markets Authority (CMA) has found that this has led to weak competition and higher prices in both [digital advertising](#) and [mobile applications](#).
4. The DMCC bill will give the Digital Markets Unit (DMU) the powers it needs to improve competition in these poorly-functioning markets. This will lead to lower prices and better outcomes for consumers and businesses. The UK was in a leading position in developing a new regulatory framework for digital markets. The foundational work to inform this – including the Cairncross Review, the Furman Review, the advice of the Digital Markets Taskforce and the CMA's market study on digital advertising – has been world-leading. However other jurisdictions, including the European Union, have now moved ahead of us as this bill has been delayed. Legislative reform here in the UK is urgently required. We are therefore strongly supportive of the DMCC bill.
5. In the following sections we have set out some of the issues in digital markets that currently cause harm to publishers, together with our view on the application of the DMU regime. Finally, we address the question of the appeal standard within the regime which we understand is an area of debate as the bill passes through parliamentary scrutiny.

Mobile apps

6. Since first launching native mobile apps in 2008 the FT has been subject to Apple and Google's unilaterally-set and often-changing app store rules, including those concerning payment solutions and commissions. Throughout this period we have consistently weighed the benefits of these products for our business and customers against the costs incurred as a result of these terms.
7. Notably we removed our iOS app from the Apple App Store in 2011 in response to new rules requiring the use of Apple's billing system. These entailed paying a 30% commission and the loss of direct customer relationships and the data they provide. We replaced the native iOS app with an HTML5 web app. In line with the CMA's conclusion reached in its Mobile Ecosystems Market Study (MEMS) we found that the web app was not an adequate substitute for a native app and have since developed and released a new native app for iOS meaning we are subject to Apple's terms and commission.
8. The DMCC bill gives the DMU the power to designate these mobile operating system gatekeepers as businesses with 'strategic market status' (SMS) and, through conduct requirement and pro-competition interventions, open up the markets for mobile application distribution and in-app payments. This will support innovation in the creation of new payment solutions and reduce costs for consumers and businesses, including publishers.

Subscription models

9. Many digital publishers, such as the FT, have demonstrated innovation in recent years by moving away from advertising business models to subscriptions which offer a sustainable source of revenue and are seen as a critical contributor to the future of the news media ecosystem.
10. The DMU regime would allow interventions to protect this innovation, for example where SMS firms do not treat content funded by subscriptions on the same basis as free/ads-funded content (from which they are likely to profit given the dominance of certain market participants in digital advertising). There is a risk that without this legislation a variety of business models offering consumers genuine choice will fail to gain the traction needed to sustain news media outlets and the journalism they produce.

Artificial intelligence

11. We are concerned that the largest tech businesses are able to secure an unfair advantage in the development of generative AI as a result of dominant positions held in adjacent markets. Whilst we believe the three components of the DMU regime give the regulator sufficient powers to address these concerns, we are concerned that the SMS designation criteria may be too high and leave Microsoft outside the jurisdiction of the new regime.

12. Google and Microsoft have trained their large language model chatbots - Bard and ChatGPT respectively - on huge datasets of content 'scraped' from the internet. Whilst we take steps to keep web scraping bots off our digital properties, we have no choice but to let Google and Microsoft's search crawlers access our content - both that which is in front of, and behind, the paywall - in order that the FT is indexed for, and appears within, search results. The FT, like all news publishers, is heavily dependent upon search engines (and Google in particular) for traffic.
13. The use of data across purposes is the type of anti-competitive conduct that the new Digital Markets Unit regime is seeking to prevent. However, it is understood that Microsoft is likely to fall outside of the designation criteria for 'strategic market status' in relation to search. Given the deep ties between Microsoft and OpenAI and the speed at which Microsoft is integrating generative AI into its products, we believe this raises questions about the SMS designation criteria and whether it is set appropriately to deal with businesses that are likely to emerge dominant in new technologies.

Appeal standard

14. Finally, we strongly support the proposal that the standard of appeal should be based on Judicial Review (JR) principles. The JR standard means that the DMU regime will be consistent with other forward-looking regulatory regimes including Ofcom, Ofwat and Ofgem. The JR standard also applies to mergers, another area where the CMA makes forward-looking assessments.
15. We are concerned that any change from the JR appeal standard, to a merits-based regime, would allow SMS firms to deploy their vast legal resources to delay the implementation of the new regime. This would place the UK at a further disadvantage in relation to other jurisdictions which are able to move faster.
16. We are also concerned that such a change would reduce the incentives for SMS firms to work in partnership with the DMU. Apple in particular has repeatedly and aggressively fought regulatory enforcement rather than work in a participatory manner with regulators. Consideration of its conduct in the Netherlands, where it chose to pay a succession of fines rather than comply with the regulator, is indicative of its likely approach. The JR appeal standard encourages designated firms to work together with the DMU on the implementation and enforcement of the new regime and any lowering of this would remove such motivation.

David Buttle

Director of Public Affairs and Platform Strategy

david.buttle@ft.com
+44 (0)7929 920399