

# The UK Digital Competition Bill: What Should the UK Learn from Europe and Germany?

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*The United Kingdom regulates competition in digital markets, following similar initiatives in Europe and Germany. It can learn from their compliance experiences and engage in international collaboration to ensure consistency.*

## 1 Introduction

The United Kingdom addresses competition issues in digital markets with the Digital Markets, Competition, and Consumers (DMCC) Bill<sup>1</sup>. This law requires large online platforms to follow requirements that promote fairer and more competitive digital markets. Similar initiatives include the European Union's Digital Markets Act (DMA)<sup>2</sup> and Germany's Section 19a GWB<sup>3</sup>. These laws already impose obligations on large online platforms, and some platforms are currently under investigation for non-compliance<sup>4</sup>. Although each legal framework has distinct objectives and structures, they all aim to regulate the same or very similar global business practices against the same platforms. In this context, the UK can learn from the implementation of European and German laws. Additionally, the European, German, and UK enforcers should engage in international cooperation to ensure a consistent global approach to competition in digital markets.

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<sup>1</sup> the Digital Markets, Competition, and Consumers (DMCC) Bill (accessed 27 May 2024). Available at: <https://bills.parliament.uk/bills/3453>

<sup>2</sup> Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on Contestable and Fair Markets in the Digital Sector and Amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (Text with EEA Relevance). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R1925>

<sup>3</sup> Section 19a GWB. Available at: [https://www.gesetze-im-internet.de/englisch\\_gwb/englisch\\_gwb.html#p0071](https://www.gesetze-im-internet.de/englisch_gwb/englisch_gwb.html#p0071)

<sup>4</sup> See the DMA and Section 19a trackers. Available at: <https://www.digital-competition.com/dmatracker> and <https://www.digital-competition.com/section19agwb>

## 2 The UK Bill

The DMCC Bill mandates that large online platforms with Strategic Market Status (SMS) in specific digital activities comply with codes of conduct designed by the UK Competition and Markets Authority (CMA). Since Professor Jason Furman and his colleagues recommended the bill in 2019<sup>5</sup>, the CMA has gained significant experience in digital markets through various market studies, including on online platforms and the digital advertising market<sup>6</sup>, and antitrust cases against companies like Google<sup>7</sup>, Meta<sup>8</sup>, Amazon<sup>9</sup>, and Apple<sup>10</sup>. Additionally, the CMA has conducted merger reviews, such as the *Microsoft/Activision* merger<sup>11</sup>.

To support these efforts, the CMA established the Data, Technology and Analytics (DaTA) unit in 2018 to manage complex data analytics<sup>12</sup>, and the Digital Markets Unit (DMU) in 2021 to prepare for the implementation of the DMCC bill and enforce it<sup>13</sup>.

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<sup>5</sup> Jason Furman et al, Unlocking Competition in Digital Markets Report of the Digital Competition Expert Panel, March 2019. Available at: [https://assets.publishing.service.gov.uk/media/5c88150ee5274a230219c35f/unlocking\\_digital\\_competition\\_furman\\_review\\_web.pdf](https://assets.publishing.service.gov.uk/media/5c88150ee5274a230219c35f/unlocking_digital_competition_furman_review_web.pdf)

<sup>6</sup> CMA, Online Platforms and Digital Advertising Market Study (accessed 27 May 2024). Available at: <https://www.gov.uk/cma-cases/online-platforms-and-digital-advertising-market-study>

<sup>7</sup> CMA, Investigation into Suspected Anti-Competitive Conduct by Google in Ad Tech (accessed 27 May 2024). Available at: <https://www.gov.uk/cma-cases/investigation-into-suspected-anti-competitive-conduct-by-google-in-ad-tech>

<sup>8</sup> CMA, Investigation into Meta's (Formerly Facebook) Use of Data (accessed 27 May 2024). Available at: <https://www.gov.uk/cma-cases/investigation-into-facebooks-use-of-data>

<sup>9</sup> CMA, Investigation into Amazon's Marketplace (accessed 27 May 2024). Available at: <https://www.gov.uk/cma-cases/investigation-into-amazons-marketplace>

<sup>10</sup> CMA, Investigation into Apple AppStore (accessed 27 May 2024). Available at: <https://www.gov.uk/cma-cases/investigation-into-apple-appstore>

<sup>11</sup> CMA, Microsoft/Activision Blizzard Merger Inquiry (accessed 27 May 2024). Available at: <https://www.gov.uk/cma-cases/microsoft-slash-activision-blizzard-merger-inquiry>

<sup>12</sup> Stefan Hunt, CMA's New Data Unit: Exciting Opportunities for Data Scientists, Competition and Markets Authority, 24 October 2018 (accessed 27 May 2024). Available at: <https://competitionandmarkets.blog.gov.uk/2018/10/24/cmas-new-data-unit-exciting-opportunities-for-data-scientists/>

<sup>13</sup> CMA, Digital Markets Unit (accessed 27 May 2024). Available at: <https://competitionandmarkets.blog.gov.uk/2018/10/24/cmas-new-data-unit-exciting-opportunities-for-data-scientists/>

The DMU has full discretion to define outcome-based conduct requirements (CRs), such as banning self-preferencing, provided they are proportionate and justified in ensuring fair dealing, open choices, trust and transparency. It can also mandate proportionate and justified pro-competitive interventions (PCIs) to address adverse effects on competition, like mandating interoperability<sup>14</sup>. Additionally, SMS firms will have to report certain acquisitions with a local nexus in the UK<sup>15</sup>. The DMCC bill grants extensive enforcement powers, including issuing orders, imposing penalties, pursuing criminal charges, and disqualifying directors.

Drawing from its experience in digital markets, the DMU will likely designate Alphabet, Amazon, Apple, Meta, and Microsoft as SMS firms.

### 3 Lessons From Europe and Germany

The UK regime shares several similarities with the European DMA and the German Section 19a GWB. Both European and German laws impose conduct requirements on large online platforms once designated by the Commission and the German competition authority, respectively. Like the DMCC bill, the DMA applies only to gatekeepers providing core platform services (CPSs). The Commission has already designated Alphabet, Amazon, Apple, Booking, ByteDance, Meta, and Microsoft, while X is still under investigation. The DMA imposes a specific list of conduct requirements that gatekeepers must address through compliance solutions.

In contrast, Section 19a GWB applies to all activities of the designated firm, allowing the German competition authority to impose specific conduct requirements after an investigation.

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<sup>14</sup> CMA, Digital Markets Competition Regime Guidance CMA194con Draft Guidance on the Digital Markets Competition Regime Set Out in the Digital Markets, Competition and Consumers Act 2024, 24 May 2024 (accessed 27 May 2024). Available at: [https://assets.publishing.service.gov.uk/media/6650a56d8f90ef31c23ebaa6/Digital\\_markets\\_competition\\_regime\\_guidance.pdf](https://assets.publishing.service.gov.uk/media/6650a56d8f90ef31c23ebaa6/Digital_markets_competition_regime_guidance.pdf)

See also, CMA, Overview of The CMA's Provisional Approach to Implement the New Digital Markets Competition Regime, 11 January 2024 (accessed 27 May 2024). Available at: <https://www.gov.uk/government/publications/overview-of-the-cmas-provisional-approach-to-implement-the-new-digital-markets-competition-regime>

<sup>15</sup> CMA, Guidance on the Mergers Reporting Requirements For SMS Firms CMA 195con Draft, 24 May 2024 (accessed 27 May 2024). Available at: [https://assets.publishing.service.gov.uk/media/6650a57bdc15efdddf1a83eb/Guidance\\_on\\_the\\_mergers\\_reporting\\_requirements\\_for\\_sms\\_firms.pdf](https://assets.publishing.service.gov.uk/media/6650a57bdc15efdddf1a83eb/Guidance_on_the_mergers_reporting_requirements_for_sms_firms.pdf)

The German competition authority has already designated Alphabet, Amazon, Apple, and Meta, with Microsoft still under investigation.

The UK regime combines a designation phase similar to the DMA with the flexibility and discretion of Section 19a GWB to define specific compliance requirements. However, unlike the UK regime, the DMA and Section 19a GWB are not outcome-based; they do not specify outcomes but require firms to demonstrate their best efforts to comply by providing opportunities that the laws create.

The same firms that comply in Europe and Germany will likely need to comply in the UK. Thus, the CMA can learn from their compliance experiences in these regions.

**Designation Challenges:** Most SMS firms are unlikely to challenge their designation under the UK regime if the DMU defines digital activities similar to CPSs under the DMA. Most firms did not challenge their designation under the DMA, except Apple (App Store and iMessage), ByteDance (TikTok), and Meta (Messenger and Marketplace). Amazon and Apple challenged their designation under Section 19a GWB<sup>16</sup>.

**Leveraging Compliance Solutions:** SMS firms will likely leverage their DMA compliance solutions under the UK regime, especially if the DMU's obligations are similar to the DMA requirements. Given their global presence, these firms can achieve economies of scale, including in regulatory compliance, ensuring consistency with European laws and quick implementation.

**Engaging with Stakeholders:** SMS firms will engage with stakeholders and the CMA if dialogues are constructive. Designated firms under the DMA engage with the Commission and third parties to improve compliance solutions. For example, Apple adjusted its terms for alternative distribution channels to address concerns from developers with minimal or no revenue about pricing schemes following feedback from developers and academics<sup>17</sup>.

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<sup>16</sup> The German Federal Court confirmed Amazon's designation. Bundesgerichtshof, Federal Court of Justice Confirms Amazon's Paramount Significance for Competition Across Markets, 14 May 2024 (accessed 27 May 2024). Available at:

<https://www.bundesgerichtshof.de/SharedDocs/Pressemitteilungen/EN/2024/2024097.html?nn=17772046>

<sup>17</sup> Apple, What's New for Apps Distributed in the European Union, 2 May 2024 (accessed 28 May 2024). Available at: <https://developer.apple.com/news/?id=d0z8d8rx>

**Minimising Adverse Impacts:** SMS firms will aim to minimise adverse impacts on stakeholders, necessitating DMU acceptance of concessions to preserve user experience and achieve positive competition and consumer outcomes. Compliance under the DMA has led to business changes that affect user interactions. For instance, Google's changes to comply with the ban on self-preferencing led Google to promote intermediaries like Booking and Expedia over hotels in search results, causing hotels to rely more on intermediaries due to reduced direct traffic from Google Search. Google also removed Google Maps from Google Search, degrading the user experience<sup>18</sup>.

**Preserving Revenue, Privacy, and Security:** SMS firms will seek to maintain their revenue, privacy, and security measures, requiring DMU guidance on acceptable practices. Designated firms under the DMA modified their business terms to comply with obligations while maintaining revenue sharing, privacy, and security. For instance, Google and Apple allow application developers to inform users about alternative offers on their websites but impose several conditions, including regarding fees, privacy, and security, that led to further investigations by the Commission<sup>19</sup>.

**Ensuring Innovation:** SMS firms will want to innovate, requiring DMU support to adjust requirements and work with stakeholders. DMA obligations can limit firms from quickly innovating. For example, Google's Generative Artificial Intelligence (GenAI) in Google Search is available in over 120 countries but not in Europe and the UK<sup>20</sup>, likely due to self-preferencing bans. GenAI in search engines is inevitable due to fierce competition from companies like OpenAI, Microsoft, Mistral, Meta, and PerplexityAI, and consumer demand for direct, personalised answers.

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<sup>18</sup> Adam Cohen, New Competition Rules Come with Trade-Offs, *Google Blog*, 5 April 2024 (accessed 28 May 2024). Available at: <https://blog.google/around-the-globe/google-europe/new-competition-rules-come-with-trade-offs/>

<sup>19</sup> European Commission, Commission Opens Non-Compliance Investigations Against Alphabet, Apple and Meta Under the Digital Markets Act, 25 March 2024 (accessed 28 May 2024). Available at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_24\\_1689](https://ec.europa.eu/commission/presscorner/detail/en/ip_24_1689)

<sup>20</sup> Hema Budaraju, Generative AI In Search Expands to More than 120 New Countries and Territories, *Google Blog*, 8 November 2023 (accessed 28 May 2024). Available at: <https://blog.google/products/search/google-search-generative-ai-international-expansion/>

## 4 The Necessary International Cooperation

Europe, Germany, and the UK will benefit from international cooperation<sup>21</sup>. This collaboration will ensure a coherent global approach to competition in digital markets through internal forums such as the International Competition Network, the European Competition Agencies Forum, and the European Competition Network. Such cooperation will allow large online platforms to reduce compliance costs and enable third parties to leverage compliance solutions across different jurisdictions without needing to adapt to local conditions.

Additionally, competition authorities will gain from sharing experiences, which will help improve their enforcement practices and potentially propose legislative changes. If permitted, they could also engage in joint enforcement actions, minimising inconsistencies while saving time and resources.

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<sup>21</sup> Christophe Carugati, How Best to Ensure International Digital Competition Cooperation, *Bruegel*, 6 February 2023 (accessed 28 May 2024). Available at: <https://www.bruegel.org/policy-brief/how-best-ensure-international-digital-competition-cooperation>

## About

### Digital Competition

Digital Competition ([www.digital-competition.com](http://www.digital-competition.com)) is a research and advisory firm dedicated to advancing open digital and competition policies that promote innovation. We provide our members and clients with impartial, forward-looking analyses on emerging global digital and competition issues, helping to shape policies that benefit everyone. We engage with stakeholders, offer insights, and make policy recommendations on complex and novel policy developments. This analysis was conducted independently and did not receive any funding.

This paper is part of our Digital Competition Coherence Hub (<https://www.digital-competition.com/digitalcompetitioncoherencehub>). The Hub is dedicated to promoting international coherence to reforms regulating competition in digital markets, ensuring effective regulations with minimum compliance costs and unintended consequences arising from inconsistencies amongst regulations. We leverage expertise and dialogue with stakeholders, governments, competition authorities, and international organisations while maintaining our commitment to open access, full transparency, and impartial advice. Our Hub helps stakeholders and regulators navigate reforms at the design and implementation stage. We also contribute to the discussion in designing competition policies for a coherent approach, especially in the context of the forthcoming 2024 G7 Italian presidency.

To advance this Hub, we provide research and invite stakeholders to contribute with relevant input. We also offer consultations, training sessions, and conferences on international coherence in digital markets and digital competition regulations. Contact us to join the Hub as a member and/or for consultation/press inquiries.

### Dr. Christophe Carugati



Dr. Christophe Carugati ([christophe.carugati@digital-competition.com](mailto:christophe.carugati@digital-competition.com)) is the founder of Digital Competition. He is a renowned and passionate expert on digital and competition issues with a strong reputation for doing impartial, high-quality research. After his PhD in law and economics on Big Data and Competition Law, he is an ex-affiliate fellow at the economic think-tank Bruegel and a lecturer in competition law and economics at Lille University.