



# Digital Markets, Competition and Consumers Act 2024

## 2024 CHAPTER 13

### PART 1

#### DIGITAL MARKETS

#### CHAPTER 2

#### STRATEGIC MARKET STATUS

PROSPECTIVE

#### *Procedure*

#### **9 Initial SMS investigations**

- (1) The CMA may begin an initial SMS investigation where it has reasonable grounds to consider that it may be able to designate an undertaking as having SMS in respect of a digital activity in accordance with [section 2](#).
- (2) An “initial SMS investigation” is an investigation into whether to designate an undertaking as having SMS in respect of a digital activity where the undertaking is not already designated in respect of that activity (subject to [section 10\(4\)](#)).
- (3) The CMA may begin an initial SMS investigation into whether to designate an undertaking as having SMS in respect of a digital activity even if it has previously made a decision not to designate the undertaking as having SMS in respect of that activity.

*Status: This version of this cross heading contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Digital Markets, Competition and Consumers Act 2024, Cross Heading: Procedure. (See end of Document for details)*

### Commencement Information

**II** S. 9 not in force at Royal Assent, see [s. 339\(1\)](#)

## 10 Further SMS investigations

- (1) The CMA may begin a further SMS investigation in relation to the designation of a designated undertaking in respect of a relevant digital activity at any time during the designation period (see [section 18](#)) relating to that designation.
- (2) The CMA must begin a further SMS investigation in relation to the designation of a designated undertaking in respect of a relevant digital activity not later than 9 months before the end of the designation period relating to that designation, if it is not already carrying one out at that time under subsection (1).
- (3) A “further SMS investigation” is an investigation into whether—
  - (a) to revoke a designated undertaking’s designation in respect of the relevant digital activity or to designate the undertaking again in respect of that activity, and
  - (b) to make provision under [section 17](#) (existing obligations).
- (4) A further SMS investigation may also include an investigation into whether to designate the designated undertaking in respect of a digital activity that the CMA considers to be similar or connected to the relevant digital activity (whether instead of, or in addition to, the relevant digital activity).

### Commencement Information

**I2** S. 10 not in force at Royal Assent, see [s. 339\(1\)](#)

## 11 Procedure relating to SMS investigations

- (1) When the CMA begins an SMS investigation it must give the undertaking to which the investigation relates a notice (an “SMS investigation notice”).
- (2) The SMS investigation notice must state—
  - (a) in the case of an initial SMS investigation—
    - (i) the reasonable grounds mentioned in [section 9\(1\)](#);
    - (ii) that the CMA may close the investigation in accordance with [section 12](#);
  - (b) the purpose and scope of the SMS investigation;
  - (c) the period by the end of which the CMA must give the undertaking a notice setting out its decisions as a result of the investigation (see [section 14\(2\)](#));
  - (d) the circumstances in which that period may be extended (see [section 104](#)).
- (3) The statement of the purpose and scope of the investigation must include a description of the undertaking and digital activities to which the investigation relates.
- (4) The CMA must give the undertaking one or more revised versions of the SMS investigation notice if it changes its view of the purpose and scope of the investigation.

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- (5) As soon as reasonably practicable after giving an SMS investigation notice or a revised version of an SMS investigation notice, the CMA must—
- (a) publish the notice, and
  - (b) give a copy of the notice to the FCA, OFCOM, the Information Commissioner, the Bank of England and the PRA.

#### Commencement Information

**I3** S. 11 not in force at Royal Assent, see [s. 339\(1\)](#)

### 12 Closing an initial SMS investigation without a decision

- (1) The CMA may close an initial SMS investigation at any time before it has reached a final view on the matters mentioned in paragraphs (a) and (b) of section 2(1).
- (2) When the CMA decides to close an initial SMS investigation, the CMA must give the undertaking to which the investigation related a notice to that effect.
- (3) The notice must include the CMA's reasons for closing the investigation.
- (4) As soon as reasonably practicable after giving a notice under subsection (2), the CMA must publish the notice.

#### Commencement Information

**I4** S. 12 not in force at Royal Assent, see [s. 339\(1\)](#)

### 13 Consultation on proposed decision

- (1) The CMA must—
  - (a) carry out a public consultation on any decision that it is considering making as a result of an SMS investigation (see [section 14\(1\)](#)), and
  - (b) bring the public consultation to the attention of such persons as it considers appropriate.
- (2) Consultation under subsection (1) may be carried out at the same time as consultation under [section 24\(1\)](#) (consultation in relation to a conduct requirement).

#### Commencement Information

**I5** S. 13 not in force at Royal Assent, see [s. 339\(1\)](#)

### 14 Outcome of SMS investigations

- (1) The CMA must—
  - (a) in the case of an initial SMS investigation which it does not close under [section 12](#), decide whether to designate the undertaking to which the investigation relates as having SMS in respect of a digital activity to which the investigation relates;

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- (b) in the case of a further SMS investigation, make a decision on the matters mentioned in [section 10\(3\)](#) and, where relevant, [section 10\(4\)](#).
- (2) The CMA must give the undertaking a notice (an “SMS decision notice”) setting out its decisions under subsection (1) on or before the last day of the period (the “SMS investigation period”) of 9 months beginning with the day on which the SMS investigation notice is given.
- (3) The giving of a revised version of an SMS investigation notice under [section 11\(4\)](#) does not change the day on which the SMS investigation period begins.
- (4) Sections [15](#) and [16](#) make provision about the content of an SMS decision notice.
- (5) As soon as reasonably practicable after giving an SMS decision notice, the CMA must publish the notice.
- (6) If the CMA does not give an SMS decision notice on or before the last day of the SMS investigation period, the CMA and the undertaking to which the investigation related are to be treated as if—
- (a) in the case of an initial SMS investigation, the CMA had given the undertaking an SMS decision notice stating that it had decided not to designate the undertaking in respect of any digital activity to which the investigation related, and
  - (b) in the case of a further SMS investigation, the CMA had given an SMS decision notice stating that it had decided to revoke the designated undertaking’s designation in respect of the relevant digital activity with effect from the end of the SMS investigation period.

#### Commencement Information

**I6** S. 14 not in force at Royal Assent, see [s. 339\(1\)](#)

### 15 Notice requirements: decisions about whether to designate

- (1) Where the CMA decides as a result of an initial SMS investigation not to designate the undertaking to which the investigation relates as having SMS in respect of a digital activity to which the investigation relates, the SMS decision notice must include the CMA’s reasons for its decision.
- (2) [Subsections \(3\) to \(6\)](#) apply where the CMA decides to designate an undertaking as having SMS in respect of a digital activity (whether or not that undertaking is already a designated undertaking).
- (3) The SMS decision notice must include—
- (a) a description of the designated undertaking,
  - (b) a description of the digital activity with respect to which the designation has effect,
  - (c) any provision that the CMA has decided to make in reliance on [section 17](#) (existing obligations),
  - (d) the CMA’s reasons for its decisions under [section 14\(1\)](#),
  - (e) a statement of the period (the “designation period”) for which the designation has effect (see [section 18](#)),

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- (f) a statement of the circumstances in which the designation period may be extended (see [section 104](#)), and
  - (g) a statement of the circumstances in which the designation may be revoked before the end of the designation period (see [sections 10](#) and [14\(1\)\(b\)](#)).
- (4) The CMA may give one or more revised versions of an SMS decision notice if it changes its view of—
- (a) the undertaking, or
  - (b) the digital activity,
- provided that the undertaking or digital activity, as the case may be, remains substantially the same.
- (5) The giving of a revised SMS decision notice providing for the designation of an undertaking does not affect—
- (a) the day on which the designation period in relation to that designation begins, or
  - (b) anything done under this Part in relation to that undertaking.
- (6) As soon as reasonably practicable after giving a revised SMS decision notice, the CMA must publish the revised notice.

#### Commencement Information

**I7** S. 15 not in force at Royal Assent, see [s. 339\(1\)](#)

### 16 Notice requirements: decisions to revoke a designation

- (1) [This section](#) applies where the CMA decides, as a result of a further SMS investigation, to revoke the existing designation of a designated undertaking in respect of a digital activity without making a further designation in respect of that digital activity under [section 14\(1\)\(b\)](#).
- (2) The SMS decision notice must provide for the revocation of the existing designation—
- (a) to have effect at the end of the day on which the notice is given, or
  - (b) to have effect from such earlier time as the CMA may specify in the notice.
- (3) The SMS decision notice must include—
- (a) any provision that the CMA has decided to make in reliance on [section 17](#) (existing obligations);
  - (b) the CMA's reasons for its decisions under [section 14\(1\)\(b\)](#).

#### Commencement Information

**I8** S. 16 not in force at Royal Assent, see [s. 339\(1\)](#)

### 17 Existing obligations

- (1) Where the CMA decides, as a result of a further SMS investigation, to revoke a designated undertaking's designation in respect of a relevant digital activity, the CMA may make transitional, transitory or saving provision in respect of any existing obligation.

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- (2) Provision may be made in reliance on subsection (1) only for the purpose of managing the impact of the revocation—
- (a) on any person who benefited from the existing obligation, and
  - (b) in a way that appears to the CMA to be fair and reasonable.
- (3) In Chapters 6 (investigatory powers and compliance reports) and 7 (enforcement and appeals), references to a “designated undertaking” are to be read as including an undertaking to which an existing obligation applies by virtue of provision made in reliance on subsection (1).
- (4) Subsection (5) applies where the CMA decides, as a result of a further SMS investigation, to—
- (a) designate an undertaking again in respect of a relevant digital activity, or
  - (b) designate an undertaking in respect of a different digital activity in reliance on section 10(4).
- (5) Where this subsection applies, the CMA may—
- (a) apply any existing obligation, with or without modification, to the designated undertaking in respect of the new designation;
  - (b) make transitional, transitory or saving provision in respect of any existing obligation.
- (6) For the purposes of this section, an “existing obligation” is any—
- (a) conduct requirement (see section 19),
  - (b) enforcement order (see section 31),
  - (c) commitment (see sections 36 and 56);
  - (d) final offer order (see section 41(2), or
  - (e) pro-competition order (see section 46(3)(a)),
- that is in force in relation to a designated undertaking in respect of the relevant digital activity before the revocation mentioned in subsection (1) or, as the case may be, the designation mentioned in subsection (4).
- (7) Provision made in reliance on this section is to be included in an SMS decision notice.

#### Commencement Information

**19** S. 17 not in force at Royal Assent, see s. 339(1)

## 18 Designation period

- (1) Where the CMA decides to designate an undertaking as having SMS in respect of a digital activity, the designation period is 5 years beginning with the day after the day on which the SMS decision notice is given.
- (2) See—
- (a) section 104 for circumstances in which the designation period may be extended, and
  - (b) sections 10 and 14(1)(b) for circumstances in which a designation may be revoked before the end of the designation period.

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### Commencement Information

**I10** S. 18 not in force at Royal Assent, see [s. 339\(1\)](#)

**Status:**

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**Changes to legislation:**

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