



# Digital Markets, Competition and Consumers Act 2024

## 2024 CHAPTER 13

### PART 1

#### DIGITAL MARKETS

#### CHAPTER 3

#### CONDUCT REQUIREMENTS

#### *Enforcement of conduct requirements*

#### **26 Power to begin a conduct investigation**

- (1) The CMA may begin an investigation (a “conduct investigation”) where it has reasonable grounds to suspect that an undertaking has breached a conduct requirement.
- (2) A conduct investigation is an investigation into—
  - (a) whether a breach has occurred, and
  - (b) if it has, what action, if any, the CMA should take in relation to the breach.
- (3) When the CMA begins a conduct investigation it must give a notice (a “conduct investigation notice”) to the undertaking which it suspects has breached a conduct requirement.
- (4) The conduct investigation notice must—
  - (a) state the conduct requirement which the CMA suspects has been breached;
  - (b) describe the conduct which the CMA suspects constituted the breach;
  - (c) state the period within which the undertaking may make representations in relation to the conduct investigation (see subsection (5));

- (d) state the period by the end of which the CMA must give a notice to the undertaking setting out its findings as a result of the conduct investigation (see [section 30\(2\)](#));
  - (e) state the circumstances in which that period may be extended (see [section 104](#));
  - (f) state the effect of the following provisions—
    - (i) [section 28](#) (closing a conduct investigation without making a finding);
    - (ii) [section 30](#) (notice of findings);
    - (iii) [section 36](#) (commitments).
- (5) The period mentioned in [subsection \(4\)\(c\)](#) is such period as the CMA may determine.
- (6) As soon as reasonably practicable after giving a conduct investigation notice, the CMA must publish the conduct investigation notice.

## **27 Consideration of representations**

Before making a finding that an undertaking to which a conduct investigation relates has breached or is breaching a conduct requirement, the CMA must consider any representations that the undertaking makes in relation to the conduct investigation.

## **28 Closing a conduct investigation without making a finding**

- (1) The CMA may close a conduct investigation at any time without making a finding as to whether or not a breach of a conduct requirement has occurred.
- (2) When the CMA decides to close a conduct investigation, the CMA must give the undertaking to which the investigation related a notice to that effect.
- (3) The notice must—
  - (a) describe the undertaking in respect of which the CMA began the investigation,
  - (b) state the conduct requirement to which the investigation related, and
  - (c) 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.

## **29 Countervailing benefits exemption**

- (1) The CMA must close a conduct investigation under [section 28](#) where representations made by the undertaking to which the investigation relates lead the CMA to consider that the countervailing benefits exemption applies.
- (2) The countervailing benefits exemption applies where—
  - (a) the conduct to which the investigation relates gives rise to benefits to users or potential users of the digital activity in respect of which the conduct requirement in question applies,
  - (b) those benefits outweigh any actual or likely detrimental impact on competition resulting from a breach of the conduct requirement,
  - (c) those benefits could not be realised without the conduct,
  - (d) the conduct is proportionate to the realisation of those benefits, and
  - (e) the conduct does not eliminate or prevent effective competition.

- (3) Where the CMA closes a conduct investigation as a result of [subsection \(1\)](#), the undertaking to which the decision relates is to be treated as if the CMA had found that the conduct did not constitute a breach of the conduct requirement.

### **30 Notice of findings**

- (1) The CMA must give a notice to the undertaking to which a conduct investigation relates setting out its findings as a result of the conduct investigation (subject to [subsection \(5\)](#)).
- (2) The notice must be given on or before the last day of the period (the “conduct investigation period”) of 6 months beginning with the day on which the conduct investigation notice is given to the undertaking.
- (3) The notice must—
- (a) state whether or not the CMA has found that a breach has occurred, and
  - (b) include reasons for the CMA’s findings.
- (4) As soon as reasonably practicable after giving the notice, the CMA must publish the notice.
- (5) [Subsection \(1\)](#) does not apply—
- (a) where the CMA closes the conduct investigation under [section 28](#), or
  - (b) in relation to any behaviour in respect of which the CMA has accepted a commitment from the undertaking (see [section 36](#)).

### **31 Enforcement orders**

- (1) Where the CMA finds, as a result of a conduct investigation, that an undertaking has breached a conduct requirement, it may make an order (an “enforcement order”) imposing on the undertaking such obligations as the CMA considers appropriate for one or more of the following purposes—
- (a) in a case where the breach is ongoing, stopping the breach;
  - (b) preventing the breach from happening again;
  - (c) addressing any damage caused by the breach.
- (2) The CMA may vary an enforcement order by making a revised version of that order.
- (3) An enforcement order may include transitional, transitory or saving provision.
- (4) An enforcement order must—
- (a) specify the breach to which it relates;
  - (b) include the CMA’s reasons for imposing the obligations in the order.
- (5) The CMA may consult such persons as the CMA considers appropriate before making an enforcement order (including a revised version of an order).
- (6) Where the CMA decides to make an enforcement order (other than an interim enforcement order under [section 32](#)), it must do so as soon as reasonably practicable after giving the undertaking a notice of its findings under [section 30\(1\)](#).
- (7) As soon as reasonably practicable after making an enforcement order (including a revised version of an order), the CMA must publish the order.

- (8) The CMA may consent to an undertaking acting in a way that would otherwise constitute a breach of an enforcement order.

### **32 Interim enforcement orders**

- (1) The CMA may make an enforcement order on an interim basis (an “interim enforcement order”) in relation to a suspected breach of a conduct requirement where—
- (a) the CMA has begun a conduct investigation in relation to the suspected breach, and
  - (b) the CMA considers that it is necessary to act on an interim basis—
    - (i) to prevent significant damage to a particular person or category of person,
    - (ii) to prevent conduct which could reduce the effectiveness of any other steps the CMA might take in relation to the conduct requirement which it suspects the undertaking has breached or is breaching, or
    - (iii) to protect the public interest.
- (2) An interim enforcement order must specify the suspected breach to which it relates.
- (3) Before making an interim enforcement order, the CMA must give the undertaking to which it would relate an opportunity to make representations to it about the order which it proposes to make.
- (4) But the duty in subsection (3) does not apply where the CMA considers that compliance would substantially reduce the effectiveness of the order.
- (5) Where the CMA makes an interim enforcement order in relation to an undertaking without complying with subsection (3), the CMA must, as soon as reasonably practicable, give the undertaking a notice including—
- (a) the reasons for the CMA’s decision to make the interim enforcement order without complying with subsection (3), and
  - (b) the period within which the undertaking may make representations in relation to the interim enforcement order (see [subsection \(7\)](#)).
- (6) As soon as reasonably practicable after giving a notice under subsection (5), the CMA must publish the notice.
- (7) The period mentioned in subsection (5)(b) is such period as the CMA may determine.
- (8) The CMA must consider representations which it receives following a notice under subsection (5) as soon as reasonably practicable.

### **33 Duration of enforcement orders**

- (1) An enforcement order (including a revised version of an order) comes into force at such time as the CMA may specify in the order.
- (2) An interim enforcement order ceases to have effect—
- (a) when revoked under [section 34](#),
  - (b) subject to provision made in reliance on [section 17](#) (existing obligations), when the designation to which it relates ceases to have effect, or

- (c) when one of the following events occurs in relation to the suspected breach to which the order relates—
  - (i) the CMA gives the undertaking a notice stating that the CMA has found that no breach has occurred (see [section 30](#));
  - (ii) the CMA accepts a commitment from the undertaking (see [section 36](#));
  - (iii) the CMA makes an enforcement order (see [section 31\(1\)](#));
  - (iv) the CMA notifies the undertaking that it has decided not to make an enforcement order that is not an interim enforcement order.
- (3) An enforcement order other than an interim enforcement order ceases to have effect—
  - (a) when revoked under [section 34](#), or
  - (b) subject to provision made in reliance on [section 17](#) (existing obligations), when the designation to which it relates ceases to have effect.
- (4) The fact that an enforcement order ceases to have effect does not affect the exercise of any functions in relation to a breach or possible breach of that order.

#### **34 Revocation of enforcement orders**

- (1) The CMA may revoke an enforcement order by giving a notice to that effect to the undertaking to which the order applies.
- (2) The notice must include the reasons for the CMA's decision to revoke the enforcement order.
- (3) The notice may include transitional, transitory or saving provision in relation to the revocation of the enforcement order.
- (4) As soon as reasonably practicable after revoking an enforcement order, the CMA must publish the notice.
- (5) The CMA may consult such persons as the CMA considers appropriate on any proposal to revoke an enforcement order.

#### **35 Duty to keep enforcement orders under review**

The CMA must keep under review—

- (a) the extent to which an undertaking to which it has given an enforcement order is complying with that order,
- (b) the effectiveness of an enforcement order,
- (c) whether to vary or revoke an enforcement order,
- (d) where an enforcement order is revoked, whether to make a new enforcement order, and
- (e) whether to take action in accordance with [Chapter 7](#) (enforcement and appeals) in respect of an undertaking which does not comply with an enforcement order.