



Digital Markets, Competition and Consumers Act 2024

2024 CHAPTER 13

PART 1

DIGITAL MARKETS

CHAPTER 2

STRATEGIC MARKET STATUS

Power to designate undertaking as having SMS

PROSPECTIVE

2 Designation of undertaking

- (1) The CMA may designate an undertaking as having strategic market status (“SMS”) in respect of a digital activity carried out by the undertaking where the CMA considers that—
 - (a) the digital activity is linked to the United Kingdom (see [section 4](#)), and
 - (b) the undertaking meets the SMS conditions in respect of the digital activity.
- (2) The SMS conditions are that the undertaking has—
 - (a) substantial and entrenched market power (see [section 5](#)), and
 - (b) a position of strategic significance (see [section 6](#)),in respect of the digital activity.
- (3) Subsection (1) is subject to [section 7](#) (the turnover condition).

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: Power to designate undertaking as having SMS. (See end of Document for details)

- (4) The CMA may only designate an undertaking as having SMS in respect of a digital activity after carrying out an SMS investigation in accordance with this Chapter.

Commencement Information

- I1** S. 2 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

3 Digital activities

- (1) For the purposes of this Part, the following are “digital activities”—
- the provision of a service by means of the internet, whether for consideration or otherwise;
 - the provision of one or more pieces of digital content, whether for consideration or otherwise;
 - any other activity carried out for the purposes of an activity within paragraph (a) or (b).
- (2) For the purposes of this section, a service is provided by means of the internet even where it is provided by means of a combination of—
- the internet, and
 - an electronic communications service (within the meaning given by section 32(2) of the Communications Act 2003).
- (3) The CMA may treat two or more activities within [subsection \(1\)](#) that are carried out by a single undertaking as a single digital activity where—
- the activities have substantially the same or similar purposes, or
 - the activities can be carried out in combination with each other to fulfil a specific purpose.
- (4) In any notice or other document that the CMA is required to give or publish under or by virtue of this Part, the CMA may describe a digital activity by reference to the nature of the activity, brand names or both.

Commencement Information

- I2** S. 3 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

4 Link to the United Kingdom

A digital activity is linked to the United Kingdom for the purposes of [section 2\(1\)\(a\)](#) if—

- the digital activity has a significant number of UK users,

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- (b) the undertaking that carries out the digital activity carries on business in the United Kingdom in relation to the digital activity, or
- (c) the digital activity or the way in which the undertaking carries on the digital activity is likely to have an immediate, substantial and foreseeable effect on trade in the United Kingdom.

Commencement Information

I3 S. 4 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

5 Substantial and entrenched market power

In order to assess whether an undertaking has substantial and entrenched market power in respect of a digital activity for the purposes of [section 2\(2\)\(a\)](#), the CMA must carry out a forward-looking assessment of a period of at least 5 years, taking into account developments that—

- (a) would be expected or foreseeable if the CMA did not designate the undertaking as having SMS in respect of the digital activity, and
- (b) may affect the undertaking's conduct in carrying out the digital activity.

Commencement Information

I4 S. 5 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

6 Position of strategic significance

An undertaking has a position of strategic significance in respect of a digital activity for the purposes of [section 2\(2\)\(b\)](#) where one or more of the following conditions is met—

- (a) the undertaking has achieved a position of significant size or scale in respect of the digital activity;
- (b) a significant number of other undertakings use the digital activity as carried out by the undertaking in carrying on their business;
- (c) the undertaking's position in respect of the digital activity would allow it to extend its market power to a range of other activities;
- (d) the undertaking's position in respect of the digital activity allows it to determine or substantially influence the ways in which other undertakings conduct themselves, in respect of the digital activity or otherwise.

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Commencement Information

I5 S. 6 not in force at Royal Assent, see [s. 339\(1\)](#)

7 The turnover condition

- (1) The CMA may not designate an undertaking as having SMS in respect of a digital activity unless the turnover condition is met in relation to the undertaking.
- (2) The turnover condition is met in relation to an undertaking if the CMA estimates that—
 - (a) the total value of the global turnover of an undertaking or, where the undertaking is part of a group, the global turnover of that group in the relevant period exceeds £25 billion, or
 - (b) the total value of the UK turnover of an undertaking or, where the undertaking is part of a group, the UK turnover of that group in the relevant period exceeds £1 billion.
- (3) The Secretary of State may by regulations amend either of the sums mentioned in [subsection \(2\)](#).
- (4) Regulations under [subsection \(3\)](#) are subject to the affirmative procedure.
- (5) The CMA must—
 - (a) keep under review the sums mentioned in [subsection \(2\)](#), and
 - (b) from time to time advise the Secretary of State as to whether the sums are still appropriate.
- (6) In this section—
 - (a) the “relevant period” means—
 - (i) the most recent period of 12 months (“period A”) in respect of which the CMA considers that it is able to make an estimate of the total value of the relevant turnover of the undertaking or group, or
 - (ii) if the CMA estimates that the relevant turnover of the undertaking or group in the period of 12 months ending immediately before period A was higher than the relevant turnover of the undertaking or group in period A, that earlier period of 12 months;
 - (b) the “relevant turnover” of the undertaking or group is the UK turnover or, as the case may be, global turnover of the undertaking or group.

Commencement Information

I6 S. 7 in force at Royal Assent for specified purposes, see [s. 339\(2\)\(c\)](#)

8 Turnover of an undertaking

- (1) [This section](#) applies for the purposes of the turnover condition.
- (2) The total value of the global turnover of an undertaking or group in the relevant period (as defined in [section 7\(6\)](#)) is, subject to regulations under [subsection \(4\)](#), the total value of the turnover of the undertaking or group arising in connection with any of its activities.

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- (3) The total value of the UK turnover of an undertaking or group in the relevant period is, subject to regulations under [subsection \(4\)](#), the total value of the turnover of the undertaking or group—
- (a) arising in connection with any of its activities, and
 - (b) relating to UK users or UK customers.
- (4) The Secretary of State may by regulations make provision about how the total value of the global turnover or UK turnover of an undertaking or group in a period is to be estimated for the purposes of the turnover condition.
- (5) Regulations under [subsection \(4\)](#) may (among other things)—
- (a) make provision about amounts which are, or are not, to be regarded as comprising the turnover of an undertaking or group;
 - (b) confer on the CMA the power to determine matters specified in the regulations (including the matter mentioned in paragraph (a)).
- (6) Regulations under [subsection \(4\)](#) are subject to the negative procedure.

Commencement Information

I7 S. 8 in force at Royal Assent for specified purposes, see [s. 339\(2\)\(c\)](#)

Status:

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Changes to legislation:

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