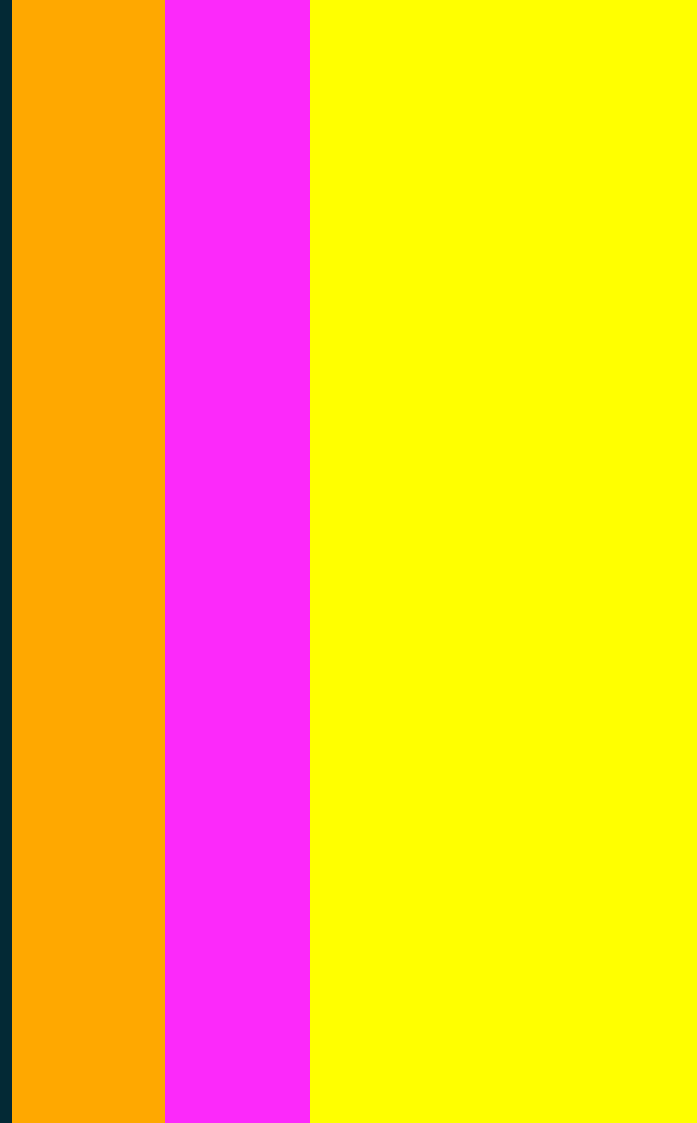


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**THE
DIGITAL
MARKETS
UNIT**



Summary

The Digital Markets Unit (DMU) will oversee a new regulatory regime for the most powerful digital firms, promoting greater competition and innovation in these markets and protecting consumers and businesses from unfair practices.

What it hopes to achieve

The concentration of power in a handful of the largest digital companies is crowding out competition by erecting entry barriers for other firms.

The new regime will aim to prevent abuses of market power, spurring greater innovation. It will aim to make sure smaller firms are not unfairly pushed out of the market so that they can grow and compete. It will give consumers more choice and support a wide range of sectors, including the publishing industry.

The Government's regulatory framework will be focused on platforms with Strategic Market Status (SMS), the most powerful digital firms. A code of conduct will be established, setting out clear principles to protect consumers and businesses from exploitation and prevent competitors from practices that undermine fair competition. Further, the DMU will be able to make pro-competitive interventions to drive competition and innovation.



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Current status

Powers for the DMU will require legislation. In the interim, the DMU has been established within the Competition and Markets Authority (CMA), on a non-statutory basis to focus on operationalising and preparing for the new regime.

The Government most recently consulted on its proposals for the new pro-competition regime from July to October 2021. In February 2022, Minister Chris Philp stated that the Government would respond to the consultation in 'one to two' months. The legislation to give the DMU powers will likely be passed during 2023 at the earliest; following this the digital firms will need to be designated as having SMS, so it may not be fully operational until 2025 or 2026.

Key Points

1 - The DMU Regime

The DMU will be a part of the CMA, promoting competition and competitive outcomes by addressing both the sources of market power and the economic harms that result from the exercise of market power. The Government is currently minded to provide the DMU with a supplementary duty to have regard to innovation.

2 - Strategic Market Status

The regime will focus on firms that the DMU designates with SMS. To designate a firm with SMS, the DMU will be required to test and conclude that a firm has substantial and entrenched market power in at least one activity, providing it with a strategic position. The regime will be focused on particular activities, rather than all a firm's activities, but will be able to group certain products, services, and processes into a single activity if they fulfill a specific function.

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3 - Code of Conduct

The code of conduct will promote three key objectives - fair trading, open choices, and trust and transparency - shaping SMS firms' behavior to prevent bad outcomes before they occur. Practices that the code will aim to prevent include:

- Entrenching and protecting market power – where a firm uses contractual terms or its wider ecosystem of products to unreasonably restrict the ability of others to compete
- Extending market power – where a firm uses its position in its designated activity to unfairly extend its market power into related activities
- Exploitative conduct – for example, where a firm uses unfair or unreasonable contract terms
- Unreasonably restricting customer choice – for example, where a firm uses default settings unreasonably or provides insufficient information to enable informed and open decision making by users

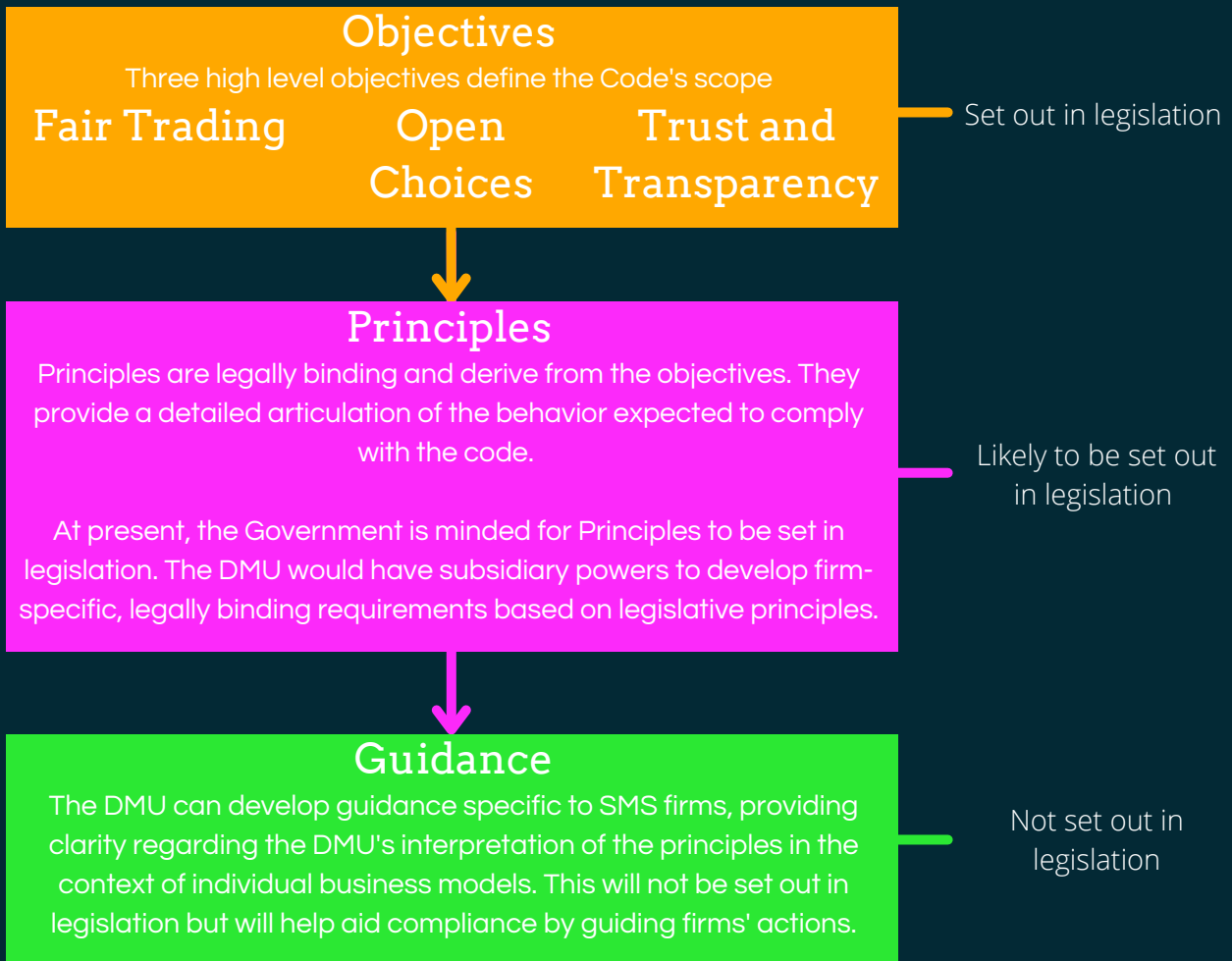
4 - Pro-Competitive Interventions

The pro-competitive interventions will address the root causes of substantial and entrenched market power. This could include measures to overcome network effects and barriers to entry/expansion through mandating interoperability, third-party access to data, or certain separation measures. It could also include measures that increase consumer control over data. These measures have the potential to fundamentally shift the structure of digital markets, by addressing the unique characteristics in these markets that lead to weak competition.

5 - SMS Merger Regime

The Government is also considering new merger rules for firms with SMS. These rules would aim to ensure merger activity is more proactively monitored and that harmful mergers are blocked where they further enhance or entrench the powerful positions of firms with SMS.

The Code of Conduct



How will the DMU interact with other digital policies?

No regulation operates in isolation, and the nature of the digital sphere means that the synergies and conflicts between different policy aims are accentuated further. The DMU may well have a positive impact on online safety, as the largest platforms will face greater competition, allowing consumers to make choices based on content quality and user safety. However, compliance costs associated with the online safety regime could disadvantage smaller firms.

There are also synergies between greater competition and user privacy: effective competition could prevent digital platforms from offering 'take it or leave it' personal data terms, whilst effective data protection can support competition as firms seek to build consumer trust and confidence.

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What the code could mean for publishers

The market power of digital platforms impacts publishers in a number of ways. These impacts and the ways the code of conduct could address them are summarised below:

Unexpected and unexplained changes to search and ranking algorithms:

Provision of sufficient explanation to publishers about how algorithms work, as well as an explanation and notification of changes, could be covered by the code of conduct under the 'trust and transparency' principle.

Difficulty in monetising content: This concern could be addressed by a principle that contractual terms concerning the ability of publishers to monetise their content should be objectively justifiable.

Use of publisher content for 'free' and keeping users within Google and Facebook ecosystems: A principle under the code could require platforms to take reasonable steps to ensure that publishers can exercise additional control over how their content is shown on platform, for example by platforms committing to work collaboratively with publishers on how content is presented.

Publishers cannot access user-level data for content hosted within the Google and Facebook ecosystems: The code of conduct could facilitate platforms sharing data with publishers about user interactions with their own content at a user level, and in a format that would allow them to match it to user data generated from the publishers' own sites.

Commoditisation' of publisher data, with Facebook and Google able to collect and use individual data from consumers who interact with content from third-party publishers on their platforms: This could also be addressed by a principle that contractual terms between platforms and publishers should be objectively justifiable, for example by obliging platforms to ensure that the appropriate user consent is sought to ensure disaggregated user data can be shared with the relevant publishers.

Digital Advertising: A rebalancing of the market

As well as publisher specific-impacts, a major impact of the DMU will be a rebalancing of the digital advertising market. The code of conduct could address:

A lack of clarity in platforms' advertising policies: The code could require platforms not to apply unduly discriminatory terms, conditions, or policies to certain customers.

Automated bidding options in Google and Facebook could be used to increase platform revenues: The code could include a requirement to act in consumers' best interests when making choices on their behalf.

Google can use its control of the publisher ad server market to determine auction processes in a way that favours its digital advertising businesses: The code could require platforms not to influence competitive processes or outcomes in a way that unduly self-preferences a platform's own services over those of rivals.

A lack of transparency of algorithms used in advertising auctions, including those used to weight bids by relevance and automated bidding algorithms: This concern could be remedied by a requirement to explain the operation of algorithms and advertising auctions and to allow audit and scrutiny of their operation by the regulator.

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International Context

In the European Union, the Digital Markets Act (DMA) is likely to be put into effect during 2023. There are fears that the DMA is not nearly such a good solution as the DMU could potentially be, because it will enforce one code of conduct across all platforms, rather than tailored codes for different platforms. Once the DMA is implemented, it may be more difficult for the UK Government to adopt a significantly divergent regulatory approach.

PPA Action

PPA has provided input for several Government and CMA consultations that have led to the formation of the DMU, and the plans for statutory powers and codes of conduct. Consultations that have fed into the creation of the DMU include: The Cairncross Review, The Furman Review, The CMA Digital Advertising Market Study, the Digital Markets Taskforce, the most recent Government consultation on the new pro-competition regime, and the ongoing CMA Mobile Ecosystems Market Study.

In recent months, PPA has met and will continue to meet with Government officials, senior staff from the Digital Markets Unit, interested MPs, Peers, and stakeholders (including aligned industry associations), and digital platforms that may be designated with SMS.

When the Government unveils its updated plans for the new regime, we will consult with members to ensure that PPA's influence is focused on securing legislation and regulation that will have a highly positive material impact on members' digital business models, ability to innovate, and future growth.

If you would like to learn more about our work on various areas of digital regulation, please email PPA's Public Affairs Executive, Sebastian Cuttill: sebastian.cuttill@ppa.co.uk

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