

CLIENT ALERT

UK Government Establishes New Digital Platform Regulator

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The UK Department for Digital, Culture, Media and Sport announced on 26 November 2020 that it will legislate to establish a new Digital Markets Unit (**DMU**) which is intended to become operational from April 2021¹ onwards. The purpose of the DMU will be to regulate the behaviour of platforms funded by digital advertising which are designated as having 'strategic market status' (**SMS**). Organizationally, the DMU will become a new business unit within the UK Competition & Markets Authority (**CMA**) but will liaise closely with, among others, the UK telecoms regulator, Ofcom, as well as the UK regulator for information rights and data privacy, the Information Commissioner's Office or ICO. The UK Government will consult on the details of the new regulatory regime early in 2021.

The UK Government has decided to adopt all four recommendations by the UK CMA, set out in the CMA's final report of its market study into online platforms and digital advertising markets which was published on 1 July 2020,² i.e.:

- **Recommendation 1:** Establish an enforceable 'code of conduct' to govern the behaviour of platforms funded by digital advertising that are designated as having 'strategic market status'.
- **Recommendation 2:** Establish a DMU to undertake SMS designation, introduce and maintain the code based on objectives set out in legislation, and produce detailed supporting guidance.

¹ [UK Government's response to the CMA's market study into online platforms and digital advertising](#)

² [Online platforms and digital advertising market study](#)

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- **Recommendation 3:** Give the DMU the necessary powers to enforce the principles of the code on a timely basis and amend its principles in line with evolving market conditions, such as the power to order specified conduct to cease or be altered and to impose financial penalties.
- **Recommendation 4:** Give the DMU the additional powers to introduce a range of interventions, such as (i) data-related interventions (including consumer control over data, interoperability, data access and data separation powers); (ii) consumer choice and default interventions; and (iii) separation interventions.

While the UK Government has given its full support to the CMA's Recommendations 1 to 3, the UK Government has said that further work and analysis is required to decide the appropriate extent of additional powers of intervention (beyond the powers to enforce the new 'code of conduct') which should be given to the DMU under Recommendation 4.

These recommendations also broadly align with the recommendations made by a panel of digital economy experts chaired by Professor Jason Furman, which were published in March 2019 (the **Furman Report**).³

So far no details have been published in relation to the designation regime for platforms with SMS or the terms of the proposed code of conduct.

The Digital Markets Taskforce,⁴ which was set up by the UK Government in March 2020 following the publication of the Furman Report, is due to provide advice on the designation test for SMS platforms and on the potential design and implementation of the code of conduct by the end of the year for public consultation in early 2021.

The announcement comes ahead of the widely anticipated announcement by the European Commission (the **Commission**) of its legislative proposals for additional regulation of digital platforms under the Digital Market Act.⁵ It has been reported that the Commission plans to unveil its proposals on 9 December 2020.⁶

³ [Report of the Digital Competition Expert Panel, chaired by Professor Jason Furman](#)

⁴ <https://www.gov.uk/cma-cases/digital-markets-taskforce>

⁵ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12416-New-competition-tool>

⁶ Date announced by Věra Jourová, the European Commission's values and transparency chief on 17 November 2020 at the European Business Summit on "Regulation of Digital Platforms".

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