



Big Tech, Online Subscriptions and Customer Reviews – The Digital Markets, Competition & Consumers Bill

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In what is set to be the biggest shake up of the UK's digital competition regime for around a decade, The Digital Markets, Competition and Consumers Bill is to tackle "Big Tech" head on in order to ensure fair conduct between them, their consumers and their competitors. These changes will also have an impact on SMEs. [Corporate and Commercial Solicitor Gerard Chalkly-Maber](#) takes a look at the proposal and developments as the legislation continues to be formulated and amended by Parliament ahead of its planned enactment later this year.

[The Digital Markets, Competition and Consumers Bill](#) (DMCC Bill), introduced to Parliament on 25 April 2023, will regulate the biggest technology businesses' conduct and practices whilst at the same time strengthening the enforcement arm of the Competition and Markets Authority ([CMA](#)).

Since its first reading in April 2023, the DMCC Bill has passed through the House of Commons and is currently at the "Committee stage" in the House of Lords. It is expected to come into force in autumn/winter 2024.

Taking on the "Tech Giants" – the regulation of competition

The DMCC Bill empowers the CMA to designate the biggest technology businesses – such as [Apple](#) and [Amazon](#) – as firms of "strategic market significance", having substantial and entrenched market power in conducting digital activities (such an activity being, for example, the provision of a service or digital content by means of the internet). These businesses will become subject to new conduct rules requiring them to trade fairly and reasonably preventing them from using their power to limit digital innovation or market access. For SMEs that have experienced such anti-competitive behaviour in the past, the DMCC Bill should hopefully provide comfort that such actions will be actively addressed.

The CMA is expected to administer the regime through its Digital Markets Unit (DMU), which will be able to fine

businesses up to £300,000 or 10% of a business's annual global turnover (whichever is higher) for breaching consumer laws.

Controversially, the Government has pushed on – despite the efforts of “Big Tech” lobbyists – to reject the availability of merits review (a determination on appeal of the *correctness* of a DMU decision). The DMCC Bill only permits challenge to the DMU's decision-making *process* on public law principles.

The CMA's jurisdiction is to be enlarged in order to investigate so-called ‘killer acquisitions’ – mergers between any active party supplying certain goods or services within the UK, with another party who provides over 33% of those goods or services within the UK and has a UK annual turnover of more than £350 million.

A warning for smaller businesses – consumer protection

Substantive new consumer rights are included in the DMCC Bill, requiring businesses to notify customers when subscription-based contracts are about to roll over into a new term. The DMCC Bill also proposes a ban on publishing fake customer reviews, imposing an obligation to take reasonable steps to prevent their publication, and to ensure all reviews are genuine.

In November 2023, amendments to strengthen consumer protection provisions in the DMCC Bill (specifically the ability for collective action to be brought against consumer protection law infringing businesses) were proposed. This proposal provides that non-compliant businesses would be at risk of large “opt-out” actions (where members of a particular class have to opt-out if they do not want to be included in the action, rather than opt-in). This, in turn, would allow a more streamlined and straightforward process than is the case for bringing a claim under competition law (which is currently the necessary route).

It is not yet clear how such a proposal will manifest, if at all, in the DMCC Bill as amendments are still in the process of being considered and debated by the House of Lords and any proposals will still need to be further considered by the House of Commons.

Regardless of the possible collective action element, the DMCC Bill still targets not only the conduct and practices of the large-scale technology businesses, but businesses of all sizes.

Under the new regime, the CMA will no longer be required to apply for a court enforcement order against businesses found breaching consumer legislation. This simplified enforcement process means small and medium sized businesses are now more likely to be subject to CMA attention.

Contact

If you would like to discuss any questions regarding the DMCC Bill or concerns as to how it may affect your business, please do get in touch with [Gerard Chalkly-Maber](#) or any other member of our [Corporate &](#)

[Commercial Team](#) at Online.Enquiries@LA-Law.com.