

[REDACTED]

CONSULTATION RESPONSE

Overview

1. [REDACTED] welcomes the opportunity to input to the CMA's consultation on guidance for the new Digital Markets Competition Regime. As a provider of financial services [REDACTED]
2. We support the intent of the Digital Markets, Competition and Consumer Act 2024 (DMCC) to **establish a new proactive competition regime for digital markets** which will **regulate the largest and most powerful digital firms** to ensure effective competition that benefits everyone, and which seeks **to address the far-reaching market power of a small number of key digital/tech firms** (Big Tech).
3. We welcome the CMA's new regime and its intent to effectively tackle market power concerns. We are responding to this consultation to support a finalised guidance which functions well and is accurately reflective of the intent of the Act. In this response, we expand on two concerns we would welcome the CMA addressing as it considers its finalised guidance and, thereafter, implements the new regime:
 - (i) the guidance should clearly articulate at the outset, and when discussing the various criteria, Parliament's intention for the regime to be applied to a small number of the biggest digital/tech firms to address the particular challenges they pose to competition¹.
 - (ii) the CMA engages in **strong and swift interventions in relation to its new powers**. We expand on these points below.

Response to consultation

The guidance should be aligned with the intent of the DMCC Act and should be explicit that the regime is aimed at "Big Tech" companies to avoid confusion regarding its substantive scope.

4. Chapter 2 sets out the requirements for an undertaking to be designated as having SMS (Strategic Market Status) in respect of a digital activity and includes details of how the CMA will approach assessing the SMS conditions and the SMS investigation procedure. When establishing the new regime, the Government's stated intent was **to address the far-reaching market power of a small number of tech/digital firms i.e. Big Tech**². The

¹ See, for example, Government's comments in its initial consultation: *"The purpose of the new pro-competition regime is to unlock the benefits of competition in digital markets and tackle the strategic market position of a small number of key digital firms. The regime will need to be proportionate, evidence-driven and carefully targeted at those digital firms and activities where the risk of harm is greatest"*. [Consultation document - HTML version - GOV.UK \(www.gov.uk\)](https://www.gov.uk/consultation-document/html-version).

² Big Tech is the term generally used to describe the largest Tech companies in the world and includes the "Big Five": Alphabet (Google), Amazon, Apple, Meta, and Microsoft. We note that it is these companies that have been called out specifically in various market and competition investigations in the digital/tech space.

Government's press release in May 2024, following the DMCC receiving Royal Assent, confirmed that **"only a handful of the most powerful global technology companies will be subject to these rules..."**³ . The CMA also indicated⁴ that it **expected the number of firms designated as having SMS to be very limited.**

5. We are concerned that the draft guidance does not reference this objective or provide clear (even if broad) boundaries/illustrations as to what type of activities and type of companies the CMA considers are and are not in scope (other than, for example, a reference to social media platforms and e-commerce platforms). This should be addressed in a further iteration of the guidance to better ensure regulatory certainty across the UK economy and ease concerns that the CMA could apply the regime more broadly than intended, capturing companies and activities for whom and which the Act is not designed.⁵
6. Specifically in relation to financial services, there is already an extensive regulatory framework targeted at ensuring competition and good consumer outcomes between and by regulated firms: so, for example, the objectives of Conduct Requirement (fair dealing, open choices, and trust/transparency) are already addressed and enforced by the Financial Conduct Authority (and others, such as the Payment Systems Regulator) and there has already been extensive consideration of, and intervention in, the sector by the CMA under its existing powers.
7. We would welcome the final guidance making clear that already heavily regulated firms operating in relatively self-contained sectors should not be a focus for the new regime; there are ample tools already available to the CMA and sectoral regulators to engage with concerns. We were not able to identify in the draft guidance a sufficiently material, express reference to this. We would also be concerned if a sectoral regulator sought to apply the CMA's practice (as a perceived "gold standard") to regulated firms [REDACTED] given any such practice should have been developed in relation to Big Tech and the particular challenges they pose to competition across the UK economy and unsuitable for general application.
8. Rather, we would welcome CMA support, in conversation with the FCA, in ensuring that where Big Tech engage in activities that impact on the financial services sector, be that as financial services providers, consumer intermediaries or as suppliers of critical services (such as Cloud), they do so fairly and in a manner conducive to competition and good consumer outcomes. There is a clear possibility, that the FCA has recognised, of Big Tech

³ [Digital Markets, Competition and Consumers Act receives Royal Assent - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/digital-markets-competition-and-consumers-act-receives-royal-assent)

⁴ [Digital markets competition regime draft guidance summary](#), p5.

⁵ It is instructive that Parliamentary efforts were focussed at seeking legislative wording that ensured a narrow rather than broad application of the regime. For example, concepts such as "digital platform activities" or "activities where digital technologies are a 'core component'" were suggested with this in mind but were not pursued given the lack of consistent, commonly accepted definitions rather than any change in Parliamentary intent. There was a clear expectation that the CMA would provide greater clarity in the required guidance- see, for instance, "A new pro-competition regime for digital markets - government response to consultation - GOV.UK (www.gov.uk)".

leveraging their market power in other (digital) areas (such as mobile ecosystems and online platforms) into financial services with potential distortive effects. We consider this is something that needs to be effectively regulated in a sensibly prospective/forward looking manner (as envisaged by the new Conduct Requirement powers).

9. We would also welcome the CMA's express consideration, when carrying out an SMS assessment, of the likely impact a Big Tech activity could have on financial services and financial services firms in addition to other potential industry sectors. In the case of financial services this is particularly pertinent given their role in financial stability and monetary policy transmission, and overall importance to the smooth functioning of the UK economy.

There should be a commitment for ongoing review of the guidance.

10. To ensure the regime is working well, meeting its objectives, and avoiding unintended consequences, it would be helpful for the CMA to commit to reviewing it after 12 months of it being operational. This process could invite firms to respond to the effectiveness on a general basis.
11. We would also anticipate that the guidance is updated to reflect CMA learnings and we welcome the CMA's intention to publish interpretative notes in relation to Conduct Requirements. We suggest that these could be issued on a continuous basis on other interpretative approaches taken by the CMA under the DMCC.

Robust and swift interventions will be needed to ensure effective competition in areas where firms have substantial and entrenched market power.

12. Chapter 3 of the guidance sets out the Conduct Requirements which are intended to guide the practices of an SMS firm to address issues in relation to a relevant digital activity. The requirements also protect against the risk the firm seeks to take advantage of its substantial and entrenched market power in respect of that digital activity and position of strategic significance in ways that could exploit consumers and businesses or undermine fair competition.
13. Big Tech firms have grown, and continue to grow, on a largely unregulated basis. Their size, scale and global reach means that these companies pose unique systemic risks, which can materialise very quickly and can be very difficult to effectively remedy after-the-event. We welcome the CMA's scrutiny against potential anti-competitive conduct as 'Big Tech' firms continue to expand into different markets.

14. [REDACTED]

15. [REDACTED]

16. [REDACTED]

[REDACTED]

The CMA must be cautious when designing remedies.

17. In designing remedies, the CMA should ensure they do not unduly disrupt consumer activity, pre-existing commercial relationships (for example, hard won discounts) or unduly penalise firms that have achieved commercially successful outcomes through volume requirements or long-standing commercial relationships and which do not impose restrictive conditions (such as excessive prices, exclusivity, or unwanted bundling/tying). In designing remedies, we would urge the CMA to attach importance to the views of those firms actually engaging and contracting with Big Tech, so that competition law and policy is not applied in a commercial vacuum but appropriately takes into account the current, and likely future, industry context.