

CMA publishes code of conduct advice for platforms and publishers

The Competition and Markets Authority (CMA) has today published its joint advice with Ofcom following a request from government which sets out how consumers and content providers, including newspapers, could benefit if the power of the biggest tech firms is properly managed. The advice was provided to the government in November 2021 and is now being published alongside the government's response to the digital markets consultation. It provides one example of how the government's proposed new regime for curbing the power of big tech platforms could apply in practice.

The advice sets out how a code of conduct, if introduced into law, would mean that big tech firms with significant bargaining power would have to agree fair and reasonable terms for the content they use on their platforms. It identifies a number of ways to do that, such as: – addressing concerns about the transparency of how algorithms work and which factors are used to determine where different publishers' content appears in searches; – giving publishers appropriate control over presentation and branding of their content; – driving improved practices in the sharing of user data between publishers and those platforms that host their content; and – redressing the imbalance in bargaining power in negotiations between publishers and the biggest platforms, by providing a framework for fair financial terms for publishers' content where this is hosted by the largest platforms with significant market power.

Under the government's proposals, the code would consist of a set of legally-binding obligations on the biggest tech firms, providing clarity about how these firms should behave when dealing with consumers and businesses, including publishers. In the event of a dispute between a platform and a publisher about the application of a code, the Digital Markets Unit (DMU) would have the role of deciding whether a contract or given behaviour by the firm was compliant. As set out in the advice, as well as more traditional enforcement powers to ensure compliance, the DMU should be given a backstop enforcement power to impose binding arbitration to ensure code breaches do not persist for long periods and incentivise swift resolutions.

The CMA expects this code to sit alongside other pro-competitive interventions, such as mandating that different services can work together, or that consumers are given choice as opposed to being defaulted to the same firm's supporting product. Such interventions would help directly tackle the sources of these platforms' market power and address market features like barriers to entry, which prevent challenger tech firms driving greater competition and innovation.

The advice – produced jointly by the DMU, part of the CMA, and Ofcom – sets out the authorities' view on how a code of conduct could work in the specific instance of the relationship between platforms and content providers, including news publishers.

Other countries, such as Australia, have recently undertaken their own efforts to level the playing field between platforms and publishers. One of the key differences between the government's proposals and the approach followed in Australia in relation to news media is that the SMS regime in the UK has a broader focus. It is intended that codes of conduct for the biggest tech firms will shape their behaviour and reduce the imbalance of bargaining power across a range of digital markets. The advice published today sets out the CMA's current thinking on what guidance on assessing fair and reasonable compensation for content should look like under the SMS regime. It also discusses how approaches such as that being taken in Australia could incentivise adherence to conduct requirements that may be imposed on the biggest tech firms by the DMU in the future.

Andrea Coscelli, Chief Executive of the CMA, said:

Online platforms and news publishers play a vital role in how we read and understand what's going on in the world, which is why it is only right that news outlets are treated fairly by platforms that use and share their content.

Our advice published today clearly sets out how the Digital Markets Unit could create a more level playing field between platforms and publishers. This includes ensuring platforms are more transparent about how their algorithms work and setting out the steps that could be taken where there are disagreements between companies about payments.

We stand ready to assist the government in bringing forward the necessary legislation for the DMU as quickly as possible. In the meantime, we will not shy away from scrutinising the behaviour of big tech firms and using our existing powers to their fullest extent.

Dame Melanie Dawes, Ofcom Chief Executive, said:

Having a wide range of news sources and opinions is the cornerstone of our democracy, values and society. Today marks an important step towards securing a fair outcome in the relationship between online platforms and news publishers.

The way people use digital channels to communicate and get information is changing rapidly. We're taking a closer look at the potential benefits and threats to media plurality, and will be saying more on this later in the year.

1. For media enquiries, contact the CMA press office on 020 3738 6460 or press@cma.gov.uk.

2. The government is proposing a new pro-competition regime for digital markets, including enforceable codes of conduct applying to digital firms designated as having Strategic Market Status (SMS). Since the CMA and Ofcom's joint advice was submitted to government in November 2021, the thinking on the legislative framework has continued to develop. As a result, the language of the advice in terms of code "principles" does not necessarily match the language of the consultation response of "conduct requirements". However the two can be read interchangeably for these purposes.
3. The SMS test, for firms with Strategic Market Status, is subject to final legislation. As set out in [the government's consultation response](#) we expect the test will focus on identifying substantial and entrenched market power that enables the firm to act strategically. The DMU will apply this test rigorously based on a range of qualitative and quantitative evidence, including drawing on analysis undertaken as part of previous CMA projects such as the Online Platforms and Digital Advertising market study and Mobile Ecosystems market study. The DMU will consult transparently on its decisions to designate firms as having SMS.
4. The CMA and Ofcom's joint advice to government was provided following a request by the Digital Secretary in April 2021 for the non-statutory Digital Markets Unit (DMU) in the CMA to work with Ofcom to "look at how a code would govern the relationships between platforms and content providers such as news publishers, including to ensure they are as fair and reasonable as possible". [New watchdog to boost online competition launches](#).