

Research Briefing

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Digital Markets, Competition and Consumers Bill 2022-23: Digital markets and competition: Progress of the Bill

Summary

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Summary

The [Digital Markets, Competition and Consumers Bill](#) (Bill 003 of 2023-24) is a Government Bill. It was first introduced during the 2022-23 session, on 25 April 2023, as Bill 294 of 2022-23. The Bill was carried over under standing order No. 80A. It was re-introduced during the 2023-24 session on 8 November 2023.

This briefing was published in the last session and refers to the Bill under its 2022-23 title. The remaining stages of the Bill are scheduled for 20 November 2023.

This briefing covers the second reading debate and committee stage of Parts 1 and 2 (including Schedules 1 to 12) of the Bill, on digital markets and competition. Separate briefings cover the Bill's consumer protection and other measures (Parts 3 to 6 and Schedules 13 to 26 of the Bill) and background to the Bill which are available from the Library briefing page [Digital Markets, Competition and Consumers Bill 2022-23](#).

The Bill

Part 1 of the Bill would create a new pro-competition regime for digital markets. This would include giving the Competition and Markets Authority (CMA) the power to designate businesses with strategic market status (SMS) and to impose binding codes of conduct on these businesses.

Part 2 of the Bill would reform aspects of competition law by amending existing UK law on merger control, market inquiries and the cartel offence.

Commons second reading debate

The Bill received its second reading in the House of Commons on 17 May 2023. It was passed without division, with Members across the House supportive of the principles of the Bill.

Commons public bill committee

Commons Committee stage comprised 14 sessions including oral evidence and line-by-line scrutiny between 13 June and 11 July 2023.

The Government made technical and clarifying amendments to the Bill which were supported by the Opposition and passed without division. Labour tabled a number of amendments to Part 1 of the Bill focussing on transparency and scrutiny which were defeated on division.

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Introduction

The [Digital Markets, Competition and Consumers Bill](#) (Bill 294 of 2022-23) is a Government Bill introduced in the House of Commons on 25 April 2023.

This briefing covers the second reading debate and committee stage of Parts 1 and 2 (and Schedules 1 to 12) of the Bill, on digital markets and competition. Separate briefings cover the Bill's consumer protection and other measures (Parts 3 to 6 and Schedules 13 to 26 of the Bill) and background to the Bill which are available from the Library briefing page [Digital Markets, Competition and Consumers Bill 2022-23](#).

Second reading took place on 17 May 2023. Commons Committee stage comprised 14 sessions including oral evidence and line-by-line scrutiny between 13 June and 11 July 2023.

The Bill's provisions would extend to the whole of the UK.

2 Background

More detailed information on the background to parts 1 and 2 of the Bill are covered in the Library briefing [Digital Markets, Competition and Consumers Bill 2022-23: Digital markets and competition provisions](#).

2.1 Part 1: Digital markets

Part 1 of the Bill covers digital markets which the Bill’s explanatory notes define as:

markets where businesses develop and apply new technologies for the benefit of other businesses and consumers, or create brand new products and services using digital capabilities, connecting groups of users in new and innovative ways.¹

In the UK the independent Competition and Markets Authority (CMA) is primarily responsible for enforcing competition law. **Part 1** of the Bill would:

- Give statutory powers to the Digital Markets Unit (DMU). The DMU was established within the Competition and Markets Authority in April 2021 to deal with anti-competitive practices in digital markets.
- Implement the Government’s Digital Markets Strategy, creating a new pro-competition regime for digital markets. There would be bespoke codes of conduct and a merger control regime for firms designated by the new DMU as having strategic market status.
- Strengthen the enforcement powers of the CMA to tackle consumer harm, including its ability to fine businesses that abuse their market position.
- Empower the CMA to “designate” businesses (known as “designated undertakings”) that are very powerful, in particular digital activities, giving them strategic market status (SMS) in relation to those activities.
- Empower the CMA to resolve payment-related breaches of conduct requirements to deal on fair and reasonable terms with third parties, through a ‘Final Offer Mechanism’ as a “backstop” enforcement tool.²

¹ [Explanatory Notes to the Digital Markets, Competition and Consumers Bill](#), para 3

² [Explanatory Notes to the Digital Markets, Competition and Consumers Bill](#)

2.2

Part 2: Competition

Part 2 of the Bill would reform aspects of competition law by amending existing UK law on merger control, market inquiries and the cartel offence. The Bill would also make amendments to enhance the investigative and enforcement powers for the UK's competition regime.

The existing legislative framework is established by the [Competition Act 1998](#) and the [Enterprise Act 2002](#), as amended by the [Enterprise and Regulatory Reform Act 2013](#).³

The [Competition and Markets Authority](#) has a duty to promote competition for the benefit of consumers. Its functions include:

- investigating markets and mergers between organisations;
- taking action against businesses and individuals involved in cartels or anti-competitive behaviour; and
- protecting consumers from unfair trading practices.⁴

³ [Competition Act 1998](#); [Enterprise Act 2002](#); [Enterprise and Regulatory Reform Act 2013](#)

⁴ Competition and Markets Authority, [About Us](#) (accessed 16 August 2023)

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Commons second reading debate

The Bill received its second reading in the House of Commons on Wednesday, 17 May 2023. It was passed without division, with Members across the House supportive of the principles of the Bill.⁵

Minister for Enterprise, Markets and Small Business, Kevin Hollinrake, said that **Part 1** of the Bill would “lead to lower prices for everyday online goods and services and give consumers more choice and control” by encouraging greater competition.⁶ He said that **Part 2** of the Bill would “refine the CMA’s competition enforcement work so that it is better targeted, faster and more effective, allowing the free market to operate more efficiently.”⁷

Labour shadow front bench members welcomed the Bill, but criticised delays to it being brought before Parliament.⁸ Shadow Minister for Business and Consumers, Seema Malhotra, said that “This legislation is welcomed by the Opposition but it is well overdue.”⁹ She also highlighted that the Bill included 35 new Henry VIII powers – clauses that enable ministers to amend or appeal provisions in an Act using secondary legislation – and quoted a 2021 report by the Lords Delegated Powers and Regulatory Reform Committee which said that Every such power; and its scope, must always be fully justified.¹⁰

⁵ [HC Deb 17 May 2023 cc879-928](#)

⁶ [HC Deb 17 May 2023 c880](#)

⁷ [HC Deb 17 May 2023 c880](#)

⁸ [HC Deb 17 May 2023 c885](#)

⁹ [HC Deb 17 May 2023 c888](#)

¹⁰ [HC Deb 17 May 2023 c886](#)

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Commons Public Bill Committee

Commons Committee stage comprised four sessions of oral evidence and ten sessions of line-by-line scrutiny between 13 June and 11 July 2023. The fifth to tenth sessions covered parts 1 and 2 of the Bill from 20 to 27 June 2023. Membership of the committee is set out in an appendix to this briefing paper.

Clause numbers referred to in this briefing paper are align with those as the Bill was introduced.¹¹

4.1

Part 1: Digital Markets

Designation of undertaking (Clause 2)

Clause 2 would empower the Competition and Markets Authority (CMA) to “designate” undertaking (firms) that have “Strategic Market Status” (SMS) with respect to a particular digital activity.¹²

Labour tabled three amendments, 55 to 57, debated alongside the clause, which it said would ensure the CMA is able to draw upon analysis and consultations that took place before the passing of this Bill.¹³ Shadow Minister for Tech, Gambling, and the Digital Economy, Alex Davies-Jones, said the amendments “would allow the CMA to reflect on the lessons learned in the various consultations and analysis that it has already undertaken.”¹⁴

The Minister for Tech and the Digital Economy, Paul Scully, said he strongly supported the point but that the amendments were not necessary as the Bill did not prevent the DMU from drawing insight from previous analysis or consultations when carrying out an SMS investigation.¹⁵

Jerome Mayhew (Conservative) said that the amendment might lead to unintended consequences such as prolonged litigation.¹⁶

The amendments were defeated on division, with Conservative members of the Committee voting against.¹⁷

¹¹ [Bill 294 2022-23 \(as introduced\)](#)

¹² [Explanatory Notes to the Digital Markets, Competition and Consumers Bill](#)

¹³ [Public Bill Committee Amendments at 20 June 2023](#)

¹⁴ [PBC Deb 20 June 2023, c116](#)

¹⁵ [PBC Deb 20 June 2023, cc116-117](#)

¹⁶ [PBC Deb 20 June 2023, c118](#)

¹⁷ [PBC Deb 20 June 2023, c119](#)

Designation procedure (clauses 9-18)

Clauses 9-18 say that the CMA would be able to conduct an investigation into whether to designate an undertaking if it has reasonable grounds to consider that it may be able to designate the undertaking as having SMS for a particular digital activity.¹⁸

Labour tabled seven amendments, 46 to 52, debated alongside the clauses, which it said aimed to ensure access to information relevant to the regime is available publicly.¹⁹ Shadow Minister for Tech, Gambling, and the Digital Economy, Alex Davies-Jones, said the amendments were “designed to encourage a more transparent approach to SMS investigations.”²⁰

The Minister for Tech and the Digital Economy, Paul Scully, said that the Bill would require the Digital Markets Unit (DMU) “to publish online a statement summarising the contents of those notices whenever they are provided to a firm.”²¹ He explained that in the statements the DMU “will provide the key information from the notice” while it may redact commercially sensitive information.²²

The amendments were defeated on division, with Conservative members of the Committee voting against.²³

Power to impose conduct requirements (clauses 19 to 25)

Clause 19 would give the CMA power to impose conduct requirements on designated undertakings, in the form of obligations or restrictions. A list of requirements the CMA can impose is set out in clause 20.²⁴

Labour tabled an amendment to **clause 19**, 54, which it said would introduce a timeline for the enforcement of conduct requirements set out on the face of the Bill and in CMA Guidance.²⁵

The Minister for Tech and the Digital Economy, Paul Scully, said that although the Government expects conduct requirements to be imposed as soon as a firm is designated, a statutory deadline had not been included in the Bill because the DMU needs flexibility to deal with the complexities of developing targeted obligations.²⁶

¹⁸ [Explanatory Notes to the Digital Markets, Competition and Consumers Bill](#)

¹⁹ [Public Bill Committee Amendments at 20 June 2023](#)

²⁰ [PBC Deb 20 June 2023, c133](#)

²¹ [PBC Deb 20 June 2023, c133](#)

²² [PBC Deb 20 June 2023, c133](#)

²³ [PBC Deb 20 June 2023, c134](#)

²⁴ [Explanatory Notes to the Digital Markets, Competition and Consumers Bill](#)

²⁵ [Public Bill Committee Amendments at 20 June 2023](#)

²⁶ [PBC Deb 20 June 2023, c139](#)

A separate Labour amendment, 53, to **clause 20** would prevent a designated undertaking from carrying on activities that would be prevented by the provisions from being done in a different area of its business.²⁷

The Minister said that “The amendment would allow the DMU to intervene outside the designated digital activity, without any requirement to show that there is a link to the firm’s market power in any given activity” which could be harmful to competition, consumers and innovation.²⁸

Labour also tabled an amendment, 58, and new clause (2) which it said would allow a conduct requirement to be used to stop a designated undertaking withholding news from a recognised news publisher from its platform.²⁹ Shadow Minister for Tech, Gambling, and the Digital Economy, Alex Davies-Jones, cited international examples and said that “Denying citizens access to reliable information to avoid payment serves only to emphasise the primacy that such firms place on profits, rather than citizens’ interests.”³⁰

The Minister said that the existing clause in the Bill was drafted in a sector neutral way and that “a sector-specific type of conduct requirement on discrimination is therefore redundant.”³¹

The amendments and new clause were defeated on division, with Conservative members of the Committee voting against.³²

Final offer mechanism (clauses 38 to 43)

The Bill would grant the CMA powers to use a final clause mechanism tool to enforce conduct requirements relating to payment terms.³³

A series of Government amendments, 1 to 4, 6 to 11, 45 and Government new clause 1 were passed without division.³⁴ These would redefine the transactions which can be dealt with under the final offer mechanism and make ensure that the CMA can end the final offer mechanism without making a final offer order at any time after giving a final offer initiation notice.³⁵

A new clause, 3, tabled by Labour but not moved would have required the CMA to publish an annual report on the workings of the final offer mechanism.³⁶

²⁷ [Public Bill Committee Amendments at 20 June 2023](#)

²⁸ [PBC Deb 20 June 2023, c140](#)

²⁹ [Public Bill Committee Amendments at 20 June 2023](#)

³⁰ [PBC Deb 20 June 2023, cc142-143](#)

³¹ [PBC Deb 20 June 2023, c143](#)

³² [PBC Deb 20 June 2023, c144](#)

³³ [Explanatory Notes to the Digital Markets, Competition and Consumers Bill](#)

³⁴ [PBC Deb 20 June 2023, cc158-166](#)

³⁵ [Public Bill Committee Amendments at 20 June 2023](#)

³⁶ [PBC Deb 20 June 2023, cc158-166](#)

Technical and clarifying amendments (clauses 44-115)

The Government made a number of technical and clarifying amendments between **clauses 44** and **115** and the associated **schedule 2** which were passed without division.

Administration and regulatory coordination, and miscellaneous and interpretation (clauses 102 to 115)

New clause 4, tabled by Labour would have required the Secretary of State to produce an annual report before Parliament on the operation of the CMA's functions under Part 1 of the Bill.³⁷ Shadow Minister for Tech, Gambling, and the Digital Economy Alex Davies-Jones said that it was "right that Parliament has that scrutiny and overview."³⁸ Following a commitment from the Minister that the CMA's annual report should include enough for Parliament to scrutinise the work of the CMA and the DMU a division on the clause was not pressed.³⁹

Clauses 102 to 115 and the associated **schedules 3 to 7** were passed without division.

4.2 Part 2: Competition

Miscellaneous (clauses 135 to 138)

The Government made a number of technical amendments to **clauses 136 to 138** and the associated **schedules 8 to 12** which were passed without division.⁴⁰

4.3 Further information

A record of what happened to each clause, schedule, amendment, and new clause considered at committee stage is set out in the [Digital Markets, Competition and Consumers Bill \(Committee stage decisions\)](#) published on the Bill pages of the Parliament website.⁴¹ Transcripts of the committee stage debates are also available.⁴²

³⁷ [Public Bill Committee Amendments at 20 June 2023](#)

³⁸ [PBC Deb 27 June 2023, cc219-220](#)

³⁹ [PBC Deb 27 June 2023, c220](#)

⁴⁰ [PBC Deb 27 June 2023, cc233-237](#)

⁴¹ [Digital Markets, Competition and Consumers Bill \(Committee stage decisions\)](#)

⁴² [Digital Markets, Competition and Consumers Bill, Committee debates: compilation pdf of sittings](#)

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Appendix: Membership of the Committee

Mr Philip Hollobone, Rushanara Ali, Dame Maria Miller and Steve McCabe chaired sittings of the Public Bill Committee. Its members were:

- Carter, Andy (Warrington South) (Con)
- Coyle, Neil (Bermondsey and Old Southwark) (Lab)
- Davies-Jones, Alex (Pontypridd) (Lab)
- Dowd, Peter (Bootle) (Lab)
- Firth, Anna (Southend West) (Con)
- Ford, Vicky (Chelmsford) (Con)
- Foy, Mary Kelly (City of Durham) (Lab)
- Hollinrake, Kevin (Parliamentary Under-Secretary of State for Business and Trade)
- Malhotra, Seema (Feltham and Heston) (Lab/Co op)
- Mayhew, Jerome (Broadland) (Con) Mishra, Navendu (Stockport) (Lab)
- Russell, Dean (Watford) (Con)
- Scully, Paul (Parliamentary Under-Secretary of State for Science, Innovation and Technology)
- Stevenson, Jane (Wolverhampton North East) (Con)
- Thomson, Richard (Gordon) (SNP)
- Watling, Giles (Clacton) (Con)
- Wood, Mike (Dudley South) (Con)

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