



Can the UK keep up with Europe on digital competition?

by Zach Meyers

As Brussels finalises world-leading digital competition rules, Prime Minister Boris Johnson has deferred similar reforms for Britain. But if UK authorities are bold, they can still help shape global tech markets.

EU law-makers are putting the finishing touches to the [Digital Markets Act](#) – a landmark law that will upend big tech firms’ business models to improve competition online. In the UK, however, [regulators](#), [ministers](#) and many [law-makers](#) are frustrated. The UK’s Competition and Markets Authority (CMA) is convinced that dominant tech firms are [overcharging](#) users and [stifling](#) innovation. For years, experts have [recommended](#) new digital competition laws to better address the problem. But in this year’s Queen’s speech – which sets out the government’s legislative priorities for the coming year – the government [delayed](#) tabling these new laws.

If the UK falls behind in tech regulation, UK tech start-ups may prefer to grow in the EU, where the Digital Markets Act will make their lives easier. The UK would also suffer a loss of global influence: if the US adopts digital competition reforms, those reforms are more likely to reflect the Digital Markets Act rather than the UK’s proposals. However, if the UK’s competition regulator acts quickly and boldly, these concerns may prove to be unfounded.

The CMA has one of the sharpest analyses of technology markets among Europe’s competition regulators. The CMA’s studies of digital advertising and mobile software

are world-leading, uncovering questionable market practices. The CMA is closely supervising Google’s [privacy reforms](#). And it has a growing number of ongoing competition law investigations against big tech firms. The CMA also forced Facebook to unwind its [purchase](#) of Giphy, a smaller tech firm – becoming the world’s first competition authority to block an acquisition by a tech giant. But, by and large, the CMA is mostly still undertaking studies and investigations: to identify questionable practices and understand their impact on competition.

EU regulators have taken the lead on the next logical step: determining which practices are illegal. The EU’s national competition regulators have already reached landmark antitrust decisions against big tech, in areas like [advertising](#) and [e-commerce](#). The European Commission has fined Google multiple times for anti-competitive conduct. However, these decisions have taken years and were focused on very specific practices, rather than solving the underlying market problems, so they have not led to noticeable long-term improvements in competition.

The UK and EU must therefore implement broader reforms of digital markets to make them more competitive. Here, too, the EU is ahead: its

Digital Markets Act will prevent the biggest tech firms from engaging in certain practices deemed to be unfair, without regulators needing to prove harm to competition in practice. But the Act is also a very specific, relatively inflexible set of rules, focused mostly on addressing a motley collection of existing problems. Consequently, the Act risks both [over-regulating and being unable to adapt](#) to market developments.

The UK's reforms would take a different approach: they would allow the CMA to nudge big tech firms towards fairer practices by imposing a 'code of conduct' on each big firm. These principles-based codes will probably prove more enduring and future-proofed than the DMA. For example, they might require firms to be more transparent about their practices, and to consult users before making significant changes. The CMA could also impose more drastic changes to the market – for example to stop users becoming 'locked in' to one firm's services. But any such changes could be designed carefully, unlike the Digital Markets Act which makes all big platforms follow the same blunt rules.

[Commentators](#) are disappointed about the UK government's dithering in enacting these mostly sensible reforms. The delay gives the EU a lead in defining what open, competitive digital markets should look like. That lead is encouraging others to act: the Biden administration has now [backed](#) rules quite similar to those in the EU's Digital Markets Act. But if the CMA acts boldly and creatively, it can keep pace with the EU – without waiting for Westminster to pass new laws.

The CMA can use a dormant weapon in its arsenal to reform digital markets: a 'market investigation'. This is an in-depth study to identify whether competition is working in a particular market, rather than trying to condemn any particular firm for breaking the law. If the CMA finds problems, it can design tailored reforms to change how the market functions, without punishing firms for their past behaviour. The reforms can be profound. A market investigation led to the firm which owned Heathrow, Gatwick and Stansted airports being forced to sell Gatwick and Stansted so they would compete with Heathrow. Another market investigation forced UK banks to share their customer data with start-ups – helping give consumers more options. These types of interventions might also work well in digital markets.

The CMA has underplayed the usefulness of market investigations. For example, the CMA's chief executive, Andrea Coscelli, complains that market investigations only allow "[one-off](#)

[interventions](#)". But in practice, the CMA has used them to create long-term, adaptive regulations for troublesome markets. The CMA's Open Banking reforms, for example, were enacted in 2016 as part of a market investigation and are still evolving today.

Ironically, the European Commission's initial proposal to regulate digital markets looked [remarkably similar](#) to the CMA's market investigation powers. Giving the Commission such broad-ranging powers proved too controversial for many stakeholders in the EU, so the Commission was forced to settle on the Digital Markets Act's static rules instead. But the irony is clear. The European Commission looks enviously at the CMA's power to conduct market investigations – even as the CMA refuses to use that power, and demands even more flexible tools instead.

The UK government has announced [broad](#) reforms to UK competition law, which could make future market investigations even more powerful and flexible. But the CMA should have learnt from its experience with digital markets not to be distracted by the glittering prospect of possible future powers. There are clear benefits in acting now. Market investigations normally take 18 months – one started now could finish by the end of 2023. In the EU, tech firms have until 2024 to comply with the Digital Markets Act. This fortuitous timing gives the CMA a window to launch market investigations into a few priority areas – such as digital advertising and mobile devices – and design market reforms at the same time as the European Commission is working out how to implement the Digital Markets Act. EU and UK regulators could engage closely, maximising the consistency between their two regimes. If the CMA's investigations went well, the need for new UK laws to tackle digital markets may then seem less pressing.

Boris Johnson has missed an opportunity to promote digital competition in the UK. If the CMA keeps waiting for Westminster to pass new laws, the UK will inevitably fall behind. Consumers and start-ups would then be left jealous onlookers as EU nationals secured a fairer deal from big tech. But if the CMA acts quickly, it can maintain the UK's global tech leadership and help to ensure sensible implementation of new tech rules across Europe.

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