

APPENDIX A: FRAMEWORK FOR THE ASSESSMENT OF CONDUCT REQUIREMENTS

- A.1 Conduct Requirements ('**CRs**') are requirements as to how an SMS firm must conduct itself in relation to a relevant digital activity.¹ CRs are intended to guide the practices of an SMS firm in ways that address not only existing issues in relation to a relevant digital activity, but also protect against the risk that 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. The Act provides the CMA with the power to impose a CR or combination of CRs where the CR(s) meet certain legislative requirements, as summarised below.
- A.2 First, the CMA may only impose a CR or combination of CRs on an SMS firm if the CMA considers it would be proportionate to do so for the purposes of one or more of the three objectives in the Act, having regard to what the CR or combination of CRs is intended to achieve.² These objectives are:
- (a) **Fair dealing:** users or potential users of the relevant digital activity are treated fairly, and able to interact, whether directly or indirectly, with the SMS firm on reasonable terms;
 - (b) **Open choices:** users or potential users of the relevant digital activity are able to choose freely and easily between the services or digital content provided by the SMS firm and services or digital content provided by other firms; and/or
 - (c) **Trust and transparency:** users or potential users of the relevant digital activity have the information they require to enable them to understand the services or digital content provided by the SMS firm through the relevant digital activity, including the terms on which they are provided, and make properly informed decisions about whether and how they interact with the SMS firm in relation to the relevant digital activity.
- A.3 Second, the CMA may only impose a CR where it falls within one or more of the 'permitted types' set out in the Act. they must be for the purpose of obliging the designated firm to do certain things (eg to trade on fair and reasonable terms)

¹ Section 19(3) of the Act.

² Section 19(5)–(8) of the Act.

or preventing the designated firm from doing certain things (eg restricting interoperability or using data unfairly).

A.4 Third, before imposing a CR or combination of CRs on an SMS firm, the CMA must also have regard to the benefits for end-users that it considers would likely result (directly or indirectly).

(a) The CMA may only impose a CR or a combination of CRs on a designated firm if it considers that it would be proportionate to do so for the purposes of one or more of the statutory objectives, having regard to what the CR or combination of CRs is intended to achieve.³ A proportionate CR or combination of CRs is one that:

- (i) is effective in achieving its intended aim;
- (ii) is no more onerous than it needs to be to achieve its intended aim;
- (iii) is the least onerous CR(s), where the CMA has identified multiple equally effective options that would achieve the intended aim; and
- (iv) does not produce disadvantages that are disproportionate to its aim.⁴

A.5 Finally, as explained in its published guidance,⁵ when considering whether and how to address issues in relation to a relevant digital activity the CMA has regard to its Prioritisation Principles.⁶ These principles help to guide our choice of work where we have discretion to act. They consist of five key considerations:

- (a) **Strategic significance:** does CMA action in this area fit with the CMA's objectives and strategy, having regard to the Government's Strategic Steer to the CMA?
- (b) **Impact:** how substantial is the likely positive impact of CMA action?
- (c) **Is the CMA best placed to act:** is there an appropriate alternative to CMA action?

³ Section 19(5) of the Act.

⁴ [Digital markets competition regime guidance](#), December 2024 (CMA194), paragraph 3.33.

⁵ [Digital markets competition regime guidance](#), December 2024 (CMA194), paragraph 3.11.

⁶ CMA [Prioritisation Principles](#), October 2023 (CMA188).

- (d) **Resources:** does the CMA have the right capacity in place to act effectively?
- (e) **Risk:** what types of risks are associated with CMA action, and how significant are they?

A.6 In brief, as set out in its published guidance, the CMA's approach to designing effective and proportionate CRs follows three steps:

- (a) **Step 1 (Aim):** the CMA identifies what the CR is intended to achieve. CRs must be imposed for the purpose of one or more of the objectives set out in legislation and will typically be intended to ensure that SMS firms do not take advantage of their powerful positions in ways that could exploit consumers or businesses or undermine fair competition;
- (b) **Step 2 (Effectiveness):** the CMA considers CRs within the permitted types set out in legislation to identify CRs or combination of CRs that would be effective in achieving the CMA's aim in relation to a particular issue. As part of this, the CMA will consider both the content and form of CRs – including outcome-based, action-focused, higher level and more detailed CRs; and
- (c) **Step 3 (Proportionality):** the CMA considers the proportionality of any CRs that it proposes to impose.⁷

⁷ [Digital markets competition regime guidance](#), December 2024 (CMA194), paragraph 3.20.