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Sprawling tech regulator could end the dream of having a British digital powerhouse

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Back in 2020, the Competition & Markets Authority concluded that Microsoft's Bing couldn't realistically compete with Google. Without Bing having access to Google's high-quality user search data, the watchdog foresaw sustained Google dominance over search engines, leaving users worse off. Three years on and Bing has formed a partnership with OpenAI's ChatGPT, sparking a mad dash towards artificial intelligence-powered search. "Big Tech" companies are competing ferociously to integrate this technology into word processing, email and more. Yet had Google been strong-armed into sharing its data, as the authority wanted, there would have been less incentive for Microsoft to leapfrog it or for Google to develop its own breakthroughs.

Competition is an intense, relentless process of creative destruction. Its regulation requires humility or you condemn innovation. That's why the government's draft legislation for a Digital Markets Unit is so worrying. Instead of a laser-like focus on consumers, the draft bill presented this week would create a sprawling new regulator with terrifyingly broad powers.

Armed with the ability to label big digital companies as having "strategic market status", the DMU could craft and enforce tailored regulations to micro-manage Amazon, Meta, Google and Apple. Breaching those "codes of conduct" could lead to fines of up to 10 per cent of turnover, while the DMU could force those businesses to restructure and share data, too. The regulator would be "effectively legislator, investigator and executioner", according to Sir Jonathan Jones KC.

Perversely, it would be harder for Amazon to counter accusations of unfairly privileging its products in its marketplace than for a water company to appeal against an Ofwat decision after dumping raw sewage. That's because, under this legislation, businesses can appeal against DMU decisions only through legal and procedural challenges (judicial review) rather than the case's merits.

The excuse for this is that the unit would be a "specialist" regulator. But how can one regulator be "specialist" in the diverse, evolving worlds of social media, retail marketplaces, cloud computing, app stores and AI? These aren't the old nationalised telecoms and water. As the Google-Bing example shows, technology regulators aren't exactly clairvoyant. Had the DMU existed in 2020, it might have enforced that damaging data-sharing.

The idea for the unit was conceived amid fears that Meta, Google and Apple monopolised certain markets. Since then, TikTok has become the hippest social media app for young adults, Amazon's muscled in on digital advertising and ChatGPT is now the fastest-growing consumer app ever. New margins of competition have sprouted.

As troubling as they are, the European Union's new technology regulations mainly address those old, longstanding complaints. The DMU, instead, is guaranteed to grow, expanding to any company that becomes large enough. Worse, its frameworks allow the regulator to block new products and aims explicitly to obstruct platforms from extending into each other's markets, curbing the dynamics seen in today's AI competition.

The CMA, which would house the DMU, is populist on Big Tech. It was mocked for blocking Facebook buying Giphy on the grounds that the Gif library may one day compete

selling digital ads. Yesterday Microsoft was prevented from purchasing Activision, the producer of Call of Duty, because the video game could become exclusive to Microsoft's platforms, despite legally binding commitments otherwise. The Deliveroo founder Will Shu says the authority treated him like a criminal for Amazon merely buying a stake in his company.

If this unaccountable newer quango forces big digital groups to develop UK-specific products, hive off business units or pass data to rivals, Britain's technology scene and we customers will suffer. Rishi Sunak says he's been showcasing our companies in Silicon Valley under the banner "Unicorn Kingdom". Perhaps that's an apt moniker. With these DMU proposals, Britain's dream of giving birth to a global digital giant is a fantasy.

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