

RADIOCENTRE SUBMISSION TO THE HOUSE OF LORDS COMMUNICATIONS AND DIGITAL COMMITTEE'S REVIEW OF THE DIGITAL MARKETS, COMPETITION AND CONSUMERS BILL

SUMMARY

1. Radiocentre welcomes the opportunity to input into the House of Lords Communications and Digital Committee review of the Digital Markets, Competition and Consumers Bill. The committee's ongoing work and advocacy in this area has played an important role in examining the dominance of tech platforms in society and the wider impact of this on the UK economy.
2. Radio broadcasters have a significant interest in digital markets because, as listener behaviours evolve, they rely increasingly on the platforms provided by the digital gatekeepers such as Apple, Google and Amazon to reach their listeners. In common with other media and content businesses, the radio and audio industry is facing a significant technological shift, with audiences moving from traditional broadcast transmission (via FM, AM and DAB) to IP distribution. A rapidly increasing share of listening is forecast to take place online and on smart speakers powered by voice assistant platforms.
3. While this digital transformation has provided many opportunities for the sector, there is a material risk that radio broadcasters will have a significantly weaker bargaining position in relation to voice assistant platforms with which they must interoperate to reach listeners. This is because radio broadcaster's ability to reach their listeners and receive adequate data on audiences (crucial for improving services and generating revenue through digital advertising) is increasingly dependent on the terms set out by large tech platforms. This risk is exacerbated where radio broadcasters compete directly with voice assistant platforms in providing audio and advertising services. All three of the main voice assistant platforms (Amazon, Google and Apple) already offer competing audio services (such as music subscriptions or radio-like services). They also offer advertising and some are looking to grow their audio advertising services.¹
4. The Digital Markets, Competition and Consumers Bill will help to open up digital markets so that radio stations can compete on a level playing field against the gatekeepers' radio-like services and therefore carry on entertaining and informing their listeners into the future. This submission focuses on the digital markets aspects of the Bill and does not discuss the competition and consumer law aspects.
5. We support the main features of the new digital markets regime. The test for strategic market status (SMS) will enable the Digital Markets Unit (DMU) to designate the appropriate activities within firms and then write tailored conduct requirements for them that will benefit British consumers. We also support the pro-competitive intervention tool and the enhanced merger review process for SMS firms. The DMU's discretion in how it

¹ [Frontier Economics: An assessment of the bargaining relationship between radio and voice assistant platforms in the coming decade, March 2023](#)

operates under the new regime, its information gathering powers, and the significant fines and other sanctions that are proposed are appropriate. Finally, we support the judicial review standard for appeals, which is the most appropriate approach for the review of forward-looking determinations by an expert regulator in a regime that needs prompt decisions.

6. This submission relates predominantly to question 4 of the committee’s call for evidence.² Without wishing to detract from our overall support for the Bill, we have some minor proposals for improvements, which are discussed in the rest of this submission. In particular:
 - a. The DMU regime should have a duty to take account of the interests of “citizens” and not merely “consumers”, otherwise it may not have the ability to take fully into account important issues such as media plurality, British culture and privacy.
 - b. The role for the other members of the Digital Regulation Cooperation Forum (DRCF), especially Ofcom, is too narrow. Ofcom should be empowered to make SMS designations, draft conduct requirements, undertake conduct investigations and make pro-competitive interventions (all in consultation with the DMU to ensure consistency of approach).
 - c. The leveraging principle in clause 20(3)(c) is too narrowly drafted and the DMU will therefore find itself unable to address some harmful activity.

BACKGROUND

7. Radio in the UK remains an important and powerful medium. UK radio listeners are well served by a diverse mix of national, regional and local broadcasters, from commercial radio and the BBC, with 9 out of 10 adults tuning in every week. Radio broadcasters make a significant public value contribution by providing listeners with a broad mix of music, trusted news, entertainment and companionship.
8. Radio’s essential role in keeping listeners informed and entertained was especially evident during the pandemic. The sector is also a significant contributor to the creative economy. Commercial radio is estimated to provide £683 million GVA to the UK economy, as well as supporting 12,340 jobs.³
9. Commercial radio alone has 39 million listeners and alongside the entertainment provided by stations these services play an extremely important role providing news and information to audiences. Around a third of listeners (13 million) rely on commercial radio

² Question 4 - What are [the Bill’s] main weaknesses and how should these be addressed?

³ [APPG on Commercial Radio: Valuing Radio, December 2018](#)

as their principal source of news and information and are far less likely to seek news elsewhere.⁴

10. While total radio audiences remain strong, there has been a notable shift in consumption habits in recent years. Radio faces increasing competition from other, non-licensed, audio services, including music streaming and podcasts. In addition, online listening to live radio has seen a rapid increase, more than doubling in size in the past four years and rising to a new record high of 24%. This is even higher for commercial radio where the share of online listening is now 28%, overtaking analogue listening (AM/FM) at 27% for the first time in Q1 2023. Smart speakers have driven much of this growth and now account for over half of online radio listening.⁵
11. Radio listening is consistently found to be one of the most popular uses of voice assistant platforms, such as Amazon Alexa, Google Assistant and Apple Siri. The choice of content and ease of use offered by these platforms has led to rapid adoption. It is estimated that up to 50% of UK households now have at least one smart speaker. These platforms offer significant benefits to audiences and broadcasters, but also present a risk if this increasingly important route to market for the radio industry is effectively owned and controlled by global tech companies acting as intermediaries or ‘gatekeepers’ to radio content and audience data.

THE INTERESTS OF CITIZENS

12. In the Government’s July 2021 consultation document⁶, there was a suggestion that the DMU should take into account the “interests of citizens”. We supported this idea because it would have enabled the DMU to take account of issues that are not directly economic in nature such as privacy, media plurality and cultural issues. Unfortunately, it seems that the idea was dropped to make the DMU’s role more narrowly focused on competition and consumers, in line with the existing duties of the Competition and Markets Authority (CMA).
13. Radio plays a central role in UK public life and an important political and societal role by supporting media plurality and improving social cohesion through the promotion of shared cultural and democratic values, making it a force for good. This should be protected from conduct by digital gatekeepers that reduces its future viability, and the DMU (in close partnership with Ofcom) is the natural place for these interventions to occur.
14. The DMU may reasonably take the view that UK consumers are best served by having a range of options when listening to music, the radio or podcasts on the SMS firms’ platforms and its reasons may be wider than purely competition-based. It may wish to protect radio stations’ access to consumers via these platforms (especially via voice

⁴ [Radiocentre: Beyond the Bubble, December 2018](#)

⁵ RAJAR, Q1 2023

⁶ [DCMS & BEIS, A new pro-competition regime for digital markets, July 2021](#)

assistants) rather than allowing consumer access to be gradually restricted so that eventually they only have the choice of radio-like services provided on a global basis by US-based tech firms (which, unlike UK-based radio stations, are not regulated by Ofcom).

15. The DMU may therefore want to take account of the impact of its interventions (both conduct requirements and pro-competitive interventions) on people in their role as citizens as well as consumers. Without the explicit ability to do so, the risk is that the DMU will either ignore or downplay the wider context and impose sub-optimal interventions, or will implicitly take account of these wider issues without laying out its reasoning in a transparent nature.

CONCURRENCY

16. Throughout the process of designing the new regime, there has been a debate about the role of the sectoral regulators, particularly the members of the Digital Regulation Cooperation Forum which are Ofcom, the Financial Conduct Authority, and the Information Commissioner's Office (alongside the CMA). The Bill includes provisions (clause 106) that oblige the DMU to consult with the other regulators, but it does not give those other regulators the ability to conduct SMS designations, write conduct requirements, make pro-competitive interventions, or investigate breaches of the rules.

17. In the early days of the new regime, the DMU may find itself resource-constrained as there are many issues in digital markets that need urgent attention. It would be inefficient not to be able to use the deep expertise of a regulator like Ofcom to help to share the work, especially in areas like broadcasting where Ofcom has more expertise than the CMA. Under the current markets regime, Ofcom has the ability to lead market studies and has, for example, been leading the analysis of voice assistants and cloud services, which are extremely important areas of work.⁷ The more central involvement of Ofcom would be especially worthwhile because Ofcom will already be drafting rules under the Media Bill that relate to voice assistants and it could leverage that knowledge. Ofcom should therefore be empowered to make SMS designations, draft conduct requirements, undertake conduct investigations and make pro-competitive interventions under the DMU regime.

18. Consistency of approach can be ensured by giving Ofcom a duty to consult the CMA in the same way that the CMA has the duty to consult Ofcom under clause 106 of the Bill.

LEVERAGING OF MARKET POWER (CLAUSE 20(3)(c))

19. A firmwide leveraging principle is important because the conduct requirements apply only to specific activities rather than to the SMS firm more generally. The SMS firms' market power undoubtedly spills over into non-SMS activities, and it can harm competition there.

⁷ [Ofcom: Ofcom to probe cloud, messenger and smart-device markets, September 2022](#)

For example, if an SMS firm were to foreclose access to third party radio stations via its music app, or gather data from third party radio stations via its music app, such conduct would not be caught if the latter music app did not qualify as an SMS activity, even if the SMS firm's app store or operating system were to be designated as an SMS activity. The Bill currently takes a very narrow approach to the leveraging issue, and we think the DMU will too frequently find itself unable to address an issue because of legal arguments about "where" (i.e. in which activity) the conduct happens.

20. The drafting of clause 20(3)(c) should be amended so that conduct can be addressed even when it occurs "outside" the SMS activity and does not directly enhance the SMS firm's market power in the SMS activity. This can be achieved simply by deleting the final phrase, "in relation to the relevant digital activity".

OTHER ISSUES

21. Generally, we would welcome any measure that streamlines the processes that are on the critical path towards the regime being fully in force. For example, we query why the DMU needs to conduct a full SMS designation process for firms that have already been the subject of a CMA market study (during which all the CMA's analysis was extensively consulted upon). We also query why there is no statutory deadline for imposing the first conduct requirements on a new SMS firm (noting that the DMU needs to retain the ability to impose further conduct requirements as time goes on).
22. We would also welcome any measure that improves the transparency of the DMU's actions. The CMA is one of the most transparent regulators internationally, and we recognise there is a trade-off between consultation and speed. However, there is a risk that the SMS firms will get greater access to data than other firms who are affected by the SMS firms' conduct. For example, the Bill often obliges the DMU only to publish a "summary" of its reasoning. Often other parties only receive information at a later stage in the process than the SMS firm, which risks their contributions being received at a time when the DMU is less receptive to new ideas. The non-SMS firms should be able to contribute to the DMU's work on an equal footing to the SMS firms.
23. Clause 1 of the Bill limits its operation to firms who carry out a "digital activity" and this is defined in clause 3. We query whether this limitation is meaningful or necessary. No firm that satisfies the SMS test, which includes the requirement for the firm to hold a "position of strategic significance" in the UK economy, will not be involved in "digital" activities. This limitation therefore merely gives the potential SMS firms the ability to obstruct the new regime by raising arguments about whether, for example, an operating system that is pre-installed on a mobile phone is providing a service "by means of the internet" or not. We recommend that that Bill is simplified by removing the requirement for an SMS firm to be carrying out a "digital activity".

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ABOUT RADIOCENTRE

Radiocentre is the industry body for commercial radio. We work on behalf of over 50 stakeholders who operate over 300 licensed radio stations across the UK and represent 90% of commercial radio in terms of listening and revenue.