



HOUSE OF LORDS

Rt Hon the Baroness Stowell of Beeston MBE
Chair of the Select Committee on Communications and Digital
House of Lords
London
SW1A 0PW

Rt Hon Rishi Sunak MP
First Lord of the Treasury and Prime Minister
10 Downing Street
London
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17 October 2023

Dear Prime Minister,

I write regarding the Digital Markets, Competition and Consumers (DMCC) Bill.

The Bill has significant potential to drive innovation and investment in the UK. Digital regulation should create the conditions for a level playing field and healthy competition while avoiding disproportionate burdens and penalties. The judicial review (JR) process under the Bill is central to this ambition as it provides the mechanism for challenging the regulator's decisions. We are concerned at reports that the Government is considering changes to the JR process which risk undermining the Bill's central purpose and value.

Proportionality

It is important that the DMCC Bill is fair to all parties and does not become an anti-big tech Bill. We recommend that you resist proposals to place disproportionate burdens on big tech firms. We have heard arguments that big tech firms should be subject to stricter measures under the countervailing benefits provisions, for example. We do not think this is necessary and consider that the current provisions remain adequate. Likewise we believe the current measures on the leveraging principle are already proportionate and do not require strengthening.

The case for retaining the JR appeals process

The same principle applies to the Bill's JR standard. We examined this in a recent inquiry where we took evidence from a range of small, medium and large business, big tech firms and legal experts.¹ We concluded the existing proposal for a JR appeals standard offers four key benefits: speed, fairness, a non-adversarial approach and regulatory certainty.²

We heard arguments from big tech firms that the JR process should be changed because it does not allow for a proper consideration of the evidence and hands too many powers to the regulator without sufficient checks and balances. Some alternatives include a more

¹ Communications and Digital Committee, ['Review of the Digital Markets, Competition and Consumers Bill'](#) (June 2023)

² Communications and Digital Committee, [Letter from the Chair to Rt Hon Kemi Badenoch MP, Secretary of State for Business and Trade, Department for Business and Trade](#) (21 July 2023)



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expansive but time-limited review, a full merits review or broadening the grounds for review.³ We urge you to resist such changes.

Speed

Digital markets move quickly and regulatory action must keep pace. The JR provides a timely process which ensures the regulator's decisions remain relevant to market conditions.

Moving to a full merits process would take much longer and favour those with an interest in delaying regulatory intervention. Expanding the grounds for appeal while placing time limits on that process would not be helpful either: the workload would remain unchanged and the most likely outcome is an overwhelmed regulator producing substandard outcomes.⁴

Fairness

The JR process is a tried and tested system which provides sufficiently rigorous opportunities to consider the evidence and the framework in which the regulator's decisions are taken. It is used to good effect in comparable areas elsewhere and should not be considered "light touch".

Introducing more avenues for legal challenge on the basis of proportionality tests would not in itself make the process fairer, but it would create a major power imbalance favouring those with the greatest resources.⁵

Non-adversarial approach

The current JR proposals encourage all parties in a dispute to engage constructively and in good faith early on. Our evidence suggests that broadening the grounds for review or introducing a full merits process would incentivise adversarial tactics and preparations for lengthy legal disputes from the outset. This is not conducive to good regulatory oversight in such a fast-moving digital economy.⁶

Regulatory certainty

The above factors mean a JR system will create regulatory certainty. Changing it risks creating disincentives for the regulator to address the most impactful and high-stakes issues whilst providing insufficient deterrents against business tactics likely to trigger the most time-consuming and costly avenues for appeal. All of this would generate regulatory uncertainty around the outcome of lengthy appeals processes, the quality of the regulator's work (in the case of time-limited appeals) and the prospects for meaningful action to support healthier competition.

Further considerations

We also heard that the Bill would make the UK an outlier compared with other jurisdictions. That should be welcomed. The Government is breaking new ground with this

³ Communications and Digital Committee, oral evidence ([20 June 2023](#))

⁴ Communications and Digital Committee, [Letter from the Chair to Rt Hon Kemi Badenoch MP, Secretary of State for Business and Trade, Department for Business and Trade](#) (21 July 2023)

⁵ Communications and Digital Committee, oral evidence ([23 May 2023](#), [20 June 2023](#), [27 June 2023](#))

⁶ Communications and Digital Committee, oral evidence ([23 May 2023](#), [20 June 2023](#), [4 July 2023](#))



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Bill in part because existing competition law and approaches taken by other jurisdictions have proven inadequate.⁷

The DMCC Bill's current proposals reflect the structure of the UK economy. We have extensive opportunities among our small and medium sized enterprises with a culture of innovation. The Government should adopt regulations which are fair and provide a level playing field encouraging UK businesses to compete and grow. Changing the JR process would undermine this.

Next steps

We urge you to prioritise a fair and timely regulatory approach and to take account of the needs of UK businesses. We would be grateful for assurance that you intend to retain the current JR process.

I am copying this letter to the Secretary of State for Business and Trade.

Yours sincerely,

BARONESS STOWELL OF BEESTON

⁷ Communications and Digital Committee, oral evidence ([23 May 2023](#), [27 June 2023](#))