

Pre-legislative scrutiny of the draft Media Bill

First, may I thank the Culture, Media and Sports Select Committee (“the Committee”) for inviting TuneIn to give oral evidence as part of its pre-legislative scrutiny of the draft Media Bill (“draft Bill”). We hope you found the information helpful for your consideration.

Since providing our evidence, Sir John Whittingdale, the Minister of State for Media, Tourism and Creative Industries has appeared before your Committee. The Radiocentre has also provided further written submissions. Consequently, we believe that it would be valuable to the Committee if TuneIn offered its view on this evidence and, in some areas, corrected the record.

Before dealing with the Radiocentre’s latest written submission to the Committee (dated July 2023, ref: DMB0071), we would like to take the opportunity to correct claims it made in its oral evidence to the Committee on 20 June 2023.

Radiocentre’s oral evidence, 20 June 2023

In responding to questions from Kevin Brennan MP, the Radiocentre alleged that TuneIn was *“trying to undermine the aims and objectives of the Bill”*. This is not true. In our written submission to the Committee we clearly and unambiguously stated, *“TuneIn is supportive of the Government’s objective...”* In fact, TuneIn is seeking to broaden the definition of radio selection service (“RSS”) to those smaller and medium size manufacturers and platforms / aggregators who want to be part of the regulatory regime to ensure online radio is ubiquitous and available to all.¹ It is significant that the BBC and the Radiocentre itself (submission dated 4 July 2023, ref: DMB0072) have now requested that the definition of RSS be expanded to include *“in-car entertainment systems”* whether by *“spoken commands...or otherwise”*.

In its oral evidence, the Radiocentre also stated, *“...there is no “must carry” requirement in the Bill. The words “must carry for radio” do not appear anywhere in the Bill.”* For the sake of clarity, we would like the Committee to be aware that, in this respect, the legislation is unambiguous and explicit. Regulated radio selection services (“RRSS”) would be under a legal obligation to provide access to all relevant internet radio stations (“RIRS”) (see *“362BH Access to relevant internet radio services”*). In other words, the RRSS have a “must carry” obligation with respect to

¹ TuneIn has proposed that the definition of RSS be widened to smaller and medium sized manufacturers and platforms / aggregators. These companies would, if they wished, become part of the regulatory regime but because of their size would have lesser regulatory obligations than those that are “used by a significant number of members of the public in the United Kingdom”.

RIRS. This is confirmed in the Government's media notice (28 March 2023) which states, "*Smart speaker platforms - such as Google and Amazon - will be required by law to ensure access to all licenced UK radio stations...*"² (emphasis added)

Radiocentre's further written submission, July 2023

In respect of the Radiocentre's further written submission to the Committee (dated July 2023, ref: DMB0071), we do not feel it would be helpful to make a point-by-point rebuttal. However, Tuneln would like to correct some of the more inaccurate parts of Radiocentre's further evidence.

The Government's proposals set out in Part 6 of the draft Bill have not been subject to public consultation. The Digital Radio and Audio Review is a substantial piece of work that made recommendations. However, while techUK was part of the steering group, no aggregator, small or medium sized tech companies were part of the process. Importantly, there was no consultation on its recommendations. It was a report. The draft Bill is the first time many in the industry have had sight of the Government's proposals, since there were no proposals in any green or white paper (or even the House of Commons Library *Media Bill: policy background* paper, published as recently as February 2023). In fact, many of the smaller manufacturers who will be affected by this proposed regulation were taken by surprised by these proposals. This is why the Committee's inquiry is so important since it is the first chance some key actors, such as Tuneln, have had an opportunity to comment on the proposals.

To be clear, Tuneln has never suggested that the legislation be dropped. We are simply requesting that given the draft Bill is the first time many have seen the detailed proposals, it is important to ensure an appropriate consultation takes place and the Government takes into account the views of smaller and medium sized businesses. While the draft Bill does not seek to regulate aggregators and other devices – there is no doubt that they will be significantly affected.

Contrary to the Radiocentre's claim, the UK is, as far as we are aware, the first country to mandate certain smart speakers to provide access to online radio.

Therefore this legislation is unique. The European Digital Markets Act (cited as evidence of other legislation) seeks to "*regulate the gatekeeper power of the largest digital companies*"³. While there are rules around gatekeepers' behaviours (to ensure fair competition), there are no provisions in that Act that legally require the largest smart speaker manufacturers to carry online radio. That is why we maintain that it is important for the Government to ensure it gets this legislation right.

² See <https://www.gov.uk/government/news/new-laws-to-help-bring-more-great-shows-to-british-screens-and-airwaves>

³ See EU note on The Digital Markets Act (https://digital-markets-act.ec.europa.eu/about-dma_en)

The Radiocentre states that “...*the underlying intention of this regulation...is to safeguard unfettered access to UK radio stations for audiences*”. In practice, this is not the case – according to the Government itself only users of the largest platforms eg Amazon and Google are guaranteed such access.

Sir John Whittingdale’s oral evidence, 4 July 2023

It is of note that, with respect to television, the Minister explains that the purpose of “*must carry, must offer*” regime is to “*encourage the platforms and the broadcasters to reach a commercial satisfactory deal*”. If this is the case, why is such an approach not applied to radio?

Sir John Whittingdale said that “*these are not regulations to require the sector to do something it is not doing now*” and the proposals are simply “*a preventive measure*”. We do not consider this to be the case. This draft Bill creates a detailed regulatory regime with a number of legal duties on RRSS. Failure to comply with these duties could result in sanctions including large fines. A legal requirement on RRSS to provide access to RIRS without any reciprocal “*must offer*” obligation on the broadcaster gives the broadcaster (alongside the other obligations on RRSS) a disproportionate amount of leverage in the relationship.

The Minister admitted that the draft Bill is designed “*...to cover the main stations*”. We would go further and say that the draft Bill is designed to cover the main stations and only on the major smart speakers. This draft Bill does not provide the protection needed for consumers and smaller and medium sized companies (in fact, it potentially locks them out).

In addition, there is an on-going assumption that because aggregators and smaller / medium sized devices / platforms are not regulated, they are not affected by the proposed law.⁴ This is to misunderstand the nature of regulation. When regulation is introduced into the market, the whole market is affected and not simply those that are directly regulated. In this case, there is a risk that those not regulated are squeezed out of the market as the proposals guarantee access to all online radio to only two (or three) of the major providers of smart speakers.

Finally, the Committee recognises, and the Minister acknowledged, that it is less than ideal that a full impact assessment on the Part 6 of the draft Bill has not yet been published. As explained above, it is essential that any impact assessment not only takes into account the effect on those services which may be regulated but also

⁴ For example, the Government impact assessment on the draft Media Bill states, “*The provisions will not directly affect the services or business of audio aggregators (such as Tuneln or Radioplayer) which facilitate radio’s access to the platforms*” (para. 106) and “*The smart speakers regulations will not impact small or micro businesses. Only large voice assistant platforms will come into scope of the regulation*” (para.170).

those devices / platforms in the market which are not.

As we have previously stated, we wholeheartedly support the overall objectives of the Government's policy in this area. However, we think that it is important a partnership is developed between the broadcasters and tech companies, and that the Government gives serious consideration to the effects of all those currently in the market or who may want to enter it. The draft Bill must meet the needs of all constituents: consumers with increased choice; broadcasters with larger audiences; and device manufacturers to be able to compete on a level playing field ensuring a competitive UK marketplace.

I hope the above evidence is helpful in your considerations.

Yours sincerely,

Fergus Mellon

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