

Written evidence submitted by The British Retail Consortium (BRC) (OSB0087)

INTRODUCTION

The British Retail Consortium (BRC) represents the large majority of retailers trading face to face, online and omnichannel as well as online marketplaces. We have also welcomed many new members during the pandemic. Many members have their own websites from which consumers can purchase legally available goods. Where such goods have age restrictions, members use age verification processes to prevent such products being sold or delivered to, under-age consumers. Websites may include the opportunity for consumers to upload a review of a product or service. This may be monitored using technology.

OUR INTEREST

Our main interest in commenting on the draft Bill is to ensure clarity with regards to some common elements of retail business activity – the use of consumer reviews; the use of influencers; the use of social media websites.

ONLINE HARMS AND THE RETAIL SECTOR

The BRC has noted the initial response to the Online Harms White Paper consultation and also the interest in the topic in both the EU with its proposed Digital Services Act and the UK.

We fully support the aim of ensuring the safety and security of those online not least in that many more people have engaged in internet activity during the pandemic which has resulted in far greater exposure of young and older people, including the vulnerable, to the internet. More and more people have been shopping online and also browsing for entertainment and to stay connected with friends and family. As a result, the potential for harm has grown especially among those who have been less accustomed to using the internet and to recognising more readily when things are not right.

Retailers take their obligations seriously and want to ensure their customers have a safe experience when they use their services. They may take proactive steps in this regard and also reactive steps when issues are brought to their attention. The BRC supports a risk-based and proportionate approach and welcomes some recent changes to the Bill, including the creation of a tiered system. We anticipate that all our members in scope would be in category 2B.

We support an approach of clearly targeting specific harms such as child abuse, sexual exploitation and terrorism, which have a clear legal definition, rather than a catch all approach which would make both public and private enforcement more difficult and probably less effective against the real harms. We believe the Bill largely achieves that.

SCOPE

When the Online Harms White Paper was launched, the then Home Secretary, Sajid Javid, said plainly that ‘we cannot turn a blind eye to the darker side of social media’. In other words the aim of any regulation was to ensure the safety of users accessing social media

platforms. We were therefore surprised to see that the draft Bill as it stands will place 22,000 companies in scope of the Bill, including online marketplaces that allow users to review the products available to be sold on their website. Indeed online reviews are already regulated by EU legislation applied in the UK under consumer protection legislation.

We believe this Committee should look at how to clarify the scope of the Bill to focus it on the companies where the greatest level of harm can be found; and remove sectors/companies, such as retailers, which have been caught due to some vague definitions set out in the draft Bill. As it stands, the Bill could have significant unintended consequences for the UK retail sector.

REVIEWS

The COVID pandemic has accelerated changes in the retail sector. An increasing number of retailers are now omni-channel and continue to innovate with several now selling third party products in addition to their own, joining well known marketplaces.

We are concerned what the Bill could mean for retailers who are innovating with different business models, such as a new marketplace offer. As it stands customer reviews on products that are sold by a third party to a customer via a marketplace are in scope. We believe that reviews on products retailers sell themselves are out of scope, though we would like this to be made absolutely clear on the face of the Bill. Indeed, we strongly believe that all customer reviews should be treated the same and removed from the scope of the Bill. Companies do not necessarily differentiate between different types of customer review so this could result in more retail companies coming under the scope of the Bill now and in the future.

Customer reviews provide a useful benefit for consumers by providing feedback on a company, brand or product thereby increasing transparency and informed choice. The Bill already includes an exemption for below the line comments on news sites – and should be expanded to include customer reviews in the exclusion.

BRC members already have clear review guidelines in place and have mechanisms for addressing any attempted abuse of customer review features including through the opportunity to flag and directly report inappropriate content; through independent checks; or through proactive measures such as machine learning. We are unclear why part of the retail sector is being brought into the scope of a Bill that prioritises content on social media companies and would urge the Committee to call on the Government to remove all retailers and marketplaces from the scope of the Bill. If there are any concerns from policymakers about harm on retail websites then the BRC is ready to discuss industry led solutions or updates to existing consumer regulation, as a better alternative.

ECONOMIC CRIME

The BRC welcomes the decision to exclude economic harm from the Bill. We are aware of calls from other parts of industry to expand the scope of the Bill but strongly disagree that economic harm should be included within the Draft Online Safety Bill. We note several of our members are part of the Online Fraud Steering Group and believe industry solutions are the best mechanisms to combat the issue of online fraud. Economic crime is indeed already covered by a wide variety of legislation and is best left to regulators with experience in those fields to enforce.

We believe the Bill should continue to focus on the biggest harms and are concerned any expansion in scope of the Bill could risk the dilution of focus on the priority issues such as terrorism and child sexual abuse exploitation.

We are concerned that any additional regulation in this area could have an adverse impact on retail, not least the smaller retailers and therefore support the statement that the Government will pay particular attention to 'minimise the regulatory burden on small businesses and where there is a lower risk of harm occurring' – and therefore urge the open and clear removal of customer reviews from the scope of any legislative proposals.

As the Government response has stated, the new regulatory framework will not require the removal of specific pieces of legal content but focus on the wider systems and processes that platforms have in place to deal with online harms. The BRC believes this is a proportionate and practical approach.

B2B

The current definition of User Generated Content in the draft Bill is incredibly broad. As it stands it reads "user-to-user service" means an internet service by means of which content that is generated by a user of the service, or uploaded to or shared on the service by a user of the service, may be encountered by another user, or other users, of the service".

This goes far beyond User Generated content associated with social media and could potentially cover professional services like online academic journals. The Committee should tighten the definition to ensure the Bill targets the most harmful content; and ensure there are no unintended consequences for other businesses using internet services.

THE NATURE, PREVALENCE AND SCALE OF ONLINE HARMS DURING THE COVID-19 PERIOD

As indicated above, many people are relying on online products and services more than ever – and the sector has worked hard to keep providing and delivering essential products and ensure that customers are able to access the goods and services they need during this exceptional time.

In doing this the sector is already subject to a range of regulation including Data protection, Consumer Rights, Sale of Goods, e-privacy – all designed to protect the consumer from misleading information; to ensure the provision of accurate and necessary information about products and services and charges; to enable consumers to return products they do not like; to ensure products are as described; to protect the data a consumer provides; and to ensure the cost of the goods and the delivery charges are clear and accurate upfront. For example, on customer reviews we note that there is already a consumer protection requirement to ensure that reviews are genuine as evidenced by recent CMA action on this matter.

Unfortunately, there is a very small minority of sellers both online and offline who have tried to exploit the crisis – and the vulnerable - such as by charging excessive prices for products that are in scarce supply or by selling illegal or unsafe products such as masks. The BRC has condemned such behaviour and has noted that there are regulations in place that can be used if necessary. Platforms themselves have also taken action to take down specific material and ban some sellers from their sites.

The aim of the upcoming online harms legislation is to tackle illegal and harmful user generated content. This is no mean task given that on You Tube alone over 300 hours of video are uploaded every minute. Against that background the Online Harms regulator will already face a formidable challenge to develop a framework that is practical and that will efficiently and effectively regulate the scope of online harms against the objectives set out. To ensure the proportionate and effective regulation of such harms and to meet the objectives set out we do not believe that it is helpful to extend the remit to areas including economic areas where there is already legislation and regulation in place to deal with any offensive or harmful behaviour. Accordingly, we welcome that exemption from the Bill.

The BRC never believes that duplication of rules and requirements to meet the same objectives is desirable or efficient. Where legislation already exists that should be the primary route for dealing with any problems arising from covid-19 or any other cause – and if any evidence based assessment shows that current legislation or regulation is not sufficiently effective, the aim should be to amend that legislation or improve its enforcement rather than trying to duplicate it in legislation primarily designed for other, mainly non-economic, purposes. The BRC does not believe that had the online harms regulations been in place they would have been necessary to deal with any issues arising from online reviews or excessive prices and nor would they have been any better than utilising current legislation if it were used effectively.

Online harms should thus remain focused on the priorities set out – tackling online terrorist content and tackling online child sexual exploitation and abuse and not diluted by attempts to wrap up other issues already covered elsewhere in regulations more targeted to dealing with those other issues enforced by agencies more experienced in dealing with those type of practices.

COMPLIANCE

The measures companies will have to comply with range from public facing guidelines to risk assessments and transparency reports. There must not be a one size fits all approach and metrics focused on holding social media companies to account won't necessarily apply to other companies. There should be a proportionate and flexible approach to companies' implementation of the requirements.

CONCLUSION

The BRC welcomes the thrust of the draft Bill. However, we would prefer greater clarity that retail websites where consumers can review products and services without engaging in any further two way conversation are excluded. We would also like to see greater clarity on who is responsible in terms of the draft Bill for influencers (including if they are paid by a business to review a product or service) and business users of social media sites such as Facebook. To what extent, if any, is the business captured if it enables consumers to interact – is that a matter for the social media provider or the business concerned.

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