Snap Inc—written evidence (DRG0018)

House of Lords Communications and Digital Committee inquiry into Digital Regulation

Thank you for the opportunity to respond to the House of Lords Communications and Digital Committee's inquiry into the effectiveness of digital regulation.

As a brief introduction, Snap Inc. is a camera and technology company that, as well as designing wearable video technology and augmented reality software, owns and operates the visual messaging application, Snapchat. While Snap is still a significantly smaller company than the established tech giants that have dominated online media for the past decade, we are growing, with 306 million people globally now using Snapchat every day.

The UK has become one of the most interventionist countries in the world when it comes to tech policy and regulation, with many pieces of current and planned legislation impacting the tech sector. A range of different regulators, "self-regulatory" bodies, and shadow regulators - a non-exhaustive list includes Ofcom, the Information Commissioner's Office (ICO), the shadow Digital Markets Unit (DMU) and the Advertising Standards Authority (ASA) - make up a congested landscape, with frequent overlap between regulators' responsibilities and priorities. In this environment, it can be difficult for mid-sized companies to keep pace with the development and implementation of regulation - the challenge becomes almost impossible for start-ups and scale-ups.

As an example, a UK-based online communications platform in 2021 would find itself grappling with new "video-sharing platform" (VSP) regulation implemented by Ofcom, the ICO's new Age Appropriate Design Code (in addition to the overall GDPR), the Government's plan to ban online advertising of products high in fat, sugar or salt (HFSS), engaging with proposed changes to the UK's self-regulatory system for online advertising ahead of the Government's planned review, and attempting to understand future obligations under the UK's planned Online Safety Bill. This is in addition to a range of "voluntary" codes proposed by Government on specific areas of harm, as well as a variety of standalone inquiries from regulators, some of which seem to sit outside of their natural jurisdiction (e.g. a current inquiry from the ICO, the UK's data protection authority, into "scam ads").

While there are merits to each piece of regulation, in practice the overall regulatory landscape can be complex and impenetrable. As the Committee has noted, while there have been attempts at improving cooperation between regulators, these have largely been informal and have lacked impact. Moreover, a lack of coordination at an international level means that UK-registered companies can find themselves at a disadvantage compared to those who have registered elsewhere in Europe.

We agree with the Committee's conclusion in its 2019 "*Regulating in a digital world*" report that greater coordination of UK regulators operating in the digital sphere is needed. We would like to see this supplemented with improved coordination at the international level.

The coordination of UK tech regulation

While some UK regulators are conscious of the dangers of complexity and regulatory overlap, and have taken some steps to address this through the establishment of the Digital Regulation Cooperation Forum (DRCF), the Committee is right to highlight that the DRCF is an informal organisation, without any powers to ensure greater coherence. In practice, the DRCF appears ad hoc, high level and has not produced meaningful outcomes.

We would like to see working level practices developed at each of the key regulators in the online space - notably Ofcom, the ICO, the DMU and ASA - establishing clear lines of communication and processes with a view to increasing regulatory coherence. In its consultation on a new competition regime for digital markets,[1] the Government proposes the DMU should have a "duty to consult" and share information with other regulators. We believe that all the above regulators should have this duty, which should be reflected in their Key Performance Indicators and evaluated on a regular basis. Importantly, this duty should not only apply to consultation with other regulators in the UK, but - given the interconnected and international nature of online services - with international regulators as well.

International regulatory cooperation

A lack of formal structures around engagement with international regulators in some important policy and regulatory areas is hampering the effectiveness and coherence of UK digital regulation, and occasionally disadvantaging companies registered in the UK instead of elsewhere in Europe, particularly post-Brexit.

As an example, under the new "VSP" regulation through the European Union's AVMSD (implemented in the UK before the end of the Withdrawal Agreement transition period), the Country of Origin principle is intended to apply. This means that platforms in scope should only fall under the regulatory jurisdiction of the EU Member State where their European base is; this reduces regulatory complexity for companies, who are only required to engage with one regulator to understand and implement their new obligations, while being able to conduct business across the EU single market.

However, post-Brexit, companies whose European base is in the UK are required to register with both Ofcom (the regulator responsible for the VSP regime in the UK) and an additional regulator in an EU member state, while companies whose Europe base is outside the UK only have to register with one EU-based regulator and not at all in the UK. This means that companies who are investing in the UK have to comply with two sets of potentially competing requirements issued by different regulators in two countries, while some of the largest and most dominant companies will only be regulated in one country (usually Ireland).

The Government has attempted to mitigate this disadvantage for UK-registered businesses by granting Ofcom powers to cooperate with EU regulators. But in practice, Ofcom is no longer a full member of the European Regulators Group for

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1 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1003913/Digital_Competition_Consultation_v2.pdf

Audiovisual Media Services (ERGA). This means that, just as is the case with the DRCF domestically, there is no formal mechanism to ensure that Ofcom and EU regulators do not develop or enforce wildly divergent approaches to the implementation of the same Directive. Indeed, the Government has made statements to the effect that it intentionally desires to move away from some EU rules in the digital space. We therefore recommend that the Government pursues efforts to formalise cooperation between the UK and international regulators in the online space as a priority.

Examples of international regulatory best practice

The EU is taking a holistic approach to digital regulation, which is to be commended. The twin-pronged strategy of developing the Digital Services Act (DSA) and Digital Markets Act (DMA) in parallel, and in terms of managing systemic risk, is likely to lead to a positive outcome in terms of regulatory efficiency. The DSA proposal, essentially providing improved content regulation and transparency rules, strikes a reasonable balance between competing interests, without falling into the trap of being overly prescriptive and granular. The DMA proposal, which aims to enhance competition in digital markets, takes a similarly straightforward and proportionate approach.

In contrast, the UK's draft Online Safety Bill - which originally intended to create a proportionate regulatory framework for online safety, based around an overarching, statutory duty of care - has become increasingly unwieldy and prescriptive, seeking to establish a complex range of duties and requirements which will make compliance a real challenge for smaller companies. More positively, work to update the UK's digital competition regime appears on track and in line with international thinking.

It is also worth mentioning the Australian approach to regulating online safety. The creation of the statutory role of eSafety Commissioner (eSC), with attendant enforcement powers, has enabled the development of both preventative and remedial regulation in tandem. Alongside the Online Safety Act, the eSC has introduced a mandatory Safety-by-Design Code that obliges companies to consider and build safeguards into their products and services from the outset, thus choking off many harms upstream before they can surface. When combined with a privacy-by-design approach, as pioneered in Canada and now commonplace in many markets today, including the UK (via the ICO), this creates a principles based and proportionate framework for companies and users to thrive in.

At a high level, online regulation which is principles based - focusing on the principles or outcomes companies should deliver, setting out "what" objectives are to be achieved, without being too prescriptive on "how" to achieve these - has a much greater likelihood of being effective, and of being able to endure. Such regulation provides sufficient flexibility as markets develop and products, services and consumer tastes and expectations change. The most enduring regulations are generally also the most strategically effective; consider that the 1995 EU General Data Protection Directive, itself a model of principles based regulation, was only replaced in 2018 by the General Data Protection Regulation (GDPR). GDPR is now globally recognised as the de facto data protection

standard, with its horizontal application and principles based rules simple to comprehend and apply.

The Committee's proposal for a Digital Authority

We support the Committee's proposal to establish a new Digital Authority with a duty to coordinate the various regulators, accountable to Government and Parliament. The Authority should be responsible for evaluating regulators' compliance with the consultation duty above, and ensuring regulatory coherence. The Authority's Board could be composed of senior representatives from each of the member regulatory organisations, leading to improved working practices and collaboration.

In *Regulating in a digital world*, the Committee rightly recognised the importance of the internet "remain[ing] open to innovation and competition" in its key principles for regulation. We would recommend that the Authority would have (similar to Ofcom) a duty to promote innovation and competition. This, alongside ensuring that consumers are adequately protected by the UK's regulatory framework, and that online companies are transparent and accountable for their processes and actions, could be one of three key objectives for the Authority. If competing regulatory actions and objectives were found to be hindering innovation and competition, the Authority should be empowered to direct regulators to take actions to address this. The Authority should also consider the international regulatory landscape and evaluate regulators' engagement with their international counterparts.

Conclusion

Thank you again for the opportunity to respond to the Committee's inquiry into the effectiveness of digital regulators. We hope that this response has been helpful to the Committee as you develop your findings in this important field.

22 October 2021