

Rt Hon Rishi Sunak MP
Prime Minister
10 Downing St
London
SW1A 2AA

18th October 2023

Dear Prime Minister,

We are writing to you as a broad group of tech companies, business groups, consumer bodies and news media and publishing organisations regarding the Digital Markets, Competition & Consumers (DMCC) Bill. We believe the DMCC Bill is a vital piece of legislation that will drive investment and innovation in the UK economy. However, we are concerned to read reports that the Government is considering amendments to key parts of this Bill.

The Digital Markets Unit (DMU), empowered through this Bill, will enable open, fair and competitive online markets and level the playing field between the big tech platforms and other companies by strengthening competition rules. It will also substantially enhance the UK's reputation as one of the world's leading places to invest in emerging tech firms, reinforcing your Government's commitment to cement the UK as a global science and technology superpower.

We have been pleased to be a supportive voice on this Bill at every stage of the process. Yet we are concerned by recent reports that the Judicial Review (JR) standard currently set out in this Bill, which will hold a vital check on the CMA's decisions, could be amended and additional provisions added. There are inherent risks in including a new appeal standard that has not been legally tested. We strongly believe the current appeals standard as drafted in the Bill should remain unamended for this regime to work effectively.

In our view, there is no justification or reason to add any additional elements to the appeal standard currently in the Bill. In doing so, it would undermine the principle of legal certainty and tie the CMA into lengthy legal disputes giving big tech platforms additional time to cement their incumbent advantage and quash competition while the regulator is delayed. Critically, it could also jeopardise one of the key principles and benefits of the UK's unique approach: to enable conversations between the UK regulator and companies designated with Strategic Market Status through a more open and collaborative approach than regimes adopted in other jurisdictions where a more legalistic and combative regulatory environment has now arisen.

The inclusion of additional principles to the appeals process would be a significant and untested departure from the JR standard currently applied to CMA decisions. The JR standard proposed in the Bill is not a light-touch procedural review. In reality, it involves a thorough and systematic assessment of the reasonableness of decision-making, based on the weight of evidence. Recent Competition Appeal Tribunal merger decisions illustrate this point clearly. It is also a standard that already explicitly addresses proportionality at the heart of the decision, meaning that any additional amendments on these grounds are simply unnecessary.

Any deviation or additions to the appeals standard set out in the Bill will give just a few of the largest designated tech firms, with significant legal budgets, an unnecessary prerogative to challenge decisions made by this new regulator. This would result in lengthy periods of satellite litigation, slowing down the work of the DMU. Ultimately, slow and ineffective enforcement will

place innovative UK challenger firms at a competitive disadvantage internationally, as the CMA will be prevented from moving quickly enough to tackle the lack of competition in key digital markets and likely slow down investment in start-ups in the UK.

We urge you to maintain the appeals standard as it is drafted within this Bill. Any changes to this, as proposed by just a handful of dominant platforms, risks undermining the full potential benefits of the Bill for growth and investment in the UK's tech sector.

Yours sincerely,

Which? (Consumers Association)
Coalition for App Fairness (CAF)
Expedia Group
News Media Association (NMA)
Skyscanner
Kelkoo Group
Gener8
The PPA (Professional Publishers Association)
Publishers Association
Ecosia
Open Markets Institute
The Coalition for Online Data Empowerment (CODE)
The Responsible Online Commerce Coalition
DuckDuckGo
JLINC Labs
Movement for an Open Web (MOW)
Ctrl-Shift Ltd

About CAF: We represent dozens of companies, large and small, from sectors as varied as fintech, mobile games, online dating, streaming services, content creators, and the sharing economy. We all have an interest in growing and creating more jobs in the UK market, and our contributions to a prosperous digital future rely on a free, fair, and competitive online ecosystem.

About MOW: We are a campaign group dedicated to preserving an open and decentralised web in the face of efforts by the major platforms to exert monopolistic control over its operations.

Which?

