The UK Government Seeks Views on the Regulation of Digital Markets for a Post-Brexit Great Britain

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The UK Government’s Department for Business, Energy and Industrial Strategy has just released a 75-page Green Paper on Modernising Consumer Markets, setting out the Government’s main priorities for the digital economy in a post-Brexit Britain. The Green Paper reflects on the current state of consumer markets and regulation, and lays down the key challenges and opportunities which will be the focus of the UK’s regulatory and competitive framework going forward. This poses consultation questions to stakeholders on hot topics in digital markets, including questions on: the adequacy of the current competition rules and privacy protections, supporting consumer-friendly innovation, use of and access to big data, whether personalised pricing should be regulated, sufficiently protecting customers without stifling innovation, and alternative dispute resolution solutions.

It also includes various proposals to ensure new technology and data are used to benefit customers, strengthen national enforcement of consumer rights, modernise the approach taken by regulators, and improve consumers’ access to alternative dispute resolution services. In this Covington blog post, we explore some of the key messages and questions posed by the Green Paper.

The Three Key Principles

The Government sets out three principles which it regards as being key to tackling the challenges and opportunities of modern consumer markets:

(i) **Competition Law**: the first is competition law, which is central to the Government’s approach. It is recognised that the Government has a role in ensuring that customers are active in the marketplace, and that firms compete to provide the best goods and services at the lowest price;

(ii) **Consumer Benefits from New Technology**: the second focuses on new technology and how it can be made to work in favour of consumers. It is acknowledged that consumers should benefit from new technology and new business models, with competition and regulation working for them; and

(iii) **Consumer Redress**: the third explores consumer redress for when things go wrong. The Government discusses its intention to improve consumer awareness and access to alternative dispute resolution, with effective enforcement in cases of consumer harm.

Other Key Takeaways

**Review of the UK Competition Law Regime**: The Government is currently reviewing the UK competition regime to bring it into line with its Industrial Strategy, and will publish a Report in April 2019 confirming its findings. Consequently, 5 questions on the UK competition regime are posed to stakeholders, including:

- What challenges do digital markets pose for effective competition enforcement and what can be done to address them?
- Have the 2014 reforms to the competition regime helped to deliver competition in the UK economy for the
benefit of consumers?
• Does the competition regime provide the CMA and regulators with the tools they currently need to tackle anti-competitive behaviour and promote competition?
• Is the competition regime sufficiently equipped to manage emerging challenges, including the growth of fast-moving digital markets?
• Do you agree with the approach set out in the draft Strategic Steer to the CMA? Are there any other areas you think should be included?

The Government’s Strategic Steer to the CMA is intended to represent a public statement of how the Government sees competition fitting in with its wider objectives. The proposed draft reflects the Government’s Industrial Strategy and the challenges and opportunities outlined in the Green Paper. Among others, it recognises the opportunities and challenges of the digital economy and the need for effective approaches to supporting competition and consumers. The draft Steer also recognises the important role of the CMA now and after the UK leaves the European Union, and asks the CMA to take bold action to tackle anti-competitive behaviour and unfair trading.

Digital platforms: The Green Paper also discusses the role of digital platforms as the infrastructure through which consumers and businesses interact. It acknowledges ‘network effects’ – meaning that the value of a platform’s services increases with the number of users it has and, according to the Green Paper, a smaller number of competitors can still achieve competitive outcomes in this market when they compete to become or maintain their position as market leader. However, the UK’s ability to respond to new digital challenges will be reviewed as part of the competition law review.

Open Data Agenda: The Government recognises that the availability of data is crucial for businesses to drive the development of AI. Therefore, it intends to make public data sets available in machine-readable formats. Such data sets include geospatial data, the Ordnance Survey Master Map (which will be made available by May 2018) and Transport for London data (which is already available). Under its Life Sciences Sector Deal, it will also establish regional Digital Innovation Hubs to support the use of data for research purposes.

Maximising Choice and Innovation in IoT: The Green Paper recognises the positive effect IoT has had on the possibilities available to consumers, supporting them in their lives and at home. However, the Government has voiced concerns about consumer lock-in, since in the Government’s view it could diminish competition on the market. To tackle this potential risk, the Government is consulting on proposals to set standards for smart appliances based on the principles of: interoperability; data privacy; grid-stability; and cyber-security. As previously reported in an earlier Covington IoT Update post, the Government has also published a Proposed Code of Practice for Security in Consumer IoT Products and Associated Services.

Access to the Green Paper Questionnaire and Deadline for Responses

The Green Paper makes it clear that the digital economy is one of the key concerns of the current UK Government. This consultation represents an important opportunity for all stakeholders to voice their opinions and to help shape the regulatory environment in which they will operate, in a post-Brexit Britain. Once the consultation has closed, the Government will review the results and consider whether and how to incorporate any recommendations into a legislative proposal.

The Government’s press release dedicated to the Green Paper can be accessed here, and online responses can be submitted here or sent by email to ConsumerGreenPaper@beis.gov.uk. The deadline for responses is 11.45 p.m. on 4 July 2018.

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