

Agenda

- Study countries: EU, Germany, UK, Australia, Canada
- Divergence >>> Regulation of illegal and harmful content
- Convergence >>> Competition policy

Online Harms / 1

Overview

| | | Responsibility for Illegal Content <i>Only</i> | Responsibility for Illegal + <i>Some Legal Content</i> |
|-----------|--------------------------------------|--|--|
| EU | <i>DSA Art 14</i> | X | |
| Germany | <i>Netzwerk durchsetzungs gesetz</i> | X | |
| UK | <i>Draft Online Safety Bill</i> | | X |
| Australia | <i>Online Safety Act 2021</i> | | X |
| Canada | Proposed law | | ? |

Online Harms / 2

EU – DSA, art. 14 et seq. Dec 2020

- EU-wide uniform framework on the handling of *illegal or potentially harmful* content online,
- Every hosting provider or online platform to put in place user-friendly notice and takedown mechanisms that allow the notification of illegal content "social network providers" to provide ways for users to notify them of illegal content
- Transparency obligations. If content is removed, an explanation needs to be provided.
- Obligations for very large online platforms to prevent abuse of their systems by taking risk-based action, including oversight through independent audits of their risk management measures

Online Harms / 3

Germany - *Network Enforcement Act* (Netzwerkdurchsetzungsgesetz), Oct. 2017

- "social network providers" to provide ways for users to notify them of illegal content
- SNPs must remove "manifestly unlawful" hate speech or other harmful content within 24 hours
- other illegal content (that is, content which violates criminal law, including incitement to hatred and defamation) must generally be blocked within seven days of receipt of a complaint
- law applies to any type of criminal behaviour, and does not apply to legal yet potentially harmful types of content

Online Harms / 4

UK – *Draft Online Harms Bill*, May 2021

- White Paper (April 2019) argued that existing regulatory and voluntary initiatives had “not gone far or fast enough” to keep users safe.
- Draft Bill requires social media platforms (etc) to remove and limit the spread of illegal *and harmful content* that falls below the threshold of a criminal offence:
 - (1) Content harmful to children
 - (2) (Applies to Category 1* providers only): Content harmful to adults (i.e., where the nature of content is such that there is a “material risk of the content having, or indirectly having, a significant adverse physical or psychological impact on an adult of ordinary sensibilities” [eg., abuse, misinformation about eating disorders, self-harm or suicide.] (cl 46(2))

* = Not yet defined (see cl 53)



Online Harms / 5

UK – *Draft Online Harms Bill*, May 2021

- Conduct risk assessments (cl 7)
- Take proportionate steps to mitigate and manage risk of harm from illegal content (cl 9)
- Use proportionate systems and processes to minimise the presence of certain priority illegal content (to be defined in future regulation) and swiftly remove such content on notice (cl 9)
- Category 1 providers must:
 - Undertake adult risk assessments
 - Have regard to users' rights to freedom of expression (cl. 11 & 12)



Online Harms / 6

UK – *Draft Online Harms Bill*, May 2021

- Other duties of Category 1 providers:
 - protect content of democratic importance (cl. 13)
 - protect content of journalistic importance (cl. 14)
- Extra-territorial and applies to regulated services with links to the UK
- Joint Committee of both Houses must consider these proposals and report by 10 December 2021

Online Harms / 7

Australia – *Online Safety Act 2021*

- eSafety Commissioner may order take-down of harmful content
 - (1) cyberbullying material directed at children
 - (2) in the case of adults, material that is menacing, harassing or offensive, and was intended to have an effect of causing serious distress or serious harm to an Australian adult.
- “Offensive” if an ordinary person would regard the material as offensive, bearing in mind:
 - (a) generally accepted standards of morality, decency and propriety
 - (b) literary, artistic or educational merit (if any), and
 - (c) the general character of the material (e.g., medical, legal or scientific character)

Competition Law / 1

UK – *Online Platforms and Digital Advertising*, July 2020

- Final report into online platforms and digital advertising finds that “competition is not working well in these markets, leading to substantial harm for consumers and society as a whole”.
- Problems “are so wide ranging and self-reinforcing that our existing powers are not sufficient to address them. We need a new, regulatory approach ... with a dedicated regulator that can monitor and adjust its interventions in the light of evidence and changing market conditions”.
- Advocates creation of a pro-competition regulatory regime
- *Cf. Australia. ACCC Final Report on Digital Platforms Inquiry (July 2019)* advocates creation of a new branch within the ACCC to specifically monitor and oversee digital platforms

Competition Law / 2

EU – *Digital Markets Act*, Dec 2020

- Rules for platforms that act as “gatekeepers” in the digital sector
- Significant dependencies of many business users on these gatekeepers, which leads, in certain cases, to unfair behaviour vis-à-vis these business users
- Gatekeepers will need to proactively implement certain behaviour, and will have to refrain from engaging in unfair behaviour,
- Introduces regulatory safeguards (art 5)
 - E.g., refrain from using personal data
- Regulatory in nature. Complements rather than replaces competition law rules