Agenda

- Study countries: EU, Germany, UK, Australia, Canada
- Divergence >>> Regulation of illegal and harmful content
- Convergence >>> Competition policy
## Online Harms / 1

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**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
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
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)
**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)
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
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)
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
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