

Digital Markets, Competition and Consumers (DMCC) Bill Publishers Association (PA) evidence to the Public Bill Committee

The PA is the trade association for book, journal, audio and digital publishers in the UK, spanning fiction and non-fiction, academic and education publishing. UK publishing is worth £6.9 billion, supports 70,000 jobs across the country, and generates £4.1 billion in exports, making the UK the #1 global book exporter.

1. EXECUTIVE SUMMARY

- 1.1 This evidence sets out key information on the Digital Markets, Competition and Consumers (DMCC) Bill and highlights the measures publishers see as vital to ensure that contract negotiations are fair and that the book market operates in the best interests of consumers and businesses.
- 1.2 Digital markets are vital to publishing's future, as evidenced in the pandemic, when online markets ensured consumers could still access books. However, consumers benefit most when those markets operate in a fair and transparent way, with healthy levels of competition and innovation to drive growth.
- 1.3 Amazon has undoubtedly done great things for readership in the UK and across the globe. But **with great power comes great responsibility**. Amazon has unparalleled power in the book, ebook, and audiobook market, as the dominant book retailer, a mass market publisher in its own right, a provider of ebook hardware, and a distributor of other booksellers. Publishers consider themselves reliant on Amazon, seeing it as an essential facility and unavoidable trading partner, as well as one that has done good things in getting books into the hands of readers. Unfortunately, this has resulted in publishers being subject in certain circumstances to anti-competitive practices and, in turn, consumers suffering from less transparency, choice and value for money. The unfair practices publishers encounter include:
 - a. **Unfair commercial negotiations and terms.** Publishers expect and fear reprisal from Amazon if they do not agree to terms and conditions imposed in commercial negotiations, including the removal of books or whole catalogues from this essential platform. This is particularly acute for smaller publishers.
 - b. **Negative impacts of Amazon's vertical integration**, such as publishers not being given access to their own sales data which Amazon is able to use to compete with them, Amazon products being given greater prominence, and consumers being unable to make informed choices about which seller they buy from.
 - c. **Persistent negative practices on Amazon's platform**, including listings which infringe territorial copyright, piracy, and allowing repeat bad practice and fake reviews by sellers.

d. **Trapping consumers in artificial silos** e.g. not making ebook or audiobook formats interoperable.

1.4 In this context, publishers joined businesses and consumer groups across the economy to welcome the DMCC Bill. Sensible, proportionate regulation is the only way to ensure Amazon's unparalleled market dominance is not abused and consumers benefit from innovation, choice, and competitively priced books.

1.5 **The Publishers Association is in full support of the Bill and urges the Committee to ensure the Bill progresses at pace and is not watered-down by lobbying by big tech. In particular, we urge the Committee to ensure that the following key attributes are maintained during the Bill's passage:**

- a. The Bill will empower the Digital Markets Unit (DMU) within the Competition and Markets Authority (CMA) to assign Strategic Market Status (SMS) to the most dominant firms. Amazon's entrenched market power, as the only gatekeeper company in the book industry with little chance of challenge, meets the key threshold for it to be assigned SMS.
- b. Firms designated with SMS will be subject to conduct requirements, including the requirement to deal on fair and reasonable terms. This can be used to tackle Amazon's anti-competitive practices.
- c. If challenged, decisions by the DMU will be subject to judicial review. This is the correct review mechanism, will prevent decisions being caught up in expensive, delaying legal tactics, and should be upheld despite big tech lobbying for a lesser, 'merits' regime.
- d. Fines of up to 10% of global turnover can be imposed for failure to meet conduct requirements and a Final Offer Mechanism is established for when SMS firms fail to agree fair and reasonable terms. These provisions are necessary to give the DMU effective regulatory teeth.
- e. Given the size and power of companies such as Amazon, and the speed of digital markets, the preventative regulatory approach is essential because currently by the time anti-competitive behaviour is discovered and remedied, the damage to the market has already been done.

1.6 **Minor amendments to the Bill on 'delisting' and the definition of 'digital activities' would give even greater confidence that Amazon's anti-competitive practices towards publishers will be tackled, as would the addition of an 'oversight' position similar to the Groceries Code Adjudicator.**

1.7 **In parallel, we urge the CMA to launch a market study into Amazon now. This will speed up SMS designation when the Bill is passed and serve as a deterrent to problematic behaviours happening now.**

2. AMAZON'S MARKET DOMINANCE

- 2.1 The publishing industry has been revolutionised by the advent of the internet, ebooks, and e-commerce platforms. Amazon, the world's largest online marketplace and internet company, began as an online seller of books and, although it has since diversified enormously, its power and influence in the global book market remains vast and unprecedented.
- 2.2 Amazon has played an important part in expanding global readership, delivering books to people's hands and devices using a range of impressive innovations. It has helped UK publishers to build the global online customer base and UK authors to share their ideas around the world. In many cases, our members work very closely with Amazon and do so in a constructive, mutually beneficial way. We want those relationships to continue, but on a more level playing field for publishers of all sizes.
- 2.3 For all the benefits that Amazon has brought to the book industry and readers, it has also established a monopoly of the digital ([90%](#)) and audio book ([90%](#)) markets, and controls [50%](#) of the entire physical book market (e-commerce and high street). Typically, regulators would be concerned about a firm having a 40% share of a market and 'block exemptions' from competition law fall away well below this.
- 2.4 It is also important to understand that Amazon is not just the dominant book retailer – acting as a marketplace platform for publishers and booksellers – but also a competitor as a mass market publisher and bookseller itself, as a provider of ebook hardware, and as a distributor of other booksellers. Publishers consider themselves both reliant on Amazon and in unavoidable competition with it.
- 2.5 The concerns relating to Amazon's market dominance in the book market were compounded by the pandemic, where other routes to market were closed. This increased Amazon's role in direct selling of print books and concentrated its market power in digital and audio formats, helping it achieve a [12.6% increase in UK revenues to £23.2bn](#), and an astonishing [60% profit surge to £204m](#). This market dominance also harms UK high streets by reducing support for physical booksellers.

3 IMPLICATIONS OF AMAZON'S MARKET DOMINANCE

- 3.1 Amazon's dominance of the market has resulted in publishers being subject to anti-competitive practices and, in turn, consumers suffering from less transparency, choice and value for money. Publishers also feel unable to speak out about these practices publicly. The unfair practices publishers encounter include:
- a. **Unfair commercial negotiations and terms, with fear of reprisals:** Given Amazon's scale, dominance and approach, publishers have encountered significant difficulties and are sometimes unable to

participate in fair commercial negotiations, a problem that is particularly acute for smaller publishers. Publishers are not on a level playing field in contractual negotiations with a huge global company that is both a partner (acting as a marketplace and distributor) and a direct competitor (publishing and selling books itself). Publishers are often forced to agree to the use of ancillary Amazon services (e.g. the Prime bundle including delivery) as a condition of having access to the platform. Amazon has at times forced adherence to most-favoured nation (MFN) clauses which stop sellers offering the same content on other platforms with different prices or terms, blocking price competition across the online market and driving up prices for consumers. If publishers don't agree to these unfair terms, they fear (and in some cases are threatened with) Amazon reprisals including: the sudden de-listing of books or removal from search results; listing of titles below titles from Amazon and other publishers; labelling available titles as 'out of stock'; or removing buy buttons without cause, so customers cannot purchase available titles. Overall, Amazon pushes an unfair balance of cost and risk onto publishers and the underlying threat of being 'switched off', by what is an essential route to market, is existential for any publisher. For this reason, publishers also fear going 'on the record' about their experiences.

- b. **Vertical integration, data hoarding, and unfair product promotion:** Due to the multiple, vertically stacked, and integrated businesses within Amazon, there are conflicts of interest in how it uses data and how it promotes products on the platform. Again, it's worth noting that Amazon is not just the dominant platform for book retail but also a competitor with its customers, including publishers. Consequently, publishers are not given access to sales and marketing data about their own titles. This can be used by Amazon to inform its own commercial decision-making e.g. about which books to publish itself, what prices to set, and how to market them. As a result, Amazon's books are often given greater prominence on the platform i.e. self-preferencing with regard to the 'buy box', in recommendation algorithms, and in searches. Consumers are also unable to make informed choices about the books they purchase as offers from booksellers via Amazon, from Amazon using third party publishers, and Amazon-published books can all be presented in the same manner on the platform.
- c. **IP infringement issues including unlawful parallel imports, piracy, poor seller behaviour, and fake reviews:** It is difficult to compel dominant companies to change their business practices, especially when it comes to piracy, counterfeits, and unlawful imports. Publishers continue to encounter listings on Amazon of physical and digital pirated editions as well as unlawful parallel imports i.e. editions designed for other markets which infringe copyright if sold in the UK. Take-down processes can be slow, opaque, and ineffective. Even when unlawful listings have been successfully removed, they can

quickly resurface under a new seller name. Seller identities have not been sufficiently verified and repercussions for repeat abuses have been weak. Fake reviews have also been rife, misleading consumers into believing that they are buying quality or authentic products, when in fact they are being duped into buying low-quality fakes or unlawful parallel imports.

- d. **Locking customers in:** Amazon traps consumers in artificial data silos by deliberately not making ebook or digital audiobook formats or Kindle hardware and software interoperable.

4. DMCC BILL – SUPPORT AND MINOR AMENDMENTS

- 4.1 **The Publishers Association is in full support of the Bill and urges the Committee to ensure that the following key attributes are maintained:**
- 4.2 The Bill is intended to give the Digital Markets Unit (DMU) within the Competition and Markets Authority (CMA) the power to designate dominant tech firms with Strategic Market Status (SMS) if they meet certain thresholds, including having “substantial and entrenched market power” and “a position of strategic significance”. **Amazon’s entrenched market power, as the only gatekeeper company in the book industry with little chance of challenge, meets the key threshold for it to be assigned SMS.**
- 4.3 Once designated with SMS, firms will be subject to bespoke conduct requirements, set by the DMU. One of the three purposes of the conduct requirements, the ‘fair dealing objective’, specifies that users will need to be treated fairly and be able to interact, whether directly or indirectly, with the firm on reasonable terms. The Bill sets out the range of conduct requirements the DMU will be permitted to impose on SMS firms, covering obligations and prohibitions in interactions with users.
- 4.4 **The Publishers Association welcomes the proposed conducts requirements and the purpose of requiring SMS firms trade on fair and reasonable terms.** Taken together, the conduct requirements would enable the DMU to require Amazon to deal fairly with publishers. Such codes of conduct, properly and promptly enforced, can be very effective. Amazon is one of the retailers which already has its behaviour in UK food markets successfully overseen by the Groceries Code Adjudicator. **An equivalent arrangement would be highly effective to address the problematic conduct addressed in this evidence.**
- 4.5 Under the Bill, decisions of the DMU will be subject to a review by the Competition Appeal Tribunal on ‘judicial review’ grounds. We welcome the decision to have the judicial review process, not the lesser merits process that has been called for by some dominant tech firms.

- 4.6 The judicial review standard is used by authorities making similar ‘future-looking’ decisions. It is consistent with the legal test for other CMA interventions, such as the market investigation, it is the review standard used for other regulatory bodies such as Ofcom, Ofwat, and Ofgem, and it enables the DMU to act promptly and allow the SMS firm and challenger firms to receive a final decision around which they can plan their business with certainty. Unlike the merits test, judicial review will prevent the DMU’s decisions being caught up in expensive, delaying legal tactics. **We urge parliamentarians to ensure the judicial review process is maintained during the passage of the Bill.**
- 4.7 The Bill empowers the DMU to impose fines of up to 10% of global turnover for failure to comply with conduct requirements and introduces a Final Offer Mechanism (FOM) when SMS firms have breached conduct requirements and failed to offer fair and reasonable terms. **These mechanisms are necessary to give the DMU effective regulatory teeth and we ask they are maintained during the passage of the Bill.**
- 4.8 While the Publishers Association overwhelmingly supports the Bill, there are a number of minor amendments which could be made to give even greater confidence that the CMA will tackle Amazon’s anti-competitive practices in relation to publishers. These are:
- a. The permitted conduct requirements are high-level and open to the DMU’s discretion in how they are implemented. **Publishers would welcome a specific prohibition on the threat of delisting in contractual negotiations and/or positive obligations around the delisting process.**
 - b. Amazon’s activities in relation to publishers are in scope of the Bill, as the Bill’s definition of digital activities includes “the provision of a service by means of the internet” – which covers the sale of physical books via the internet. However, **to remove any confusion over whether Amazon’s activities in relation to physical books are in scope, Section 3(1)(c) should be amended to specifically state: “(c) any other activity carried out for the purposes of an activity within paragraph (a) or (b), including the supply of goods for resale via a relevant service.”**
 - c. **An ‘oversight’ position similar to the Groceries Code Adjudicator should be established.**
- 1.8 Finally, while we are confident that Amazon easily qualifies for SMS, SMS designation will be at the discretion of the DMU and must follow an investigation by the DMU, which can take up to 9 months. **That is why we are calling for the CMA to start a market study of Amazon now, as results from that study could be used to speed up SMS designation when the Bill is passed and importantly will also serve as a deterrent to problematic behaviours happening in the market now.**

5. CONCLUSION

- 5.1 The PA, along with a diverse range of UK businesses and consumer organisations, has strongly welcomed the tabling of the DMCC Bill. This Bill is essential in order to give the DMU the power it needs to protect consumers and promote fair competition. **We urge the Committee to support the swift passage of the Bill and ensure that it is not watered-down as a result of lobbying by well-resourced big tech. In particular, we want to see the provisions regarding SMS, conduct requirements, judicial review, financial penalties, and the Final Offer Mechanism maintained during the passage of the Bill.**
- 5.2 While publishers strongly welcome the DMCC Bill, **minor amendments** on delisting, the definition of digital activities and the addition of an 'oversight' position similar to the Groceries Code Adjudicator would give even greater confidence that the DMU will be able to tackle Amazon's anti-competitive practices in relation to publishers.
- 1.9 While the Bill empowers the DMU to designate SMS, the specific firms that will be designated this status are to be confirmed and will require investigation by the DMU after the Bill has passed. **We urge the CMA to launch a market study of Amazon now, as evidence from that can be used to speed up its designation following the passage of the Bill and serve as a deterrent to problematic behaviours now.**