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Dear Sir Bill,

- **7875/18: Commission Communication: A New Deal for Consumers**
- **7876/18: Proposal for a Directive amending Council Directive 93/13/EEC of 5 April 1993, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules**
- **7877/18: Proposal for a Directive on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC**

As requested at your meeting on Wednesday 18 July (report 36) I am writing to update you on the progress of the European Commission's New Deal for Consumers proposal since my department submitted Explanatory Memorandums on the proposals on 4 May.

Omnibus Directive

There has been steady progress on the file which proposes targeted amendments to the consumer acquis with the intention of modernising rules and improving enforcement (aka the 'Omnibus Directive'). The first line-by-line analysis of the proposal has been completed and Member States have been generally receptive although a few areas (such as amendments to the Right of Withdrawal which allows for consumers to return goods they have bought online within 14 days) have proven to be contentious. Member States were asked to provide written comments on this file to the Austrian Presidency by 12th September.

You asked for updates on the following areas in particular:

[whether] the proposed transparency requirements for online marketplaces pose a disproportionate burden on business

Member States have just submitted written comments on the proposal so it is too early to say whether the text will strike the appropriate balance between consumer protection and burdens on business. In general, the UK Government is supportive of measures to make online marketplaces more transparent. We believe that consumer protections should evolve to meet

consumer needs in new online environments. The Consumer Green paper that was launched in April also looks at this area, amongst others, to ensure that modern markets work for all. Although generally supportive of increased transparency, we do have some concerns about how the proposal would work in practice and are seeking clarity from the Commission on a few areas. For instance, the proposal requires online marketplaces to give consumers information on the 'main parameters' determining the ranking of offers. We do not think it is clear what is being required here and have pushed for some examples from the Commission.

[whether] the removal of certain obligations on traders in relation to the customer's right of withdrawal are fair for consumers

As with online marketplace transparency, it is too early to say whether the changes to right of withdrawal would be fair for consumers. There is a notable split on this amendment between the Nordic Member States, who largely support the changes, believing the risk of abuse to be unfair to the trader in the context of an increasing awareness of consumers of their rights (and so an increasing likelihood of abuse), and the other, larger group of Member States who reject the change as they feel it unfairly shifts the burden on to the consumer. The rapporteur on the file in the European Parliament, Dan Dalton (Conservative MEP), has raised similar concerns to the larger group of Member States and deleted the amendment in his draft report written on behalf of Internal Market and Consumer Protection Committee. As the amendment could potentially reduce consumer protection, the UK would have similar reservations to those expressed by the larger group of Member States and the European Parliament.

You also asked for the following clarification:

Whether there is any overlap or conflict with the proposed Omnibus Directive (b) and:

- **the Digital Content Directive (DCD);**
- **2015 Consumer Rights Act**

Both generally and in relation to the proposed extension of the existing Consumer Rights Directive (CRD) to digital services for which a consumer has paid using their personal data.

There is indeed overlap with the Omnibus Directive proposal and both the proposed DCD and the 2015 Consumer Rights Act (CRA). The amendments update CRD to align with DCD, and the Commission has specifically stated in Recital 23 of the proposal the need to ensure consistency between the two. I do not see any conflict between the two at this stage although will keep this under review as the DCD approaches adoption and the Omnibus Directive continues to progress. The CRA already covers 'free' digital content which is paid for with data, although does not currently cover 'free' digital services. In addition, the CRA consolidates the rules under the Unfair Contracts Terms Directive (which is one of the Directives being amended with the new penalty regime), so there is overlap here. As was mentioned in the Explanatory Memorandum submitted on 4 May, the Government has signaled its intention to bring forward domestic legislation to give civil courts the power to impose financial penalties on traders for breaches of consumer protection laws, so I do not see a conflict with the amendment here if it remains at minimum harmonisation.

Collective Redress Directive

While progress on the Omnibus Directive has been steady, progress on the proposed Directive on representative actions (aka Collective Redress Directive) has been slow so far

with roughly half of the first line-by-line analysis completed. Many Member States have expressed concerns about the impact the proposal could have on existing national legal systems. Given the slow progress it is too early to say whether the rules being proposed are proportionate to tackle consumer detriment and that the rules provide legal certainty.

UK-EU Consumer Protection

You also asked for clarification on how the Government envisions UK-EU consumer protection working in practice within the context of the future relationship following specific questions about existing agreements the EU has with third countries:

Whether any existing EU arrangement with a country outside the EEA, and not including Switzerland, currently provides a level of reciprocal consumer protection that the Government would consider to be adequate within the scope of the future economic partnership, and if so, to elaborate on this arrangement;

Whether any current EU agreements with third countries, other than the EEA and Switzerland, provide for a high level of participation in the intra-EU legal cooperation mechanisms and infrastructure that facilitate the protection of European consumers (e.g. RAPEX, the EU Rapid Alert System for dangerous non-food products; the European Consumer Centre Network, an EU-wide network of advice centres for consumers shopping across borders; cooperation facilitated by the Consumer Protection Cooperation Regulation)?

How the Government envisages that consumer protection arrangements within the future UK-EU economic partnership would differ from, for example, the provisions of the EU-Ukraine Association Agreement (see particularly Chapter 20 and Annex XXXIX)?

I will respond to these questions together. Cross-border consumer protection is relatively new in the international landscape, and cross-border consumer protection cooperation between government bodies is a relatively recent development. There are few trade deals at present which offer a robust framework for cross-border protection. Where cross border consumer protection is formalised through agreements between governments, it can be through either stand-alone agreements/memorandums of understanding (e.g. New Zealand-Australia) or through free trade agreements (e.g. Australia-USA); or through a combination of both (again, Australia-US). How UK-EU consumer protection will work in practice within the context of the future relationship will depend on the terms of our future economic partnership. However, the Prime Minister made clear in her Mansion House speech that the UK believes in the importance of strong consumer rights; and the White Paper on the future relationship states our commitment to maintaining high levels of consumer protection and to striking an agreement on cooperation. The exact nature of this commitment and how it is translated into the agreement will be subject to negotiation.

You also asked the following question regarding the withdrawal agreement:

Whether, assuming that a transitional period is agreed as part of a withdrawal agreement, the Government would continue to implement and apply the rules of the proposed Directives in this package if the deadline for full transposition of the Directives' provisions into national law were to fall within the transitional period, but the deadline for Member States to apply the Directive's provisions were to fall after the transitional period had ended?

As set out in the White Paper on legislating for the withdrawal Agreement, EU law will continue to apply to and in the UK under the terms set out in the Withdrawal Agreement during the implementation period. New pieces of directly applicable EU law that are introduced will continue to apply automatically within the UK; other new EU measures introduced during the implementation period will need to continue to be implemented domestically *until the implementation period ends, on 31 December 2020*. As EU rules and regulations will continue to apply to the UK during the implementation period, the Government recognises that there is a continuing need for effective scrutiny by the UK Parliament and of close engagement by Government with this scrutiny process. We will work with Parliament to ensure the right approach during the implementation period. The Government recognises the longstanding and important scrutiny role played by the European Scrutiny Committee alongside the European Union Committee in the House of Lords. Any post IP arrangements are subject to negotiations on the Future Partnership and also subject to our domestic policy consideration.

I will continue to keep the Committee updated regularly on the progress of the negotiations and the UK's objectives. I am copying this letter to Lord Boswell of Aynho, Chair of the House of Lords European Union Committee, Les Saunders (DEXEU), and Callum Gray (BEIS Scrutiny Coordinator).

Yours sincerely

yours ever



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Minister for Small Business, Consumers & Corporate Responsibility