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Chapter 2 Focus 1

The UK – Brexit

: To A Strong Leviathan

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On January 31, 2020, the United Kingdom officially withdrew from the European Union. It has had a significant impact on various fields, from national politics and the economy to the daily lives of its citizens. The relationship between the British government and digital platformers (DPFs) is no exception to these shifts. There is an urgent global need to find an optimal solution for state-DPF relations; however, no country has yet provided a definitive solution. This column examines the regulatory and policy changes introduced in the post-Brexit period and evaluates the current relationship between the UK and the DPFs.

1 Changes in the UK after Brexit

(1) From the UK in Europe to Global Britain

How has Brexit changed the UK government's policies? Alison Harcourt argues that while the UK once played a crucial role in policymaking with a liberal approach during its time as an EU member state, the Brexit has significantly diminished its influence within the EU and member states. It also lost the access to information exchange platforms at the EU level.[1]

For instance, the complete liberalization of the telecommunications market demonstrates the UK's liberal influence on the EU and policies of member states. The 1998 full liberalization of the telecommunications market in European countries was triggered by the privatization of British Telecom (now the BT Group), which had held a monopoly on the UK's telecommunications network at the time in the early 1980s. This led to the recognition of the long-term benefits of market competition in the sector. Consequently, European countries pursed the liberalization of the markets, following the UK's successful model of privatization. By 1998, nearly all EU member states had achieved institutional reforms to liberalize their sectors.[2] The UK, as

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1 Harcourt, Alison, 'The UK's Role in EU Telecommunications Policy: Brexit and Beyond', *Brexit and the Digital Single Market* (Oxford, 2023; online edn, Oxford Academic, 24 Aug. 2023), https://doi-org.kuleuven.e-bronnen.be/10.1093/oso/9780192899378.003.0004, accessed October 1, 2024.

2 *Communications Liberalisation in the UK* (Department of Trade & Industry, Mar. 2001), https://www.wto.org/english/tratop_e/serv_e/symp_mar02_uk_com_e.pdf, accessed October 1, 2024.

a member state of the EU, influenced to shaping the policies of other member states as well as the EU itself. However, following Brexit to '*Take back control*'[3], the UK now faces challenges in influencing within the Union. In the present context, the UK is primarily a competitor or strategic partner to the EU.

Conversely, the British government's focus has understandably shifted beyond Europe in the post-Brexit era. In 2021, the government published the Integrated Review *'Global Britain in a Competitive Age'*. This review positions the UK a 'European country with global interests' and emphasizes that a 'Global Britain' is defined through concrete actions. As a demonstration of this vision, the UK, alongside the United States and Australia, established the AUKUS security alliance in 2021. This trilateral partnership declared solidarity in the fields of cybersecurity and technology.[4] Furthermore, as part of an international data transfer strategy, six non-EU countries have been announced as priority partners.[5] This strategy is designed to promote trade and innovation while enabling British consumers to enjoy a wider range of products and services more efficiently, affordably, and securely.

This policy shift is also reflected in the UK's new data policy. In 2021, Oliver Dowden, then Secretary of State for Digital, Culture, Media and Sport (DCMS), emphasized the government's intention to establish a more autonomous and business-friendly data policy. He stated, "Now that we have left the EU I'm determined to seize the opportunity by developing a world-leading data policy that will deliver a Brexit dividend for individuals and businesses across the UK", and further clarified the need to "reform our own data laws so that they're based on common sense, not box-ticking".[6]

(2) UK government after Brexit

Aiming to create innovation

Since Brexit, the UK has increasingly prioritized fostering innovation. In 2023, the Department of Science, Innovation, and Technology (DSIT) was established with the aim of advancing economic and technological developments. The post-Brexit UK seeks to position itself at the forefront of global technology standards and regulatory frameworks, which underlines the DSIT's objective of solidity the country's position as a global leader in science and technology by 2030.[7] Specifically, it clarified that future science and technology will be governed by a regulation that is "pro-innovation, stimulates demand for science and technology and attracts investment while representing UK values and safeguarding citizens".[8]

The contrast in regulatory approaches to technology between the UK and the EU is particularly evident

3 '*Take back control*' was a British political slogan used by Brexit supporters

4 Vijay Varadharajan, *AUKUS – Cyber Security Aspects*, https://www.newcastle.edu.au/__data/assets/pdf_file/0008/864323/AUKUSCyberSecurityAspectsAAPowerToday.pdf, accessed October 1, 2024.

5 *UK unveils post-Brexit global data plans to boost growth, increase trade and improve healthcare* (Department for Digital, Culture, Media & Sport and The Rt Hon Oliver Dowden CBE MP, 26 Aug. 2021), https://www.gov.uk/government/news/uk-unveils-post-brexit-global-data-plans-to-boost-growth-increase-trade-and-improve-healthcare, accessed October 1, 2024.

6 Gavin Freeguard, 'Doing things differently? Policy after Brexit' *Data and Digital* (31 Jan. 2022), https://discovery.ucl.ac.uk/id/eprint/10142948/1/UKICE-Policy-Report_FINAL.pdf, accessed October 1, 2024.

7 *Science & Technology Framework* (Department for Science, Innovation & Technology, 2023), https://assets.publishing.service.gov.uk/media/6405955ed3bf7f25f5948f99/uk-science-technology-framework.pdf, accessed October 1, 2024.

8 Ibid., 16.

in the field of artificial intelligence (AI) development. While the EU became the first jurisdiction to introduce the AI Act, a comprehensive framework for regulating AI, the UK has focused on developing flexible and innovative regulatory standards aimed at promoting safe AI. This approach seeks to balance the economic and technological benefits of AI with a recognition of its potential risks. For example, the UK's AI Safety Summit brought a wide range of stakeholders, including government bodies, academic institutions, and private sectors, to facilitate dialogue on best practices. In addition, the UK government has allocated significant grants to support research initiatives focused on AI safety.[9]

Establishing a free and fair market

As part of its strategy to promote innovation, the government is focusing on creating an environment conducive to fair competition. In this regard, the UK has adopted a strict approach towards large DPFs, arguing that their market dominance curtailing growth of the sector, reducing innovation and negatively affects business and consumers.[10]

In 2020, the government introduced the Digital Services Tax, which imposes a 2% tax on the revenue generated by major tech companies from UK-based users with services such as search engines, social media, and online marketplaces.[11] Between 2020 and 2021, the Digital Services Tax generated £358 million, with projections indicating that the total revenue from the tax will reach £3 billion between 2024 and 2025.[12]

Additionally, in 2022, the UK Competition and Markets Authority (CMA) issued an injunction against Microsoft's proposed acquisition of Activision Blizzard, a major American video game company. The CMA raised concerns that the acquisition could hinder competition in the emerging cloud gaming market. Despite strong opposition from both Microsoft and Activision Blizzard[13], the companies ultimately revised their acquisition strategy in response to the CMA's concerns. A revised acquisition plan, which incorporated the CMA's recommendations, was subsequently approved.[14] This decision reflects the UK's more stringent approach to competition regulation compared to the EU, where the European Commission had initially approved the original acquisition plan.

In contrast to its approach to AI development, the UK and EU have demonstrated a cooperative approach in the context of market fairness. For instance, when the European Commission initiated an investigation into the Jedi Blue agreement, an online advertising deal between Google and Meta, which was suspected of breaching antitrust regulations, the CMA and European Commission worked collaboratively to investigate

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9 Systematic AI safety fast grands will provide up to £8.5 million, https://www.aisi.gov.uk/grants, accessed 1 October 2024.

10 Emma Woollacott, *New UK Tech Regulator Set To Curb Facebook And Google* (Forbes, Nov. 27, 2020), https://www.forbes.com/sites/emmawoollacott/2020/11/27/new-uk-tech-regulator-set-to-curb-facebook-and-google/, accessed October 1, 2024.

11 *Digital Services Tax* (HM Revenue & Customs, 11 Mar. 2020), https://www.gov.uk/government/publications/introduction-of-the-digital-services-tax/digital-services-tax, accessed October 1, 2024.

12 *The Digital Services Tax* (UK Parliament, 5 Apr. 2023), https://publications.parliament.uk/pa/cm5803/cmselect/cmpubacc/732/report.html#:~:text=The%20Digital%20Services%20Tax%20is%20designed%20to%20tax%20business%20groups,the%20online%20sale%20of%20goods, accessed October 1, 2024.

13 Microsoft appeals against UK block on Activision Blizzard deal (Reuters, May 24, 2023), https://www.reuters.com/legal/microsoft-lodge-appeal-again-uk-regulators-block-activision-deal-sky-news-2023-05-24/, accessed October 1, 2024.

14 *Microsoft / Activision Blizzard merger inquiry* (Competition and Markets Authority, 6 Jul. 2022), https://www.gov.uk/cma-cases/microsoft-slash-activision-blizzard-merger-inquiry, accessed October 1, 2024.

the matter.[15]

2 The relationship between Leviathan and Behemoth in the UK

As previously mentioned, the post-Brexit UK government's key objectives in the digital sector include demonstrating a position as a 'European country with global interests', promoting innovation while appropriately regulating technological risks, and ensuring fair competition within the market. The following provides an overview of the UK legislative framework that underpins these strategic priorities.

Data Protection Act 2018

Currently, *the Data Protection Act 2018 (DPA 2018)* and the UK General Data Protection Regulation (UK GDPR) are the core data protection legislation in the UK. The DPA 2018 replaced the Data Protection Act 1998 and incorporated the provisions of the EU General Data Protection Regulation (EU GDPR) into domestic law. Following Brexit, the EU GDPR was replaced as the UK GDPR, which came into effect in 2021; the UK GDPR remains largely aligned with its EU counterpart, and together with DPA 2018, constitutes the foundation of data protection legislation.

Since its enactment, the DPA 2018 has faced criticism from advocacy groups, particularly regarding the legality of the 'immigration exemption' in paragraph 4 of Schedule 2 of the Act.[16] This exemption stipulates that certain provisions of the UK GDPR do not apply to data processed for the purposes of investigating or detecting activities that undermine or maintain effective immigration control. Critics argued that the exemption is contrary to Article 23 of the UK GDPR and incompatible with the rights guaranteed by the Charter of Fundamental Rights of the European Union, including respect for personal and family life (Article 7) and protection of personal data (Article 8). In response, the High Court of England and Wales issued a declaratory order in which immigration exemption was unlawful. Consequently, Schedule 2 of the Data Protection Act 2018 was amended on March 8, 2024.

Online Safety Act 2023

The Online Safety Act, enacted in 2023, imposes a legal obligation on social media companies and search engines to identify, mitigate and manage risks to children, particularly illegal or harmful content and activities. The legislation applies not only to large platform operators but also to smaller entities, with penalties for non-compliance reaching up to £18 million or 10% of a company's global annual turnover. In certain circumstances, individuals may also face imprisonment for violations.

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15 *Antitrust: Commission opens investigation into possible anticompetitive conduct by Google and Meta, in online display advertising* (European Commission, 11 Mar. 2022), https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1703, accessed October 1, 2024.

16 For more details, refer following cases. Open Rights Group & Anor, R (On the Application Of) v Secretary of State for the Home Department & Anor [2019] EWHC 2562 (Admin) [68], The Open Rights Group & Anor, R (On the Application Of) v The Secretary of State for the Home Department & Anor (Rev2) [2021] EWCA Civ 800 [55]., Open Rights Group & Anor, R (On the Application Of) v Secretary of State for the Home Department & Anor [2021] EWCA Civ 1573 [55]., and the3million and Open Rights Group v Home Secretary and others [2023] EWHC 713 (Admin).

The Act extends extraterritorially, applying to operators outside the UK who provide services that have links with the United Kingdom.[17] While the law was praised for its focus on children's online safety, it has also sparked significant debate concerning the balance of safety and privacy. A particularly contentious provision, often referred to as the 'spy clause' permits operators to scan personal messages and grants the Communications Commission (Ofcom) to intervene with prohibited content. This provision was strongly opposed by NGOs[18] and private companies, including Amnesty International, Open Rights Group, WhatsApp and Signal, which argued that it greatly violates the privacy of communications and encourages mass surveillance. In response to these concerns, some companies threatened to withdraw their services from the UK.[19] Ultimately, the UK government modified the conditions for content checks, resulting in companies to continue operating within the country. Additionally, the proposal to regulate 'lawful but harmful' content was met with controversy over the definition of 'harmful'. As a result, the term 'lawful but harmful' was removed from the final version of the legislation.

Media Act 2024

The regulation of video-on-demand (VoD) services has long been a challenge in the UK. Despite the widespread use of VoD platforms such as Netflix and Amazon Prime, regulatory oversight has been limited. Except for the iPlayer from BBC, VoD services have not been subject to regulation by Ofcom under the Broadcasting Code.[20] The Broadcasting Code establishes content standards relating to issues such as harmful or offensive material, accuracy, fairness, and privacy.

However, its applicability is restricted to broadcasters whose headquarters and editorial decision-making functions are based within the UK. Consequently, most VoD services are not regulated or entirely exempt from UK broadcasting standards. For instance, as of 2022, Netflix has its European base in the Netherlands, falls under Dutch media law (Commissariaat voor de Media) rather than Ofcom's jurisdiction.[21]

The Media Act 2024 establishes a VoD Code to major streaming platforms, including Netflix, Amazon Prime, and Disney+, that provide services to UK-based users. This new framework provides VoD service standards more closely with the editorial requirements set out in the Broadcasting Code.[22]

17 'Has links with the United Kingdom' is defined broadly as meaning that a business has a significant number of users in the UK, or that the service has the UK as one or its only target market, or that the service could be used by individuals in the UK and there are reasonable grounds to believe that its content poses a significant risk of serious harm to individuals in the UK.

18 *UK: 'Spy clause' in Online Safety Bill must be addressed before it becomes law* (Amnesty International, 5 Sep. 2023), https://www.amnesty.org/en/latest/news/2023/09/uk-spy-clause-in-online-safety-bill-must-be-addressed-before-it-becomes-law/, accessed October 1, 2024.

19 An open letter (WhatsApp, 17 Apr. 2023), https://blog.whatsapp.com/an-open-letter, accessed October 1, 2024.

20 *Government response to the consultation on audience protection standards on video-on-demand services* (Department for Digital, Culture, Media & Sport, 28 Apr. 2022), https://www.gov.uk/government/consultations/audience-protection-standards-on-video-on-demand-services/outcome/government-response-to-the-consultation-on-audience-protection-standards-on-video-on-demand-services, accessed October 1, 2024.

21 *Does Ofcom regulate Netflix?*(Ofcom, 8 Dec. 2022), https://www.ofcom.org.uk/news-centre/2022/does-ofcom-regulate-netflix, accessed October 1, 2024.

22 *Media Bill to maximise potential of British TV and radio* (Department for Culture, Media and Sport and The Rt Hon Lucy Frazer KC, 21 Nov. 2023), https://www.gov.uk/government/news/media-bill-to-maximise-potential-of-british-tv-and-radio, accessed October 1, 2024.

Digital Markets, Competition and Consumers Act 2024

To promote competition within the digital market, the *Digital Markets, Competition and Consumer Act* was enacted in May 2024. This legislation seeks to prevent market monopolization by designating companies with substantial influence over the digital market as having a 'Strategic Market Status' (SMS). Private entities classified as SMS are required to provide 'open choices' and 'trust and transparency', as well as 'fair dealing', thereby improve market competition.[23]

The UK government anticipates that this regulatory framework will enhance fairness for domestic businesses, including small- and medium-sized businesses, by mitigating the dominance of major technology firms operating within the UK. Furthermore, the policy is expected to stimulate growth and innovation within the country's digital economy while expanding consumer choice and driving down service costs.

To cooperate or not to cooperate, that is the question

As discussed in the previous chapter, Professor Yamamoto classifies the relationship between the state and the DPF into three models, drawing an analogy to the historical relationship between the church and the state during the Middle Ages. The first is the *agreement (concordat) model*, in which the DPF is recognized as a political entity, and a strategic cooperative relationship is established between the DPF and the state. The second is the *information-politics congruence model*[24], wherein the state exercises direct control over the DPF. The third is the *Information-politics separation model* (also referred to as *digital laïcité*), in which the DPF is excluded from the political sphere, thereby ensuring state sovereignty and autonomy.

The post-Brexit government has prioritized global cooperation and innovation as a means of distinguishing itself from the EU, which has taken a more regulatory approach. The UK has actively invested in innovation, research, and AI development, while simultaneously strengthening its regulatory oversight to prevent market monopolization, as exemplified by CMA's intervention in corporate acquisitions and the enactment of the *Digital Markets, Competition and Consumer Act*.

While implementing legal regulations to ensure the safety of the digital space and to prevent monopolistic practices, the government remains committed to encouraging technological and economic development. Rather than adopting a purely adversarial or subservient stance toward DPFs, the UK appears to be pursuing strategic cooperation. Although major technology firms may challenge certain regulatory measures, a degree of compromise has been reached up to the present, enabling their continued coexistence. Furthermore, both Leviathan (the state) and Behemoth (the DPFs) are subject to oversight from civil society, including NGOs and advocacy groups, which play a critical role in maintaining accountability.

The current power dynamic between Leviathan, Behemoth, and the third-party entities that oversee them closely aligns with the *agreement model*. However, as five years have passed since Brexit, the nature of this

23 *New pro-competition regime for digital markets* (Department for Business &Trade, Department for Science, Innovation & Technology, 21 December 2023), https://www.gov.uk/government/publications/digital-markets-competition-and-consumers-bill-supporting-documentation/a-new-pro-competition-regime-for-digital-markets-policy-summary-briefing, accessed October 1, 2024

24 Regarding the Information-politics congruence model, the UK clearly opposes this model, stating in the National Cyber Strategy 2022 that "We will work to uphold an open and interoperable internet as the best model to support global prosperity and wellbeing, resisting the pressure of authoritarian states towards fragmentation and their idea of internet sovereignty"

strategic cooperation may evolve. According to the *International Financial Centres Index* (2024), London remains the world's second-largest international financial hub and continues to play a significant role in the FinTech sector. This presumably continues to attract Behemoth and allows Leviathan to sustain its influence. Nevertheless, the impact of Brexit has led numerous firms to relocate their operations to the EU and the European Economic Area, raising questions about the UK's long-term influence over DPFs. Moving forward, it is crucial to assess whether the UK can sustain its current level of regulatory and economic influence over DPFs so as to maintain its established relationship with DPFs.

3 Conclusion

After Brexit, the UK has actively pursued partnerships beyond Europe, seeking to redefine its role as a Global Britain rather than as a member of the European Union. Given the UK's emphasis on economic and technological advancement, its current strategic relationship with DPFs closely aligns with the agreement model. However, a strong foundation for maintaining this cooperation has yet to be firmly established. Consequently, it remains essential to closely monitor potential shifts in this relationship and assess the extent to which the existing cooperation can be maintained in the long term.