Response to Call for Views: Agentic AI and Regulatory Challenges

Agentic AI and Regulatory Challenges

CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than $100 billion in research and development, and contribute trillions of dollars in productivity to the global economy.

CCIA members are developing artificial intelligence (AI) and deploying AI in devices and services, including agentic AI. Agentic AI are autonomous AI systems that can plan, decide, and execute complex tasks with minimal human oversight.[1] Agentic AI represents a huge opportunity and, as far as possible, regulators should allow the market to evolve and mature.

There are broadly three priorities which the Digital Regulation Cooperation Forum (DRCF) could usefully pursue relating to agentic AI:

- **Foster legal clarity** — as far as possible, legal clarity should be achieved based on established principles and avoid artificial distinctions between fast-evolving technologies.
- **Ensure regulatory discretion does not deter investment** — Regulators should ensure that they do not use their discretionary powers in ways that complicate agentic AI and other AI innovation.
- **Promote AI trade** — By addressing barriers to cross-border activity, the UK can advance AI adoption. Less fragmented services can develop and deploy faster.

Foster legal clarity

There will inevitably be a need to apply existing laws in a way that reflects the role of agentic AI. This could include web scraping and content access — does agentic access to publicly available content breach intellectual property rights? It could also include liability — who bears liability in the event that agentic AI makes a mistake?

Crucially, these questions are not new. The liability issue, for example, has already been encountered in the case of driverless cars when there is a crash, and chatbots where there is defamation. Agents are not evolving in a legal vacuum and relevant rules (e.g. consumer protection) apply. General agentic-specific legislation would not be appropriate.

The best starting point for regulators is to:

- understand the current legal position;
- review whether it is creating artificial barriers to innovation; and then, where necessary
- implement changes that are as risk-based and technologically-neutral as possible (as governments have done with respect to the impact of copyright rules on AI training, creating text and data mining exemptions).

[1] https://hbr.org/2024/12/what-is-agentic-ai-and-how-will-it-change-work

The same logic applies as set out in CCIA's 2023 white paper, *Understanding AI: A Guide to Sensible Governance*: Regulation can play a vital role in engendering trust in all kinds of AI systems, but overly prescriptive approaches can hamper the development of new technologies like agentic AI and even produce outcomes antithetical to British values such as free exchange and expression.[2]

Ensure regulatory discretion does not deter investment

Regulators are in some cases using discretionary powers in ways that complicate the development and deployment of agentic AI and other new AI services. Prominent examples are privacy (i.e. the ICO) and competition policy (i.e. the CMA).

To take competition policy as an example, while sector-specific competition policy interventions could embrace the use of agentic AI to enable consumer choice, premature or overly broad intervention in the AI sector will chill investment and innovation particularly in agentic AI. For example, existing roadmaps for services designated with Strategic Market Status (SMS) have included vaguely defined potential conduct requirements related to AI,[3] despite the dynamism of the sector.[4] This creates regulatory uncertainty, and delays businesses seeking to integrate AI systems in popular digital services and devices.

Agentic AI is particularly dependent on integration between services for its value, which means that unclear conduct requirements could impede both:

- SMS-designated companies looking to develop and deploy their own agentic AI tools; and
- third parties looking to develop such tools and integrate them with SMS services (with commercial agreements that enable such integration under open-ended regulatory scrutiny).

This risks a chilling effect on agentic AI development and deployment. The CMA should swiftly resolve these uncertainties to prevent companies from feeling they need regulatory pre-approval before launching UK services.

Promote AI trade

Agentic AI tools are likely to be developed and deployed most quickly if the incentive to do so is supported, as far as possible, by an open global market. This might include both UK developers (including those working for CCIA members) benefitting from the opportunity to export agentic AI services (particularly in service sectors where the UK has strong established strengths) and UK consumers and businesses benefiting from access to cutting

[2] https://ccianet.org/library/understanding-ai-guide-to-sensible-governance/

[3] https://ccianet.org/library/response-to-apple-and-google-mobile-ecosystems-roadmap-of-possible-measures/

[4] https://www.rbbecon.com/publication/article/why-current-genai-market-dynamics-suggest-competition-is-working/

edge tools developed globally. Given that integration of agentic functions into a product or service could be a clear differentiator and source of competitive advantage, one might well anticipate incumbent suppliers in specific markets seeking protection and incentivised to disadvantage agentic products and services.

New UK trade agreements should include provisions enabling the development and trading of AI services, described in a recent CCIA paper, that:[5]

- Ensure the ability to move data into and outside a jurisdiction (cross-border data transfer rules) to enable the deployment and improvement of AI services
- Permit services suppliers to rely on computing facilities outside a specific jurisdiction
- Refrain from requiring the disclosure or transfer of AI model weights, source code, algorithms, or other commercially sensitive resources as a condition for market access, authorization, or conformity assessment
- Affirm the importance of copyright exceptions and limitations critical for text and data mining, machine learning, and related activities
- Rely on open, consensus-based standards developed by international or industry-led standardization bodies, and, where conformity assessments are required, establish mechanisms for mutual recognition of results
- Good regulatory practices in the development of obligations applicable to AI developers and deployers
- Non-discriminatory treatment of service suppliers (national treatment), including by avoiding measures that accord less favorable treatment to service suppliers of another Party, such as through the use of compute thresholds or similar criteria that disproportionately affect certain suppliers without legitimate justification
- Refrain from adopting measures that disadvantage AI systems based on the open or closed nature of their model weights or deployment architecture

These are particularly important for agentic AI because its service integration often requires cross-border IT system integration in practice. It is also important that any sector-specific safety standards for agentic AI do not create unjustified barriers to trade through compliance requirements only domestic services can realistically meet.

Conclusions

The UK has thus far sensibly avoided premature or overly broad regulation of AI as a whole. However, regulators operating with newfound discretion have created significant uncertainty for developers of AI services. Because agentic AI integrates services more deeply into the digital economy, retaining barriers will likely cause the UK to fall behind in this key new technology, impacting investment, productivity, and consumer welfare.

5 https://ccianet.org/wp-content/uploads/2023/11/CCIA_Trade-Principles-Competitive-Global-AI-Market.pdf