

# Speech: David Currie on why competition matters to the whole of the UK

It is a great pleasure to have the opportunity to talk to you this morning as the outgoing Chairman of the Competition and Markets Authority (or CMA). The Whitehall and Industry Group provides an important forum where business and government can interact and debate key issues facing the country.

And I firmly believe that my topic today is one such issue: what is the importance of competitive markets to our economy and our society, and to us all as consumers, citizens and taxpayers? And how are they best achieved in our rapidly changing times?

## **A historical perspective**

Let me start with a historical perspective. If we go back nearly 50 years, the competition regime was very different from today. The CMA's predecessors, the Office of Fair Trading (OFT) and the Monopolies and Mergers Commission (MMC), though very influential, had essentially advisory, not decision-making, powers. Ministers were the ultimate decision-makers, forming a judgement about the "public interest", not always very clearly specified, mirroring a wider tendency for government to intervene in economic matters.

The Thatcher and Reagan years saw a steady retreat from such state intervention. Increasing disillusionment with the performance of the British economy, a growing realisation of the failures of state planning in the Soviet Union and eastern bloc, growing frustration with nationalised industries all combined to bring about an increasing withdrawal of government. In the competition sphere, we had the Tebbit Doctrine, forswearing ministerial intervention in merger decisions, leaving it to the competition agencies to decide on the merits of the case on competition grounds, not wider public interest considerations. This represented the start of a trend to take ministers out of competition policy.

The decisive reinforcement of that trend came with the change of government in 1997. The Labour government not only maintained this vow of abstinence, but hard-wired it into legislation. The Competition Act of 1998 aligned UK competition law with European law (which had itself been shaped in large part by British influence); and then the Enterprise Act of 2002 transformed the MMC into the Competition Commission, and made it the sole arbiter in merger and market inquiries, subject only to judicial review.

Ministerial intervention was limited to 3 highly specific areas of public interest: national security, media plurality, and, from 2008, financial stability. For the rest, competition considerations determined the outcome through an increasingly refined and defined calculus. An important benefit for international businesses was that this approach was increasingly

converging across the major world economies.

However, a separate and distinctively British feature has been the market investigation regime, established by the Enterprise Act. This allows the CMA to investigate whole markets – not just individual companies – that are perceived not to be working well for consumers and intervene directly to make the market work better. In contrast to competition enforcement, these powers may be deployed even when no one is breaking the law. Indeed, that provides the unique aspect of this regime, which has been copied by only a handful of countries around the world. And the exercise of these powers is subject only to judicial review, though that represents a significant, necessary and appropriate restraint on their use. Crucially for my theme this morning, the market investigation regime is wholly independent of ministers.

## **The basis of an independent competition regime**

There is [considerable empirical evidence](#) that effective competition, encouraged by the appropriate use of competition tools, is crucial for economic performance and productivity growth, and acceptance of that linkage is a key reason why competition policy has been at the heart of industrial policy over the past 25 years. That it should be very largely independent of democratically elected politicians may therefore seem surprising. So it is worth recapping the reasons why ministers and Parliament, across party lines, agreed largely to vacate the field.

The first was the learning from the 1960s and 1970s that government intervention often misfired, with unintended and undesirable consequences. Markets don't always work well, due to a variety of market failures. The CMA can and does advise government at all levels on how to intervene in ways that do not harm consumers' interests. But even with good intentions, government can easily make matters worse by stepping in. That is especially the case if such interventions are driven by short-term political pressures, not on well thought-through analysis of the problems in a market and what can be done to address them.

The second is that ministers may well wish to tie their hands. If they have the powers to do anything, then they will inevitably be subject to acute lobbying on all sides. And when in this climate they do intervene, they assume ongoing responsibility when things have to be changed. Better that an independent regulator makes the judgements, based on a clear framework set by Parliament.

The third is that there may be real economic benefit from putting in place a regime where political influences do not have an undue impact on market outcomes. Long term investors welcome the greater certainty that this brings, minimising the political risk premium.

For those of my generation, these were lessons well learnt, and they explain the evolution of the system towards a largely minister-free competition regime. But I think it is very possible that we have seen the high-water mark of this independence.

The financial crash, growing unease about globalisation, large swathes of people who have missed out on any rise in income and are struggling to get by, and concerns about the impact of technology and digitisation particularly on the vulnerable – all these concerns have weakened confidence in the efficacy of markets. This has been reflected politically, with Donald Trump advocating protectionism and Theresa May expressing concern about those left behind and the fairness of “untrammelled free markets”. And we hear increasing calls for government to step in to make sure markets work well and fairly for everybody.

My proposition today is that competition still matters and that it is a key part of making markets work well for everyone, including vulnerable consumers. It is vital that we do not give up on the idea that competition, and competition-based solutions, are a force for good and can help to address the issues that concern politicians and people across the country.

It is true that competitive markets do not serve us all equally. Some groups in society, particularly the more vulnerable, do not always reap the rewards from an economically well-functioning market that others enjoy. It is important that the CMA and other competition authorities reflect on this and do what we can do address it, and I will come to this shortly. But let me first set out why competition really does matter.

## **How does competition benefit us?**

Some might argue that practices that dampen competition are victimless. Well, the reality is that such practices do real harm to the public.

Adam Smith called such practices “a conspiracy against the public”. David Lewis, the first head of South Africa’s post-apartheid Competition Tribunal referred to a cartel that was raising the price of bread beyond the reach of many millions of the poorest South Africans as “thieves at the dinner table”.

So anti-competitive practices, mergers and market structures or features that harm competition are not victimless. They are bad for our society and therefore bad for us all.

Let us turn it around – how does competition benefit us?

Competition law and policy help us all – as customers and taxpayers – by giving businesses the incentive to improve on price, quality, and service standards, to innovate, to treat customers fairly and to become more efficient and therefore more productive. In a virtuous circle, well-informed and engaged customers then distinguish between good and bad products and services, switch away from poor providers and spur businesses to innovate and to compete. New entrants emerge with fresh ideas and fresh offerings to satisfy customers and keep incumbent firms on their toes.

And all these spur efficiency, quality and innovation benefiting us all.

Businesses and the economy also benefit. Competition drives efficiency and productivity. It ensures a level playing field for firms that put their

customers first. Businesses – especially smaller businesses – benefit from better upstream competition. Government benefits from buoyant tax revenues. And open and competitive markets supported by robust competition policy promote innovation and long-term growth.

So vigorous competition matters for us all – as shoppers, as taxpayers and as citizens.

## **Competition isn't everything**

However, as I mentioned earlier, that competition really matters isn't everything. The outcomes from the workings of competitive markets often serve some groups of customers better than others.

In many markets, prices are higher to some than others – that has always been true, but may be accentuated in the online world where sophisticated algorithms based on large quantities of data can drive pricing tailored to individuals. And unfortunately those who lose out can be the most vulnerable – the elderly, the less well-off, the less-educated, among others. Vulnerability has many dimensions and we are all at risk of becoming vulnerable at some stage in our lives regardless of whether or not we are young, healthy, well-off, able-bodied, well-educated. Unsurprisingly, therefore, this is seen as unfair, and 'fairness' and 'treating people fairly' is a major part of the current political lexicon.

## **Fairness, trust and vulnerability**

And competition authorities around the world are increasingly talking about fairness. [Renata Hesse of the US Federal Trade Commission](#) spoke last year of how "companies [that] harm competition ... infect the economy with unfairness". [Margarethe Vestager, the European Commissioner for competition](#), said last year "we have to show that competition makes markets work more fairly for everyone". And her [Director General, Johannes Laitenberger](#), said earlier this year: "There are too many people out there who feel the turn that the economy has taken in the past few decades has left them behind ... People end up feeling excluded. They may lose trust in the system altogether."

That link to trust in markets is critical: a well-functioning market system depends on trust in markets, trust in business, and trust in competition. If a widespread perception of unfairness erodes that trust, then the market system will work less well and we will all be the losers.

There is, however, a problem with fairness: there are often very different views on what is fair and unfair in a range of situations. Easier to define and operationalise is the associated concept of vulnerability, which has many quite clearly-defined dimensions. The UK competition agencies have a long record of focusing on markets that matter for ordinary citizens, and of taking an interest in those who are struggling to get by. And in its various reports, the OFT expressed concern about market outcomes that, while benefiting consumers overall, made vulnerable consumers worse off. So although concern for vulnerable consumers has especial resonance now, it is not new to us.

So competition authorities need to be sensitive to the question of fairness and vulnerability, and I will illustrate in a moment how the CMA does this. We have a clear primary statutory duty, given to us by Parliament, to promote competition for the benefit of consumers. This means, as I just said, that while we need to be sensitive to concerns about unfairness and vulnerability, that cannot drive us. Our interventions to make markets work therefore may well contribute to spreading wealth or making outcomes feel fairer, as I will explain below, but there are other parts of government and other policy instruments more specifically set up for tackling issues of inequality and public welfare.

With that important proviso, how do we in practice address questions of fairness and vulnerability in what we do?

First, the overall enforcement of the competition regime helps.

When companies abuse their market power, when they fix prices with their competitors, or when a merger significantly reduces competition, we all lose out. Wealth and power moves from the consumers to the owners of assets, and inequality in society deepens. [Empirical evidence](#) shows that the exercise of market power, which competition policy restrains, works to the benefit of the minority of the very asset-rich, and to the disadvantage of most others.

I, like many others, would regard this as unfair and we are all potential victims. And while it is true that competition does not always benefit the most vulnerable in our society, it is also the case that anti-competitive practices frequently work against them.

Therefore, our core work – to stamp out anti-competitive practices, to prevent mergers which harm competition, to make sure that companies do not abuse their market power – is critical in preventing vulnerable consumers and the population at large from actions and from outcomes that many would consider to be unfair.

Second is through the selection of the cases that we pursue and markets that we investigate, taking actions whereby vulnerable people are protected. Take, for example, our markets regime. Many of us experience forms of vulnerability in the market for legal services: indeed some would argue that this very important market is one where most are essentially excluded, unless either very well-off or poor enough to qualify for the limited legal aid regime. Our [market study in legal services](#) identified a whole set of measures that aim to help make this market work better for people.

We recently announced the conclusions of our [market study into care homes](#), a market which many encounter for the first time when they are elderly and at their most vulnerable and where family support is difficult because of lack of knowledge and experience.

We have proposed a set of reforms to how this market works, but also launched an enforcement investigation against what we see as crucial breaches of consumer law that work to disadvantage vulnerable people.

In our [energy market investigation](#), we identified the fact that customers on prepayment meters suffer particularly adverse terms and lack the same ability to switch as other customers. The price cap that we have imposed with effect from April 2017 is already saving those customers money – £300 million a year in total and an average of £75 per customer. Whilst there were other reasons that these prepayment meter customers couldn't get as good a deal as direct debit customers, they are typically the poor and disadvantaged. We were open to a wider price cap that widens the coverage to other vulnerable people who are not on prepayment meters, if we could find a reliable way of identifying them. But the conclusion of our report was that a much wider price cap of the kind now being considered by government would damage competition and harm consumers in the long term.

And in our enforcement work, we have chosen cases that also bear on the question of fairness and vulnerability. The most high-profile of these are the cases that the CMA is pursuing against pharma companies involving major price hikes on drugs that are out of patent that may have cost the cash-strapped NHS several hundreds of millions of pounds. This may therefore affect the service that can be delivered to those needing NHS treatment – including many vulnerable people. If we decide that the law has indeed been broken, we will have to see if those decisions stand up to legal appeal. If they do, the NHS will be entitled to seek appropriate compensation from the companies in question.

And alongside our competition powers, we exercise our consumer protection powers in support of our statutory competition duty. In consumer law there is a specific concept of unfairness, in cases where contract terms are unfairly tilted in favour of the business at the expense of the consumer. Using this and other consumer laws, we are investigating suspected illegal practices by [secondary ticketing websites](#), against [care hire intermediaries](#), and against [care home providers](#) and [online hotel booking sites](#) following our recently concluded market studies. And we're also investigating issues in other markets for goods and services that matter to millions of people, some of them vulnerable, including [online dating](#) and [online gambling](#). In another market, that for [online games for children](#), we clamped down on purportedly 'free' games that directly and inappropriately encouraged children to make in-game purchases.

And we know we have more to do. So in our [draft Annual Plan](#), published for consultation last week, we have proposed taking a particular interest in vulnerable consumers, including reaching out to those groups who regularly deal with people in vulnerable circumstances to understand more about how we can help them through our work. We also recognise that there is an important debate taking place about issues like fairness and vulnerability, and we intend to encourage and play a full part in that discussion.

So to conclude, our primary purpose, given to us by Parliament, is to promote competition to the benefit of consumers. In this, we can do a great deal to help ordinary people get a good outcome in their dealings with businesses.

History suggests that we can be most effective in ensuring competition works to the benefit of consumers and the economy if government gives us the space

to carry out our work and is mindful of the risks of stepping in – even if it is with the best of intentions. We are not competition zealots – we recognise that on occasions, take for example the market for payday loans, greater competition alone does not always work to benefit all consumers and direct protections are sometimes necessary. Vulnerable consumers deserve particular focus and wider considerations of fairness and inequality are legitimate, though often a matter for other parts of government to address. We don't have all the answers, but will continue to work to advance our understanding and help drive the debate.

And we do believe that on the whole vigorous competition works to the benefit of consumers, spurring businesses to be more efficient, to innovate, and to make better offerings at keener prices to entice customers from their competitors. The result is that as customers we enjoy better quality goods and services and better value for money. As taxpayers we benefit from better value for money in the delivery of goods and services to government if anti-competitive practices that raise prices are stamped out. And as citizens we benefit if the economy performs well because of the higher productivity that results from more vigorous competition.

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## **Statement to Parliament: EU Transport Council 5 December 2017**

I attended the only formal Transport Council under the Estonian Presidency (the Presidency) in Brussels on Tuesday 5 December.

First, the Council noted the Presidency's progress report, summarising discussions to date at official level, on Phase One of the Mobility Package. Work has focused on proposals designed to improve the clarity and enforcement of the EU road transport market (the 'market pillar') and proposals on the application of social legislation in road transport (the 'social pillar'). I broadly supported the progress made, emphasised the UK's commitment to a constructive safety-first approach to updating the rules, but also registered concerns over the proposed extension of scope of part of the regulations to small vans.

Following this, the Council adopted 3 sets of Council conclusions:

- on progress in Trans-European Network-Transport (TEN-T) and Connecting Europe Facility (CEF)
- the Digitalisation of Transport
- the mid-term evaluation of Galileo, EGNOS and European GNSS Agency

Next, the Presidency held a policy debate on the 'road charging pillar' of the Mobility Package. The proposals to amend the existing Directives on HGV road tolls and user charges ('Eurovignette') and the interoperability of



electronic road toll systems ('EETS') set out rules for charging vehicles using the road (but do not mandate such charging) and promote better functioning of charging across national barriers. The UK broadly welcomed provisions on improving the functioning and enforcement of electronic road tolling systems. However, the UK said we were opposed to proposals to broaden the scope of EU charging rules to include cars, and had concerns about the proposed phasing-out of time-based road charging and measures mandating hypothecation of revenues from congestion charging.

Following this, the Council noted the Presidency's progress report on official level discussions on Safeguarding Competition in Air Transport. The UK did not dispute the need for fair competition but urged caution on proposals for regulatory measures; it was important to avoid potential negative impacts on the liberalised aviation market, connectivity, consumers, and member states' bilateral aviation agreements with third countries.

Under Any Other Business, several items were discussed. Notably:

- Commissioner Bulc presented the Commission's recently published second phase of the Mobility Package, provided an update on the implementation of the extensive Aviation Strategy, alongside a Communication on Military Mobility, and noted progress on rail passenger rights negotiations
- Finland called for reconsideration of the Summertime Directive
- Germany updated on the second high-level group on automated and connected cars
- Poland drew attention to the 2018 International Maritime Days
- France promoted her proposed declaration at the upcoming 'one planet' summit calling on the IMO to adopt an ambitious strategy for the decarbonisation of international shipping
- Bulgaria presented transport plans for her incoming Presidency of the Council of the European Union

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## [News story: Minister holds inaugural Electoral Summit](#)

The Summit brought together expert members from around the United Kingdom, including representatives from SOLACE, Electoral Commission, Association of Electoral Administrators and the Scottish Assessors Association, to provide additional impetus to the democratic engagement agenda.

This forum discussed a range of electoral matters, focusing in particular on how the government and the electoral community can best work together to promote democratic engagement, tackle electoral fraud and further modernise the electoral system.



The Minister for the Constitution, Chris Skidmore said:

Our partners in the electoral community play a vital role in identifying opportunities for engaging under-registered and vulnerable groups. I am delighted to launch the first Electoral Summit as part of our commitment to engaging with these key organisations.

This is imperative to help realise our ambitious aim of making the General Election in 2022 the most inclusive to date.

This work is guided by Sir Eric Pickles' comprehensive review, which made a number of recommendations for strengthening the integrity of the electoral process.

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## **Press release: Santa backs Highways England's call to motorists to check their vehicles this Christmas**

Santa Claus checks his sleigh to make sure it doesn't break down as he prepares to deliver presents to children the world over.

And the company responsible for motorways and main A-roads is urging people driving this Christmas to make sure their vehicles are also ready for seasonal travel.

Santa can be seen carrying out the vital checks on his sleigh in a special fun animation below – and he's got a little help from his festive friends including Rudolph!

[See our animation](#)

These checks include:

- checking that Santa has plenty of grip on his sledge – motorists should check their tyre tread to make sure it is within the legal limit
- making sure Rudolph's nose is shining bright – always make sure lights on the vehicle are working correctly before setting off
- making sure he feeds his reindeer before travelling – make sure that you always keep your tank at least one quarter full to avoid running out of fuel on your journey

Highways England's customer service director, Melanie Clarke, said:

This is a timely reminder from Santa and his festive friends that you should always check your vehicle before setting off.

But there is a serious point to this, too. Safety is our top imperative and we know from experience that almost half of breakdowns are avoidable and these can easily be averted with simple checks.

Christmas is always a busy period on the road network and we'd urge all motorists to make sure they do their bit to check their vehicle is roadworthy before setting off over the festive period.

She also highlighted that 99 per cent of motorways and strategic A roads will be roadworks-free in time for Christmas, meaning hauliers and motorists alike can enjoy last-minute shopping and delivery journeys with as little disruption as possible.

Latest statistics from Highways England show almost half of all breakdowns are caused by simple mechanical problems which could be avoided with basic checks. Nearly a quarter are caused by tyre problems; meanwhile, 450 people were injured in incidents involving vehicles that weren't roadworthy over the course of a year.

And around 20 motorists break down every day because they have run out of fuel. There were 7,419 cases nationwide of vehicle breakdowns on the strategic road network due to lack of fuel.

The RAC is also backing the campaign and says that motorists should check their vehicle this Christmas, even if their journey is likely to be a short one.

RAC spokesman, Rod Dennis, said:

Just like Santa, millions of drivers can't afford a breakdown getting in the way of them reaching their destinations this Christmas.

So we're backing Highways England's call for drivers to give their vehicles a bit of 'TLC' before they set out on any long journey. Simply checking things like the condition of tyres could be the key to not wasting valuable time in the cold and wet this December, broken down at the side of the road.

Then, should the unexpected happen, motorists can be reassured by the fact that our patrols will be working tirelessly throughout the festive period to get them back on the move again as quickly as possible.

To help keep people moving this Christmas, Highways England has also produced a [handy pdf](#) showing people how to conduct basic vehicle checks before setting

off this Christmas.

Those travelling over Christmas are also being reminded to make sure that they are prepared for an emergency by:

- charging a mobile phone and taking it with them in case they run into difficulty and need to use it in emergency circumstances
- taking warm clothing in the car with them in case of breakdowns
- taking food and drink in the car in case of any extreme weather

Motorists can head online to the [Think website](#) where they can watch bespoke videos showing how to carry out basic vehicle checks. Alternatively, follow Highways England on social media channels for more information.

Those wishing to find out more about driving on smart motorways can [view our webpage](#) for further information.

Drivers planning to use the Dartford Crossing are reminded to pay Dart Charge in advance or by midnight the day after crossing.

More information can be found on our website or by calling our information line (0300 123 5000) they can keep up to date with conditions on the roads.

## **General enquiries**

Members of the public should contact the Highways England customer contact centre on 0300 123 5000.

## **Media enquiries**

Journalists should contact the Highways England press office on 0844 693 1448 and use the menu to speak to the most appropriate press officer.

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# **[News story: Landmark for English Channel electricity link project](#)**

*Updated:* Added further explanation of the milestone following feedback

The Marine Management Organisation (MMO) has issued a comprehensive decision for the IFA2 (Interconnexion France-Angleterre) project under the TEN-E Regulations, after it attained all of the required statutory consents in UK consenting regime.

The IFA2 interconnector is a 1,000mw high voltage direct current (HVDC) link, which will run from Normandy in France to Hampshire in England. The project is being carried out by National Grid IFA2 Ltd and RTE.



MMO Senior Marine Licensing Manager Matthew Kinmond said:

This is the first comprehensive decision from the MMO under the TEN-E Regulations and the first in the UK for a cross-border and multiple consenting regime interconnector project. It represents a major milestone for the IFA2 project.

Dave Luetchford Head of IFA2 from National Grid said:

Enhancing Great Britain's energy connection to France will bring a number of benefits, including increasing security of electricity supplies for both countries and providing opportunities for shared use of renewable energy.

Find out more about the [IFA2 project](#)

Find out more about [TEN-E Regulations](#)