

Soft power with a hard edge: harnessing the benefits of fast-moving markets

Thank you, Andrea. And welcome: to our panellists; and to those watching online.

We're here today to talk about the changes wrought by the digital revolution. And to discuss what these mean for the future of markets and for billions of people whose lives have been transformed over the last decade or so.

We'll be hearing from business leaders on how emerging technologies and concerns about data and privacy are shaping their industries.

And from competition authorities and experts on the regulatory and policy response to the rise of the tech giants.

In one way or another, we are all trying to respond to the same question. How to shape the future development of digital markets in a way that harnesses the benefits and minimises the harms.

It is one of the greatest challenges facing political economy today. And from it springs a set of very tough questions, for all parties, and particularly for policymakers.

Here are four: First, what, if any, additional powers do competition authorities need?

Second, are competition authorities using their existing powers as effectively as they can? Third, should digital platforms be regulated, and if so, how?

Fourth, are the market-related problems thrown up by digital capable of being regulated in a way that could facilitate and increase competition?

Or would regulation – as it so often does – enfeeble competition, acting as a barrier to entry and facilitating regulatory capture?

Those aren't the only questions. But they're certainly some of the big ones. They are all controversial.

This conference is about how digital is changing business models, changing competition policy, and changing consumer outcomes.

And with that in mind, I'm going to try to add a few thoughts on just the first two of those questions I've set out.

I will also allude briefly to what the CMA is doing on them.

Do competition authorities need extra powers to respond to the digital revolution? And how might they better use their existing ones?

I will argue that the unprecedented challenge of digital will indeed necessitate a strengthening of both competition and consumer protection powers.

And also that a lot more can already be achieved within the existing legal framework if so-called “soft power” can be developed by competition and consumer authorities.

Before entering this contested territory, I want to set out five major points of agreement. It’s crucial to keep these in mind.

First, any response to the challenge of digital needs to have in mind the scale of the welfare gains to ordinary people that have been delivered, over the past decade or two.

As both citizens and consumers, we have seen a vast increase in choice and convenience, and lower prices, partly thanks to the growth of online retail.

And particularly as citizens, we have all been empowered in certain ways. Much greater freedom of expression, and new markets, have both tested the traditional model of a paternalistic government, and a dependent people, common in early post-war democracies.

The digital revolution has also released many small firms from the confines of their local markets, and enabled them to obtain access to customers around the world. And it has greatly disrupted many markets and business models – broadcast media, taxis, food delivery and very much more besides.

Almost all of this has been for the better – we like disruptors. Amid the clamour over the menace to markets and society posed by the digital revolution, it is easy to lose sight of all that it has delivered for billions of people.

A second point of broad agreement is that the detriment caused by digitalisation is wide-ranging; it is novel; and it is serious.

The facilitation of electoral manipulation. The amplification of fake news. The erosion of the tax base. The huge increase in the risk of fraud and identity theft. Illegal content, thriving “dark markets” for drugs and weapons, cyber bullying these are not just a minor side-effects. They have the potential to tear at the social fabric of countries. To disrupt not merely the odd market here and there but the post-war liberal order.

None of these are market harms, although it is markets – often the market for digital advertising – which has created the scope for some of these problems to thrive.

Which brings me to my third point of agreement. There are also many new market-related harms. They cannot be left unaddressed. First, there’s the platforms. Global in scale. Dominant in the markets they serve. These

platforms can destroy a small business with a change to an algorithm. And they can reap huge and persistent excess rents, protected by data moats, network effects and strategic acquisitions.

As Andrea said only yesterday, there's probably been underenforcement of merger control in digital markets.

And because of the nature of these markets, this can be particularly costly for consumers. Increasingly, competition authorities are now waking up to this.

What I have summarised there are some of the market harms that directly flow from the platforms.

But they are not the only forms of digital detriment. Individuals are also made vulnerable by the digital revolution. We have been hit by much greater complexity. We have become much more vulnerable to rip-offs. We are all vulnerable to fake reviews giving consumers false confidence. And we are vulnerable to websites that allow sellers to offer event tickets that they don't own.

We're vulnerable to hotel booking sites making misleading claims as part of their pressure sales tactics.

And we are vulnerable to automatic renewals of insurance policies – complete with additional loyalty premiums – to which consumers are oblivious because they have been opted-in to paperless communication.

I can't stress how important it is for us to grasp that this affects not just those considered vulnerable on traditional criteria; but the vast majority of ordinary people.

The fourth thing I think we can agree on is that the economic harms that digital markets bring require a great deal of public explanation.

The political community, in particular, is far more concerned by the risk to their respective Exchequers from the erosion of the tax base; by online harms; by fake news; and by breaches of privacy and cyber risk, than they are by the market consequences of digital platforms.

And in that hierarchy of concerns, politicians are rightly reflecting the views of the ordinary consumers.

The people they represent. Most people don't pay much attention to the price they are paying in personal data for the services provided by platforms such as Facebook and Google. That too is part of the problem.

Competition requires well-informed consumers, with the time and energy to understand what they are paying, whether it is in pounds and pence, or personal data.

Given those areas of agreement – that digital has brought huge welfare gains; that it has had wide-ranging economic and social detriment; that many market-

related harms command relatively little political attention – let me turn now to the more contentious questions: Do competition authorities need new powers? And can the existing toolkit be better deployed?

On the first, it is clear that the pace of change in digital markets poses unprecedented challenges for the rules and laws that competition authorities have inherited from an analogue age.

Perhaps this should have been evident a long time ago. But it is now becoming much more widely appreciated. And it is triggering a great deal of argument. In the EU, Margrethe Vestager has suggested changing burden of proof in competition cases.

And she has made clear that responding to digital technology is a top priority for the new Commission.

A large number of international authorities – including Japan, Sweden, Australia and the Netherlands – have initiated studies of digital markets.

Some – including Belgium, Italy and Australia – have highlighted the limitations of existing competition law, and the need for ex ante regulation.

In Germany a new law has been proposed giving the competition authority new powers and tools to deal with digital platforms.

In the US, Elizabeth Warren and President Trump are both critical of digital platforms. They both criticise fake news; and they both want more tax revenues. But they completely disagree on how to deal with it.

This will be a major point of difference between the candidates for the Presidency over the second half of the year.

In my view, the competition authorities best placed to weather the years ahead will be those that have thought clearly about whether they have the right tools, and have said what those tools should be.

And they are also ones that can demonstrate whether they are deploying the tools they do have as effectively as possible.

On this point, a key question for the CMA – and probably for a number of other authorities – is how hard-edged enforcement tools can and should be buttressed by the greater use of soft power.

By that, I mean: engagement with private sector counterparties, and other public authorities, to discourage some activity and encourage others, to secure well-functioning markets Not just alongside enforcement; but, in some cases, as a way of preventing enforcement action from becoming necessary.

Soft power and hard power are not mutually exclusive. They can reinforce each other.

Hard-edged enforcement against a cartel has a softer side effect. It deters others, and persuades them to change their behaviour. Equally, if people know

who we are, they are more likely to report a cartel, and help us enforce against them.

And speaking up can boost the deterrent effect of enforcement, since the public opprobrium and reputational damage that comes from breaking the law is greater. Without deterrence, enforcement is hardly worthwhile. So soft power improves the effectiveness of enforcement. But, as I have set out, it does more than that. It helps competition authorities “reach beyond” enforcement

One further point about soft power. It is enhanced by international co-operation. In my view, working more closely together globally has to be part of the response to digital. We have got to work much harder on it. In fact, dealing with the unprecedented global challenge of the large digital platforms is likely to require unprecedented levels of international co-operation. Between competition authorities. And between those designing and implementing any regulatory frameworks for digital markets.

And that means governments.

The rise of protectionism and populism points in the opposite direction. So this will be a massive challenge for everybody. But the stakes are high. If we fail, we could end up with a patchwork of rules and approaches that will only further entrench the dominance of the biggest players, who are best equipped to deal with the complexity, and best placed to exploit opportunities for regulatory arbitrage. If we fail, we will be destined – as Bill Kovacic, former Chairman of the FTC, recently put it – to “pedal earnestly on bicycles in futile pursuit of industries that move with the speed of racing cars”.

Elsewhere, I have set out in detail both what powers the CMA needs to do its job, and how it can use its existing powers better. I won’t rehearse that now. I’m keen to hear from others.

I’ll end by saying Harnessing the benefits, and minimising the harms of digital will require major adjustments on our part.

Competition authorities are going to have to become very different institutions in the next quarter century than they have been in the last.

Legislation – on online harm, privacy, tax – is either coming, or it is already here. And regulation is almost certainly coming in many jurisdictions, too.

This isn’t an analytical puzzle with a perfect technocratic solution. And it’s certainly not one with an answer that will be right for all time.

The shape of these markets is changing constantly, and so too must the policy response. But if I was forced to try to sum up what the contribution of the CMA can be, it is to deploy our in-house skills to say what we think is likely to be required; to explain why, and if necessary, vigorously; and to do so as part of a continuous discourse, with like-minded bodies in other jurisdictions, and with the markets themselves. Today is just a small part of that effort.

I will hand you over now to Martin Coleman, who will Chair the first panel, looking at how digital disruption is affecting how businesses operate.