HOUSE OF LORDS

Select Committee on Communications and Digital

Corrected oral evidence: Freedom of expression online

Tuesday 2 March 2021

4.05 pm

Watch the meeting

Members present: Lord Gilbert of Panteg (The Chair); Baroness Bull; Baroness Buscombe; Viscount Colville of Culross; Baroness Featherstone; Baroness Grender; Lord Griffiths of Burry Port; Lord Lipsey; Lord McInnes of Kilwinning; Baroness Rebuck; Lord Stevenson of Balmacara; Lord Vaizey of Didcot; The Lord Bishop of Worcester.

Evidence Session No. 14 Virtual Proceeding Questions 124 - 131

Witnesses

I: Professor Damien Geradin, Founding Partner, Geradin Partners, and Professor of Competition Law and Economics, Tilburg University; Dr Liza Lovdahl Gormsen, Senior Research Fellow in Competition Law and Director, Competition Law Forum, British Institute of International and Comparative Law.

Examination of witnesses

Professor Damien Geradin and Dr Liza Lovdahl Gormsen.

Q124 **The Chair:** Welcome to our second set of witnesses today for our evidence session in our inquiry into freedom of expression online. Dr Liza Lovdahl Gormsen is with us and we will be joined shortly by Professor Damien Geradin.

Dr Gormsen, I do not know whether you had the benefit of listening to the previous session, but I know you have been following our inquiry. Thank you very much indeed for coming along and giving us evidence today. We appreciate the time that you have given us.

You are a senior research fellow in competition law and director of the Competition Law Forum. We are going to focus today on competition law. Would you like to kick off by briefly introducing yourself and giving us your perspective on freedom of expression online from the point of view of competition law and your interest?

Dr Liza Lovdahl Gormsen: Thank you for inviting me here today. As you said, I am here in my capacity as a senior research fellow at the British Institute of International and Comparative Law. In the light of transparency, it might be worth disclosing that I am also a senior adviser to the CEO at the Financial Conduct Authority. I am a competition lawyer rather than a fundamental rights lawyer, so I have been asked a number of questions in advance of the hearing today and I am best placed to answer those that relate to competition and particularly the lack of competition in the market for search and social media.

On the opening question about freedom of expression, as you are all well aware, in our part of the world, that is a fundamental human right, which is protected and applies equally whether this is online or offline. It is obviously protected by the European Convention on Human Rights, the UK Human Rights Act and common law principles. Although it is a fundamental human right, it is not an absolute right, meaning that it does not mean freedom to speak your mind without legal responsibilities. If it was an absolute right then everyone would be allowed to spread disinformation and hate speech. It is a relative right, meaning that it must be restricted in certain circumstances, expressed by the law and must be balanced with other rights.

Why do I make this distinction between freedom of expression as an absolute right versus a relative right? This is because some online platforms have abdicated all responsibility in the name of freedom of expression as an absolute right. Perhaps it is liberating to believe that, no matter our political leanings or prejudice, there is a place—here I am particularly thinking about social media—where we can say whatever we please without consequence. The social media platforms consider themselves as public squares where people should be allowed to express themselves, but those so-called public squares are ultimately private spaces run by corporations that are in the business of generating revenues and responsible to their shareholders.

Finally, print newspapers never felt obligated to print every single profane note that someone sent them in an email. It is quite the opposite. Letter sections are heavily edited. No one called that censorship or denying freedom of expression. Editing the letters section is necessary if you want to be seen as a readable and responsible newspaper.

In the market for social media, there is content moderation, but dominant platforms use content curation systems that aim to maximise engagement rather than present diverse views, and this has a very negative impact on users' exposure to diversity. With little competition in the market, dominant platforms both host and curate content activities.

I will stop here, but I will definitely come back to this point later.

The Chair: Welcome to Professor Geradin, who has now joined us. Thank you very much indeed for joining us. You have not missed a huge number of questions. We have just heard a first introduction, so, Professor Geradin, please introduce yourself and give us your brief overview of our subject from your perspective, which is freedom of expression online.

Professor Damien Geradin: Thank you very much. My apologies for being slightly late, but I had a last-minute meeting that I had to attend.

I am a professor of competition law and economics in the Netherlands but also at UCL in the UK. I am also advising a number of market players on platform-related issues. For those of you who have already heard me, you may know that I am particularly advising news publishers, so that is probably my bias in the debate.

Freedom of expression is of course very important. It is particularly important for news publishers. Freedom of expression is at the core of their business, and they are subject to a range of rules and responsibilities. They cannot publish what they want. If they were doing so, they could be sued and could be subject to penalties.

The difficulty for journalists and news publishers is that there is a growing use of online platforms to consume news and therefore they are increasingly disintermediated. This means that many users, instead of going to the landing page of the *Financial Times* or the *Times*, will read news on Facebook, for example, and just see bits and pieces of news. That means that they will read one article and not then go to the next article. That serendipity is what I like about reading newspapers; you go there because you want to see the latest market news and you end up reading a book review. That will disappear. News will be itemised.

The difference between news publishers and platforms such as Facebook is that the platforms are not subject to specific regulation when it comes to the content they display on their platforms. That is problematic when we think about some of the content that is shown on YouTube or Facebook. The Government are of course keen on introducing an online safety Bill, which is probably an interesting idea. At the same time, it carries a risk, which is that it would leave it to the platforms to decide what is legal but harmful content.

In other words, you would have someone who, at some stage, would have to decide whether this news is offensive or not. Obviously the person who would have to do that would have their own biases. They might not fully understand English culture or context. It is even likely that these decisions will not be taken by humans but by algorithms. We know that algorithms have their biases, but they also can be terribly imprecise. Therefore, there is a risk that some content that might be perfectly reasonable content may suddenly be excluded because an algorithm would consider, based on the way it has been programmed, that this content is not suitable. That would be quite a problem.

For that reason, as I am sure you know, news publishers are not in favour of having their content subject to that Bill, whether it is content they publish themselves or content that is displayed on platforms.

I will stop here, but you will already know where I am coming from.

The Chair: Thank you both very much; there is a lot in there for us to unpack. We have quite a few questions, so please keep your answers reasonably brief so that we can get them all in. We might ask you, on some of the more complex issues, to send us further evidence if you think that would be useful for the committee. Those were very useful opening presentations.

Q125 **Lord Stevenson of Balmacara:** Thank you for your opening comments. It was very interesting to hear them and I think they will spark a lot of questions from my colleagues as well.

I want to start on the narrow competition issue. Both of you have explained that we do not seem to have the right tools, perhaps, to deal with some of the issues that you have raised. Traditional competition law, particularly as it applies in the UK, has largely been focused on consumer detriment. While it is quite easy to prove that detriment in some cases, in relation to economic measures, what I think you are talking about is the impact that some of the companies that we are now looking at have in relation to citizens' rights.

There are two elements to this. It is not just the economic loss; it is also the loss in democratic accountability, the ability to exchange free information and the ability to engage and discuss. Those are deficits that do not have measurable economic values but matter very much to how we want to live our lives and democracy. In a sense, it is a complicated issue, but the question is still the same. Would increasing competition, compared to what we currently see in the marketplace, increase users' freedom of expression and other human rights?

Dr Liza Lovdahl Gormsen: You are absolutely right. In the traditional sense, this is not what we have usually seen. What is happening in Europe is that, as you are very well aware, they have proposed two sets of regulation, which is the DMA and the DSA. The DSA in particular deals with that, whereas, in the UK, this is not what we are seeing from the Digital Markets Taskforce. It is quite clear that increasing competition in markets for social media and search engines will increase users' exposure to diversity and thereby enhance users' freedom of expression.

Competition regulators are good at responding to changes in the economy by taking well-tested and well-functioning theories of harm and applying them to a new set of facts. Freedom of expression, however, is not a parameter, as such, that has been applied or relied upon in theories of harm.

That said, the digital economy is necessarily a platform economy. Platforms consist of algorithms, which are widely employed throughout our economy and society to make decisions. If algorithms are used to tweak content, including limiting or not freedom of expression, then it is more the algorithm than the freedom of expression that needs to be taken into account in defining the harm as it currently stands.

Professor Damien Geradin: I will be slightly less technical than Liza. I agree with what she said. The question that you put, very simply, is whether increased competition would improve freedom of expression, and the answer is yes and no. What it could do is increase diversity in the way that the platforms are run. At the moment, the dominant social media platform is Facebook; there is no question about it. Facebook has a certain way of doing things. Facebook is, essentially, interested in user engagement, because the more time people spend on Facebook, the more data is collected and the more advertising can be shown. So it is all about keeping people on the platform.

Unfortunately, they discovered that people are more responsive to extreme content. If you are racist, you will be more responsive to racist content. If you are a leftist, you will be more receptive and more engaged by left-leaning content, and so on and so forth. It creates echo chambers that may lead to appalling discourse.

If you had more competition, perhaps another platform would have another way of doing things. For example, another platform could be more privacy focused and care more about privacy. For example, if you look at search engines, Google does not care that much about privacy while some others do. DuckDuckGo and other search engines are more privacy conscious.

If you had more competition, and allowed these other players to be real players and have a place on the market, perhaps some of the unfortunate aspects of Facebook's or Google's business model could be challenged, and there might be demand for that new type of platform.

Q126 **The Lord Bishop of Worcester:** Thank you very much indeed for being with us this afternoon. Taking it on from the points that were made about competition, I want to look at the whole business model. Some of our witnesses have suggested, as you perhaps implied just now, that the problem is the actual business model because it wants to increase the number of people who are engaging. Last week, a witness told us that the platforms' business models depend on a "systematic mass violation of rights". Some pretty strong things have been said about the business model that the platforms rely upon, such as, "It is the modern version of the loud, obnoxious, screaming tabloid headline".

On the other side of the coin, we have heard it argued that thorough

moderation is in platforms' commercial interest because, as one of our witnesses put it, "Toxic content tends to push people off the platform and draws in the kind of people who advertisers do not like and are not interested in".

I wonder where you sit on that spectrum and whether you have some thoughts about the business model in general. Damien, would you like to start on that, since you gave us some thoughts about that in your reflections on competition?

Professor Damien Geradin: The business model can be a problem indeed, but we have to be also a little cautious. The business model of companies such as Facebook and Google is ad-based; they make money through advertising. Some people say that that is the problem: they want to keep you on the platform because they can show you ads; to keep you on the platform, they will show you stuff that you might be interested in and might contribute to, which creates echo chambers with people being more radical.

I would be careful not to throw away that business model completely because there is at least one virtue to it, which is that it allows the provision of free services, which in some cases are very valuable. As well, for example, if you think about news publishing, you could say that one should switch to a subscription business model. I agree with that, and the *Financial Times*, the *Times* and other quality publications will succeed, and are succeeding, in having subscriptions. But, for a number of people, the money is not there to buy subscriptions. Maybe some people can buy one subscription, and will then have to arbitrate between Netflix, Spotify and the *Times*.

The ad-based business model should not be thrown away. There is merit to that business model, but one should fight excessive surveillance and the excessive emphasis on keeping people on the platform at all costs. That is where the problem is in my view.

Dr Liza Lovdahl Gormsen: I have only a very short comment to add to that. Obviously, the online platforms' business models vary tremendously. Their business models are very different in scale, in network effects and the way that two-sided platforms intermediate, so one has to be careful to look at the individual business model and not at all of them together. However, those business models that rely on advertising revenue, as Damien has mentioned, such as Facebook, use a content curation system. They use that to maximise engagement. This has a very negative impact on users' exposure to diversity. Therefore, the aim for an advertisement-led business model is not to improve freedom of expression but rather to maximise engagement, because that is exactly what attracts advertisers and increases revenue.

Q127 **Viscount Colville of Culross:** Good afternoon. Damien, last time you came before the committee, you called on the CMA to launch an immediate market investigation into digital advertising. You gave the implication that it was rather risk-averse and slow at implementing anything. However, since then, the CMA has come up with its refreshed

digital markets strategy. Do you think it is working fast enough to deal with your concerns over digital monopolies?

Professor Damien Geradin: Things are evolving with the CMA. First of all, I should say that the work of the CMA is generally high-quality. I am always impressed by what it does. My concern was that perhaps there was too much emphasis on writing reports and not enough emphasis on initiating cases and acting. It has done a couple of things. I understand that it will open a number of investigations in the months to come in the digital space, which I welcome. The CMA has significant powers already and should use them, and it will learn a lot by doing these investigations, even if they do not lead to an infringement decision.

Also, if you look, for example, at what it is doing with ad tech, it has opened an investigation into Google's Privacy Sandbox. This is very clever because the Privacy Sandbox is the next iteration of the Google system, if you see what I mean. Rather than looking at the past, it is perhaps clever to look at the future, so I very much approve of that initiative.

One of the reasons the CMA is doing all of this is that it realises that it will take time to get the powers it needs to start drafting codes of conduct. The strategy of using existing powers to do things while waiting for the new powers that will hopefully be granted to it through legislation is a good strategy.

Viscount Colville of Culross: Liza, you were equally critical when you came before the committee last year. Do you think that the CMA has moved forward with its policies on digital monopolies?

Dr Liza Lovdahl Gormsen: I am still critical. Of course, it is quite clear that things have moved dramatically since we met in July. Competition enforcement is not going very well, but what we see from the Digital Markets Taskforce looks much more promising. I am still fairly upset that, following the market study, the CMA did not do a market investigation, despite 1,800 pages of evidence against Facebook and Google. Although I understand that its recommendation was regulation, which it now tends to do, that is not mutually exclusive. Competition enforcement is not mutually exclusive from regulation, and it could do the two things at the same time. Only time will tell whether the regulation being suggested will have any impact.

It is good news, considering that the Furman report suggested in March 2019 to set up the DMU, and then the Digital Markets Taskforce in December 2020 supported that. Now we will see operation of the DMU in April this year. That is pretty good going, so maybe I should stop being so negative.

Q128 **Baroness Grender:** Let us give you another opportunity to be a little critical of that timing. The DMU will be, according to the Government, set up in April, but it still will need legislation in order to have any kind of powers. Given that some of the witnesses in our last inquiry felt that we are now at an existential point given the incumbency advantage that some of the larger platforms have, such as Facebook and Google, is it

moving swiftly enough? Will it have the powers and resources that it needs?

Dr Liza Lovdahl Gormsen: Whether they are acting swiftly enough depends on how quickly things go through Parliament. As I said before, it has been fairly quick. The powers available to the DMU are, as you know, through an enforceable code of conduct for digital platforms with designated strategic market status. It is suggested that it will have powers to impose remedies to tackle sources of market power. These powers include the ability to suspend, block and reverse decisions. The DMU will be able to impose financial penalty of non-compliance with the code. The DMU will have the powers to introduce pro-competitive interventions to tackle sources of market power. These include data-related remedies, greater interoperability, and interventions to introduce consumer choice and address power of default that we see in Google.

Therefore, the DMU appears to have the power that it needs. But you can give the DMU as much power as you like; the important question is whether the DMU is going to use those powers. We have seen how little the CMA has used its enforcement powers. If—and it is a big "if"—the DMU gets it right, then it has the potential to be a world leader in developing a regulatory regime for the digital sector.

I am not quite sure I know what resources are available to the DMU, so I will refrain from commenting on that.

Professor Damien Geradin: I very much agree with Liza. It is important to distinguish a couple of things. I talk to the CMA staff regularly, and I can promise you they want to do things. The officials looking at these platforms want action; they do. It is more for the management of the CMA to decide to open investigations, but I have heard—I hope it is true—that the plan is to open half a dozen investigations between now and the end of the year. That is critical because, in doing so, they can learn a lot. They have investigative powers; they can ask for information; they can strip naked these companies. So even if these investigations end up being settled or abandoned, they will have learned so much that they will have a lot of raw materials to use when they have the powers to do codes of conduct. For me, the critical thing is not to stand still until such time they have the formal powers to do the codes of conduct.

I should also say that one can criticise the CMA, but, at the end of the day, it is dependent on legislation; that is not within its control. I understand that the UK Government would like to prioritise the online safety Bill, but I would prioritise the legislation giving powers to the CMA to tackle gatekeepers. This legislation would have much more significant consequences than the online safety Bill. Ideally, you want to pass both, but I would be very worried that all the energy and attention is on the online safety Bill, with the limited results it will have, with the DMU and the powers it needs on the back burner. That would be a disaster.

Baroness Grender: That is a fascinating view, which we have not heard so far. What about the resource?

Professor Damien Geradin: It seems that 60 people will be hired to start the DMU, which is not bad, if it is true. To give you a point of comparison, the European Commission is planning to have 80 officials to implement the DMA proposal, so 60 is a good start. One should not underestimate the capacity of obfuscation of the big platforms. They will hire five large law firms and three dozen consultants to slow down and obfuscate the process, so you need resources. If it is 60, as I have been told, that is a good start; it is not insignificant.

Q129 **Baroness Bull:** Thank you very much to both of you. I want to get your views on how the social media market in itself is functioning. We have already talked about the dominance of specific players, particularly Facebook, in the time spent online by users, which, as you have indicated, is a key measure. The CMA concluded that Facebook was a must-have. Benedict Evans suggested that losing access to it was comparable to losing access to a utility, which is quite an extreme view. I am interested in your views on what barriers to new entrants into the marketplace are. Professor Geradin, you talked about allowing more players to be real players; I liked your emphasis on "real" there. As part of that question, is there a risk that the online safety Bill, which you just talked about, will create any new barriers to new entrants? Could you provide an overview of how the market is functioning, barriers to new entrants and any specific risks around the online safety Bill?

Professor Damien Geradin: You are right. The CMA found that Facebook had market power. If you look at the data, the market share, the revenue and the average revenue per user, all these datapoints suggest that Facebook has market power. How do you deal with that problem, if you consider it is a problem? The difficulty in these markets is that indeed there are barriers to entry, and these relate to economies of scale and network effects. Concretely, to be very simple, even if you want to move away from Facebook, the difficulty is that you need to move your friends with you, so that creates a very significant problem.

Why are people on Facebook when, in fact, the popularity of Facebook has diminished considerably? I have two daughters in their early 20s. They think Facebook is tacky and they do not want to touch it in any way. Why are people on WhatsApp even if they have a profound dislike for Facebook and its policies? It is because this is where people are, so there is a collective action problem. You would need to convince everyone to move to something else.

It does not mean it is impossible and, very often, competition will come by the side-line. Suddenly, you have Twitter that offers something different or you have TikTok that offers something different, but it is still difficult; there are barriers to entry.

It is possible that the online safety Bill will create barriers to entry because it means that, suddenly, you will need to moderate what goes on on your platform. If it requires humans to do that, you will have to hire these people, and you would need a lot of them because there is a huge amount of content. If it is done mechanically through algorithms, it

might be easier, but it will still be a burden. I would not see that as the most significant barrier to entry, but it would add to the burden.

Dr Liza Lovdahl Gormsen: Social media platforms retain control over the flow of information in society. We have already discussed that. Dominant platforms use content curation systems that aim to maximise engagement. What is there to do about them? They create barriers to entry for third parties by hosting as well as curating the content. Therefore, it is essential that the DMU increases competition by being bold and decisive. It should call for the mandatory unbundling of hosting and content-curating activities. Together with the obligation, social media platforms should provide fair and non-discriminatory access to third-party players. I know I am not exactly answering your question. I am trying to give you a solution to the problem: given that there are barriers to entry, what do we do about them? One suggestion out of many could be mandatory unbundling of the hosting and content curation.

Baroness Bull: Rather brilliantly, you are answering my next question, which was about how the DMU should increase competition. You have given us one idea there. I am going to ask Damien to do the same. Before we move to Damien, are there international comparators to the DMU that we might look to? If so, what are the learnings? I will ask Liza that and then, Damien, you could come back on how the DMU should increase competition.

Dr Liza Lovdahl Gormsen: We can learn a lot from our international partners. You will have seen that not only did we have the Furman report in the UK but we had reports from the ACCC in Australia, the US and various parts of the world. The majority of them, notably not the US, are suggesting some form of digital regulation and some form of equivalent of the DMU. Nobody is as far along as the EU and the UK on that front, but we should continue to engage internationally and look at what each other is doing. There is a common belief that something needs to be done in this market. The US does not suggest regulation as such, but it does suggest a resuscitation of anti-trust enforcement.

We need to keep engaging internationally, and of course one of the questions here today was about the mandatory bargaining code for platforms. I know I am getting ahead of myself here, so I will stop, but the Australian example is a brilliant international example of what can happen and of how, suddenly, content publishers get paid.

Professor Damien Geradin: I would like to make one general point. We are in this painful situation where markets are dominated by a handful of companies that are not particularly friendly when it comes to competition and other practices. One of the reasons for this is because these companies move fast and break things, as per the motto that Facebook had. But when it comes to regulation, they would expect regulators to move slowly and not break anything. They will say, "Be careful. You will disrupt innovation". I can promise you it is not true. More competition will bring more innovation. They will say, "You have to

be careful. You need to give us due process. You need to hear us. You need to collaborate with us". I think that you need is to increase pain.

Let me give you an example of why that pays off. In a prior life, I used to be outside counsel to Microsoft in some of the anti-trust investigations it was subject to. For a long time, Microsoft fought back. At some stage, the company had some sort of revelation, saying it cannot continue that way: "We are subject to complaints and lawsuits. We should come clean"—and they did. I was there at the time that this decision was taken. Since then, Microsoft has really improved tremendously. It has not been subject to any investigations. It embraced the DMA, like it will embrace the DMU. It says, "Yes, we need to be regulated", but of course it has to make sense.

What is really needed is to be in a position where these platforms suddenly realise that it is in their best interest to be compliant. So far, they have been able to have cases dismissed and decisions not implemented and they have appealed. It is obfuscation. They need to come to a point where there is no choice but to become law-abiding companies. We are not there yet. My hope is that the combination of the DMA, the reforms in the UK and litigation in the US will force them to come to that point.

Q130 **Baroness Buscombe:** I begin by saying that I am really excited about what you said a few minutes ago, Damien, about how we may have got our priorities wrong here with so much focus on the online harms Bill. More and more, I have been feeling that we are focusing on dealing with detailed issues, which of course matter very much, while this massive, monopolistic train has left the station. These small group of search engines are not just dominant; they are predatory. One of the issues, surely, is that we are all terrified of upsetting apple carts because, at the moment, it is free to the consumer, but business to business, it is very expensive.

Some of us were on a call a little earlier today and I learned a new expression: "Copy, acquire, kill". Both of you will know how, if anybody gets in the way of these guys, on their train that has left the station, they will copy what they do, acquire them and snuff them out. This is happening, as you know, a huge amount, given the number of companies that have been acquired in the last year just by three or four different search engines and platforms.

My question is about what the market is like for competition for these platforms. I have personal knowledge of one in particular that cares a lot about privacy, but its chances of competing with Google, Facebook et al are so minimal. How will they survive financially? I want to hear more of what you were saying a moment ago. Should we not be concentrating on dealing with the structures? Have we got the right competition laws? Should we be revisiting it? Does anti-trust law work? In a sense, we are using the same laws and principles that we were applying 100 years ago. Maybe that is right and maybe it is not. Data is king, but how are we managing its value? Meanwhile, all the focus is on a Bill that cannot necessarily fight this huge power.

Professor Damien Geradin: I am in vehement agreement with what you said. To be honest, the online safety Bill will not produce much effect, I am afraid. I believe that the priority should be to look at structure and to improve competition in these markets.

The reason why, so far, Google remains so dominant in search is that it has a good product. Let us face it: it is a good product and it functions well. But I can tell you that other products function well too. For 99% of searches, DuckDuckGo will deliver the result you want. It is only for the tail-end, if you have very specific and rare queries, that Google will do the job better.

We have a problem when it comes to search. You know that the Commission has adopted a decision in the shopping case, but Google has never implemented the remedies. There is no implementation of the remedies. The decision has been appealed and we will see what will come out of that. This is why I believe you need to be a little creative with the so-called remedies. Typically, when you have a competition decision, you have a cease-and-desist saying, "You should not do it anymore", but that is not enough. You should have remedies that restore competition because competition has been damaged. The remedies should be more ambitious.

In that respect, I was very much hoping that Google and Facebook would pack up from Australia. It would have been a fantastic natural experiment. What would have happened in their absence? You know what would have happened: people would have shifted away from Google Search to DuckDuckGo or Bing. And guess what? They would have liked it, kept it and used it. Some drastic remedies may sometimes need to be explored to really invite users to use something else and to give a chance to alternative search engines or social networks to have a go at the market.

The Chair: Liza has frozen, so let us move on. If she gets back to us, she can add anything in a wind-up.

Lord McInnes of Kilwinning: Thank you very much, Damien and Liza. It has been very interesting. First of all, Damien, would you suggest that those 60 brave souls in the DMU, who are going to be tasked with breaking up, to some degree, this monopoly of search engines, should implement national bans on some search engines until equilibrium in the market could be created? Could they be as radical as that in the measures they need to take?

Professor Damien Geradin: No, that would be perhaps a bit too radical. There is a range of tools before you get to that point. A very interesting comment was made about these companies acquiring companies challenging them. Banning acquisitions is probably a bad idea because, for a lot of inventors, it is the exit route. They know that they will perhaps invest millions and millions to then be acquired, and it is a way out. But there have been too many acquisitions by these firms—there have been several hundred acquisitions. It is insane. If you look at Google, many of its most successful products were acquired: YouTube, Android and Waze were all acquired. If you look at Facebook, the original

Facebook—Facebook Blue, as they call it—is no longer the prime product; Instagram is. Instagram was acquired. WhatsApp was acquired. You should stop these acquisitions because some of these companies, such as Instagram, could have been a very serious challenge to Facebook if they had been allowed to be.

As I said, between very limited remedies such as cease-and-desist and a ban, there is a range of options that can be explored. The DMU should not be shy in exploring these options.

Search is a big challenge but, at the same time, I really invite you to look at the complaint in the US lawsuit from the state of Texas. You will be amazed to read what is in there, including, for example, the fact that Google and Facebook colluded.

Also, Google paid Apple $12 billion. Some friends tell me it is less than that, but even assuming it paid half of it, $6 billion, to be the default on Safari, that is unacceptable. How do you want others to compete if, basically, Google is able to bribe its way in to be the default on Apple devices?

There is a range of things that can be done without necessarily being extreme. There is also a risk that, if you are extreme, you will not survive judicial review, because the UK courts can be quite tough when they review these decisions.

Q131 **Lord McInnes of Kilwinning:** That is very helpful; thank you. Something this committee has felt very strongly about in the past and in our previous report on journalism was the imbalance between platforms and publishers. Clearly, we have a very topical example of where the introduction of a mandatory bargaining code was implemented, raised a great deal of controversy and is now moving forward and being considered in other countries as well. What progress do you think could be made on a mandatory bargaining code in the UK? Secondly, what do you think the impact of that would be on freedom of expression?

Dr Liza Lovdahl Gormsen: I am sorry; my internet connection failed me, which was a great shame because I really wanted to provide a remedy for the question that was asked before, so maybe I can come back to that.

Lord McInnes of Kilwinning: Please do.

Dr Liza Lovdahl Gormsen: We talked about market power and search engines. One possible remedy could be that you provide a search engine preference menu, meaning that when you buy a new phone, you are faced with a choice of all the various search engines in the market, including Ask, Bing, DuckDuckGo and eco-friendly ones. This would empower consumers to make the choice. I am not talking about the option Google has created in Europe, where it has created such an option but only the highest bidders are getting in on that menu. But if it is carefully implemented and carefully crafted, that could really empower consumers to have a choice. That would be a fairly forceful remedy in the market for search engines.

Lord McInnes of Kilwinning: That is a really helpful and practical thing to consider. Could I just ask you for a brief answer on the mandatory bargaining code? If you need to write to us further then we would be delighted to hear from you.

Dr Liza Lovdahl Gormsen: You will have seen the example in Australia, which is a great example. How can anybody challenge the fact that content publishers should be paid? Of course they should be paid. There is such a big imbalance of power between the big platforms and the content providers. It is important we have a mandatory bargain code because the platforms can totally dictate the terms and conditions. They can dictate what they get paid and what they do not get paid, so this is crucial. It is a very important step forward.

Professor Damien Geradin: Briefly, first of all, this code came about because of the obfuscation of platforms. The Australian Government realised that the platforms were just not responsive and would never pay anything unless they were forced to. They came up with this fairly clever system, which is that either you negotiate and find an agreement or there will be mandatory arbitration, which is final-offer arbitration. This means that the arbitrator can pick only one of the offers that is made: the one of the publisher or the one of the platform. That suddenly unlocked negotiation. Guess what? When it was realised that this code was becoming a real thing and law, suddenly agreements were concluded with the two largest news publishers in Australia.

On the plus side, you have agreements with the two largest publishers in Australia, which is certainly a good thing; I very much appreciate that. The only negative, it seems, is that there is a risk that other publishers might not get any money, because it seems that, at the last moment, Facebook managed to convince the Government to create a way out for it. Therefore, it would not be a fully satisfactory outcome if smaller publishers, including regional and local publishers, could not get any money.

I am very much in favour of the code. It is important to really think about the mechanism. Arbitration as a last resort is definitely important. But I would just want to make sure that you do not end up with a scenario where only a handful of publishers get some money. All publishers are threatened, but the small ones are particularly threatened.

The Chair: I am afraid we have run out of time. Professor Geradin and Dr Lovdahl Gormsen, thank you very much indeed. You have once again been generous with your time for the committee. Your advice and input are always expert and really appreciated by the committee. There are one or two areas on which we may be in touch with you afterwards, to follow up. Do continue to follow the inquiry, and if you see anything that you think might be of further interest, add it to our list. Thank you again very much indeed for your evidence today.

Professor Damien Geradin: Thank you so much. I am always happy to help and thank you for your attention.

Dr Liza Lovdahl Gormsen: Thank you very much.