



HOUSE OF LORDS

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Internal Market Sub-Committee

Inquiry on

ONLINE PLATFORMS AND THE EU DIGITAL SINGLE MARKET

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Witness: Vicky Ford MEP

USE OF THE TRANSCRIPT

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Members present

Lord Whitty (Chairman)
 Lord Aberdare
 Baroness Donaghy
 Lord Green of Hurstpierpoint

Examination of Witness

Vicky Ford MEP

Q90 The Chairman: Good morning, Ms Ford.

Vicky Ford MEP: Can I go quickly through the questions, which I got this morning?

The Chairman: If you would prefer to do it that way, fine.

Vicky Ford MEP: Your first question is: “What provided the impetus to dedicate a DSM initiative specifically to online platforms? To what extent was it driven by demand from consumers, business and the Member States?” That is an interesting question. The DSM initiative is coming through a huge cross-section of different issues, some of which overlap. On the issue of platforms, first, there is a strong voice in the Parliament that we must not treat all platforms the same. Some are business to business or business to consumer, but there are also machine-to-machine platforms, so what are we talking about when we try to define platforms? Even BEUC, the European Consumer Organisation, has said in a public meeting, “If you can’t define what a platform is, why are you trying to regulate it?” A certain voice in the Parliament says that we must not have a one-size-fits-all approach to all platforms. It is also really important that not all platforms are shared economy and not all shared economy happens on platforms, although it tends to.

The initiative to investigate and look into this was partly driven by competition issues. There are issues to do with copyright, as well as to do with industry. We have concerns in the car sector: as you move to the internet of things, how do you ensure that your online platform that controls cars does not become a monopoly by the back door, so that the people working further down the line in maintenance can access what is happening on that platform? They have concerns like that. You have other people talking about the power of search engines, which I will come to on another of your questions, who are saying, “How do I make sure this is truly fair and transparent to the consumer and the person who’s using it?”, who believe that they are getting independent information when they are not. That is a competition issue. For example, a lot of lobbying happens by the UK music industry and the wider music industry, trying to make sure that they are being fairly remunerated for the content when it is put on platforms. It is coming from all sorts of different areas. It has been driven a bit by consumers, businesses and Member States. Remember that the whole digital single market strategy was firmly highlighted by Juncker in his five-point plan when he stood for European President. He would say, “I have a democratic mandate to drive this”.

On the direction of travel that the DSM initiative has taken, before the Commission launched its first strategy there was an exchange of views between the 28 Member States in Riga. I

was invited to give evidence as chairman of IMCO. Actually, 30 states were there but only 28 were allowed to speak. The other two were Norway and Switzerland. The UK gave very strong evidence as to what it wanted to see in the DSM initiative, partly because we have passed legislation on issues such as digital consumer rights and consumer goods, which I know you have all looked at in detail. The UK has a lot of interest in this. We obviously have a very vibrant tech sector; we want a digital single market that works across Europe for the UK tech sector.

Your second question is: “Does the ECR political grouping have a clear position at this stage about what the Commission should do regarding platforms?” We are one of the groups that says that platforms are different and you cannot have a one-size-fits-all approach, that platforms are integrated in wider bits of the economy, and also, importantly, where you have existing legislation, let us make sure that that works well before we start putting in place more legislation. Interestingly, when Commissioner Bieńkowska came to speak about the single market strategy, which is looking at the shared economy, she was absolutely firm that she wants to see where we can make existing legislation, principles, consumer law and competition law work well without needing to rewrite a whole new set of rules.

On the other political groupings, the left of the Parliament is currently very focused on social rights on the sharing economy. The moderate left through to the liberals, and through to the right, might be saying, “How do we work under the existing legislation?” When you look at the amendments, there are even divisions within the socialist group. An interesting statistic that you may want to check is one from the Dutch Minister for the Economy, who came to visit us two weeks ago. He pointed out that 60% of jobs in the Netherlands today are in companies that did not exist five years ago. While, yes, we need to ensure that we get a level playing field and fairness in the sharing economy, we need to be careful that we do not throttle off that growth.

Commissioner Bieńkowska—sorry, I am rather going backwards and forwards on your questions—highlighted two key areas. One was on making sure that sharing economy companies pay their taxes, the other to ensure that consumer protection and consumer law are fair in the shared economy. Those were her top priorities.

Question 3 is: “Has the IMCO committee formulated a view regarding what the outcome of the online platforms initiative should be?” No. There will be different political views.

The Chairman: Is there a timescale on the committee forming a view?

Vicky Ford MEP: Yes. We have our second exchange of views on the initial report on the whole digital single market strategy this afternoon. It is a joint report being co-authored between my committee and the industry committee. I chaired that meeting. There were 1,000 amendments. I have read through them. As I said, on looking where the politics are, legislation on the sharing economy will be one of the political fights that may get quite a split vote. To help your understanding, we had a vote this morning on trade and services—what Europe’s approach should be to trade and services. This is the internal market committee, which is responsible for goods and services trading across Europe. The left were asking for much more protectionism and the right for much more of a free market. The report got to the final vote. It was completely split 50:50. The whole report has fallen.

The Chairman: I see.

Vicky Ford MEP: In Parliament at the moment, if the liberals, the EPP and the ECR join together, that is not a majority. If you have the left forming with the greens, the communists and the Eurosceptics, who would vote to stop everything for the sake of it, that may be a majority. We had many votes where we went exactly down the middle. Hence, that may be one of the reasons why the Commission is saying, “We’ve got real issues that need addressing. How can we do that, working in existing law?” It might be targeted amendments to existing law, rather than starting huge new proposals that could get very overcomplicated. So no, we have not formulated a view. The final vote of these two committees will happen on 13 December—which is not a Friday, thank goodness.

Your fourth question is on the Parliament’s resolution on Google. It is very important that you read this resolution. It was not on Google and it did not say “split up Google”, despite what the press says. It says: “Notes that the online search market is of particular importance in ensuring competitive conditions” and calls on the Commission to enforce EU competition laws “based on input from all ... stakeholders and taking into account the entire structure ... to ensure remedies ... truly benefit consumers, internet users and online businesses”. Furthermore, it calls on the Commission to “consider proposals aimed at unbundling search engines from other commercial services as one potential long-term means of achieving” this. It basically said, “Look at competition rules first”. Some of the issues that competitors have raised with me about Google is possibly a conversation I should not have on the record. It basically said to the Commission, “You need to make sure that search engines and others are not abusing their market-dominant powers in order to block other people’s entry into the market”. If you cannot do that, one potential solution might be unbundling. It is an example of media hype into a piece of language.

The Chairman: Yes, except Google are particularly sensitive about it.

Vicky Ford MEP: Of course. They are in the middle of an investigation. The Parliament wanted to throw a rocket across their bows to say, “If you can’t act in a competitive way then the Commission should consider forcing an unbundling of certain parts of your package”.

Q91 The Chairman: In your judgment, then, if the Commission did that they could do so within existing competition law.

Vicky Ford MEP: The Commission has legal powers over competition to act in their legal role. My group voted against that particular part of the resolution, because we thought that we should not as a Parliament be telling the Commission how to act. This was part of a six-page resolution covering all sorts of other aspects of the DSM. The wording was not quite as controversial as some MEPs’ press releases put out.

Your question 6 is: “Are the US and others right to be concerned that DG Competition’s cases against some online platforms are a form of protectionism?” It is important that we keep reminding people on the other side of the Atlantic why we are doing the DSM strategy. We are doing it to try to increase European competitiveness. It is the single initiative that has been identified as the way, by working together, we can unlock growth across Europe. It comes from the cost of non-Europe study: the benefits of potential collaboration between European companies to unlock growth. I took my committee to Silicon Valley at the beginning of the summer. We met many of the big players there, many of which are saying, “Please can we have a single market approach to complex issues such as how we deal with

data and consumer protection?” They are extremely concerned about the current situation on data and the Safe Harbour ruling and the uncertainty that that is creating at the moment, but they are also still saying, “We really do want a data set of rules that means we can work on one platform across all 28 countries”. Part of this is to be able to work in a joined-up way. That is why I was in Washington last week talking to businesses again. We are not doing this just as an attack on big US giants. We are doing this to try to ensure that we can work together on these tricky issues of the new economy across the whole of Europe. That does not mean that we will cut and paste American rules on to the European market or vice versa. Interestingly, having been with Congressmen last week, I know that they are working hard at finding Safe Harbour II. Even on the data issues they are trying to make sure that they can get a ruling that works. I will send you a copy of a letter that was signed by 50 MEPs on this issue that went off to *Politico* Washington to make the point that we are not just doing it as protectionism against the GAFA—Google, Amazon, Facebook, Apple. That is not an acronym used in this Parliament. A couple of large Member States might think a bit like that.

The Chairman: A couple of rather important large Member States.

Vicky Ford MEP: Yes—maybe one more than others.

The Chairman: For different reasons.

Vicky Ford MEP: Yes. To take another example of this whole debate, a Google tax—that you start taxing every time you look at an online newspaper, and a tax to link to somebody else’s online content—was voted down very heavily by the Parliament recently. There is a rumour that the Commission is being lobbied to put it in its copyright proposal, but the Parliament has been quite opposed to that. I hope that the Parliament will come with a supportive approach towards the new economy, not with heavy-handed legislation.

Your question was whether the US and others are right to be concerned about DG Competition cases being a form of protectionism. I do not think that they are there as a form of protectionism. We always need to be concerned and engaged in what is happening in DG Comp.

Q92 Lord Green of Hurstpierpoint: To pick up on that last point, you said earlier that your committee lost a report because of a 50:50 vote and you clearly outlined the political spectrum. It is interesting that something like that, which might have been expected to gain a fair amount of traction from the same people who want more social protections, was voted down very heavily. Can you comment on what that says about the mood in the Parliament vis-à-vis the question of liberating this?

Vicky Ford MEP: Within the greens you also have a part that may vote for stronger social legislation in certain areas but will also be quite liberal when it comes to wanting to have transparent access. It is that complexity of dealing with eight different political groups. It will be really difficult to find some compromises. If you look at other debates happening on copyright, how do you make sure that musicians—

The Chairman: We have decided, because of the complexity of copyright, that we will not cover the copyright dimension.

Vicky Ford MEP: Okay. But be careful about where this goes. On the one hand you have an argument of how you make sure people are paid for their content. What does that mean for intermediary liability, if people put pirated content on my website, or fake or fraudulent

content? I hope that this issue of strengthening the ability to make sure that creators are paid fairly—be that for cultural, creative or real goods—does not end up destabilising the e-commerce directive on intermediary liability. Again, there is support from the Parliament there. That e-commerce directive was very forward-thinking at the time in its different categories of intermediary liability. Many players are saying, “Please don’t distort that”.

At the same point, that also goes into when it is not just counterfeit goods or IP issues, but security issues such as child protection online and who is carrying what on their platforms. We have had the same discussions in the UK with ISPs about taking down illegal content. That is important, but we must stay away from making the platforms totally liable. If you change that balance in terms of intermediary liability, it could potentially have significant knock-ons in the wider collaborative economy.

Your question 8 is: “What is your view about the Commission’s consultation on this topic?” It is very good that they are doing a very wide consultation. I understand that even question 1 is really difficult to answer: what is a platform? I will start from the other end. I would like to see *Which?* engaged. We have had very strong comments from BEUC, which speaks with a very loud voice over here. Some of its comments might miss some of the nuances, especially when it comes to the geo-blocking decision. There is already legislation on unfair price discrimination in Article 20 of the services directive. We need to focus on what is a fair price differentiation. In the traditional world we do not force companies to have to operate in every country and sell at the same price in every country. Where do you get the parallels from the traditional world?

Is this helpful? I am sorry that it is a bit of a brain dump.

The Chairman: That is very helpful. I am aware you are now pressed for time.

Vicky Ford MEP: I have five more minutes

The Chairman: Do my colleagues have any questions?

Vicky Ford MEP: If you ask in particular the ECR’s views, we want to work within existing legislation where we can, take parallels from traditional markets and move them into the digital economy. We have a plethora of existing consumer law. We have very firm competition policies. Let us make sure that those principles can work in the digital world. That means that there will be some areas where we need to fill in some holes. It is incredibly important that that is future-proof and done with targeted amendments so we do not just end up creating new monopolies. That does not also mean giving access to everything to everyone for free, which one extreme may want as well. We need to ensure we still remunerate creators. That includes IP as well.

Q93 Lord Aberdare: I was going to ask about the data dimension and whether there are any specific issues relating to data, the value of data and the fact that the big platforms are gathering an enormous amount of data that they are able to use to their benefit. Is that an issue your committee is looking at?

Vicky Ford MEP: We have just had an extremely interesting presentation this morning on OTT players—Over-The-Top players: Netflix, et cetera. This was a Commission study that we sent to consultants at the beginning of this year. We shall send you a copy of that. They pointed out reasons why European players may not be as competitive as US ones. One of the issues they raised was data. The debate in this House on data is not just privacy versus

commercialisation of data. There is a big debate about data protection and data safety, but there is also debate about data sharing. The debate has moved on from this just being something that businesses need. It is also more and more realised that access to big data is fundamental for understanding personalised medicines, the environment, et cetera. This has been really important for the UK. My region is the home of the human genome campus and the ENA. Analysis of big data across the world is key. As I understand it from cancer professionals now, you cannot run a clinical trial on some of our rare cancers in just one country. We do not have the ability. Being able to share your data is really important. The people who focus on the current issues to do with Safe Harbour tend to be the more commercial users and the IT companies, not those health companies. Also, there was also a really interesting discussion with some of the financial sector on mapping data on credit card movements to have fraud protection. You need to be able to share your data. The presentation this morning said that unless we find a Europe-wide solution to cloud computing, the cost to the European economy will be €200 billion a year, just on that, if you force people to share on different, broken-up, fragmented clouds. There is a big economic benefit, as well as other benefits, to ensure we get the right rules in place.

My colleague Timothy Kirkhope leads for my group on data protection issues and Claude Moraes chairs the committee on data protection. From when we first voted on that in the last Parliament, when we voted on the current Parliament's text, this turned into a much broader discussion on the benefits of big data, where we need to share it, how, and what will be the wider impact, not just a civil liberties discussion.

Lord Aberdare: I am interested in what you said about the cloud. We have not looked at the cloud as a platform all that much, as yet. You seem to be implying that there needs to be some certainty that different clouds are compatible and that there needs to be consistency between the different cloud platforms.

Vicky Ford MEP: You need to be really careful. The cloud is different from a platform, based on the network information security dossier, which is incredibly difficult, where we are asking to produce resilience plans and report on cybersecurity incidents. If you are the cloud operator, you may know that there may have been some sort of incident, but you do not know whose data it was because it is not your data. You do not know what your client was storing in that bit of the cloud. It is different from how you would have a discussion with a primary connector. The cloud is the infrastructure behind the platform—that is the point.

One other point that is frequently made to me that you might be interested in is: if we produce legislation in this area that constantly asks for a business to go back to the consumer for more information and agreements, it could put European businesses at a competitive disadvantage compared with many of the existing platforms, which have the consumer interface. There may be more European businesses that are back-to-back, B to B communicating on those platforms and do not have the direct consumer content. Be careful if we are saying that we need to get more consents and rights, because that is not necessarily something that a B-to-B company can achieve.

Lord Aberdare: It also devalues the consent. If you spend your entire time consenting you are just ticking a box.

Vicky Ford MEP: That issue is very significant as well.

The Chairman: Is there anything else you need to tell us, on or off the record?

The Committee continued in private session and then resumed in public.

Vicky Ford MEP: Competition rules are the glue the hold the single market together.

Q94 Lord Green of Hurstpierpoint: On that precise point, one of the things we have heard a number of times in the last 24 hours is about the importance of interim measures in enforcing competition law in a context where the dynamics are very rapid. Does that ring a bell? The French and the Germans now use it, and the Commission has the power.

Vicky Ford MEP: One of the things we need to be really careful about, if possible, is not to have a fragmented approach. On the competition rules we move on to the example of the shared economy. That is why Bieńkowska is now saying that we need to give much clearer guidance on what to do with the shared economy. If people try to interpret Member States' competition rules in a very fragmented way, that will break apart the whole of the single market. Therefore, you will lost those potential benefits of scale. That does not necessarily mean that absolutely everything is one size fits all. We understand that, but where we can try to use existing principles on competition rules it would be helpful. There is a concern that some of these interim measures are just trying to go backwards to protectionism, rather than saying, "The digital economy is changing and growing. How do we make sure that it's fair?" People tend to see everything through their own national eyes. Even on the Uber argument, Uber was incredibly unregulated in certain countries, whereas in the UK you still needed to have a licence as if you were a normal minicab and a normal minicab driver. It was not completely unlicensed. Trying to look at where it has worked well across Europe is important. This is why, if we bring digital platforms into the scope of the NIS¹ Directive that I just mentioned, we will do so on an absolutely maximum harmonisation approach, so you cannot have a company operating across 28 countries being forced to report in 28 different regimes, whereas when we look at the network security of, say, a nuclear power station or a gas pipeline, we will not force a maximum harmonisation. A member state can ask for as much as they need for their national security. It is negotiating a way through these issues, but it is a good question. This is why Bieńkowska and Ansip said that we need to try to have some guidelines about having a shared economy. I hope that helps put it into more of a context.

The Chairman: Thank you very much. You have given us food for thought.

¹ Network and Information Security