HOUSE OF LORDS

Select Committee on Communications and Digital

Corrected oral evidence: The future of journalism

Wednesday 8 July 2020

3 pm

Members present: Lord Gilbert of Panteg (The Chair); Lord Allen of Kensington; Baroness Bull; Baroness Buscombe; Viscount Colville of Culross; Baroness Grender; Lord McInnes of Kilwinning; Baroness Meyer; Baroness Quin; Lord Storey.

Evidence Session No. 18 Virtual Proceeding Questions 149 – 158

Witnesses

I: Will Hayter, Senior Director, Policy and International, Competition and Markets Authority; Daniel Gordon, Senior Director, Markets, Competition and Markets Authority; Simeon Thornton, Project Director, Competition and Markets Authority.

USE OF THE TRANSCRIPT

This is a corrected transcript of evidence taken.

Examination of witnesses

Will Hayter, Daniel Gordon and Simeon Thornton.

Q149 **The Chair:** Will, Daniel and Simeon, welcome to this session. It is being recorded but not broadcast, and a transcript will be produced and published on our website.

Thank you very much indeed for joining us. In this session, we want to talk to you about a couple of main subject areas. We obviously want to talk to you about the digital advertising market and the work you have been doing on that, which has been a recurring theme for the Committee, and about other aspects arising from our current inquiry into the future of journalism.

Can I ask you to introduce yourselves very briefly and tell us your roles at the CMA? In your opening responses, can you tell us a little about the Digital Regulation Cooperation Forum, which you recently announced that with Ofcom and the ICO?

Will Hayter: Thank you very much for having us. My role is senior director for policy and international at the CMA. I am responsible for the advice we provide to the Government on the design of pro-competitive measures in digital platform markets through the Digital Markets Taskforce.

We are all involved in the co-operation forum, with the other two authorities, but I have been quite involved in its set-up. You will have seen the announcements on that. It is very clear that we, Ofcom and the ICO all have an awful lot to do in these digital markets. There is a big opportunity for the three of us to share expertise, capability and insights and to make sure we are taking a joined-up approach wherever possible. That is the purpose of the forum. It will meet periodically. There are brief terms of reference, which I think you will have seen. I am very happy to answer any more questions on it. Daniel and Simeon may want to say something about the specific work we are doing with the ICO, following up from the market study.

Daniel Gordon: I am the senior director of markets at the CMA. The market study was carried out in my area and led by Simeon.

Simeon Thornton: I am a director at the CMA. I wanted to say a few words about the broad scope of the study, because that could be useful context for the discussion that is to come. It is a very wide-ranging study that looked at digital advertising markets, but also at the markets in which Google and Facebook, which obviously have a very strong position in digital advertising, attract user attention and collect user data. Those are the two big prerequisites for serving targeted advertising. We have looked at search, social media and the extent to which consumers have adequate control over their data, as well as digital advertising.

I know the Committee's particular interest today is in journalism and news media. We have worked very closely with both national and regional news media organisations and bodies such as the NMA. Those

newspapers operate within what we call the open display market, which is where publishers compete in real time to sell their inventory to advertisers. It is worth about £1.8 billion, which is a large number in and of itself, but actually a fairly small fraction of the overall digital advertising spend, which is about £14 billion. They raised a number of concerns with us about the operation of that open display market.

We can go into those concerns later, but to give you a flavour of them they tended to revolve around the market power of Google as an intermediary in those markets and the lack of transparency, particularly over fees. We calculate that about 35% of the money advertisers put into that market is taken by intermediaries. There are also various restrictions imposed on newspapers' ability to monetise content through different formats and to access valuable data. There is a whole range of concerns.

Our conclusion at the end of the study is that we need regulatory reform. We think that the regulatory reform of the sort we advocate will bring material benefits to newspapers, particularly through our proposal of an enforceable code of conduct, which doubtless we will touch on later in the discussion. That has received quite strong support from the newspapers, both in the responses to the interim report we published and in the news media reaction to our report, including some articles today.

That is really what I wanted to say. It was a very broad study. Within it, we have made some proposals for improving the functioning of digital advertising, which will bring material benefits to news media organisations.

Q150 **The Chair:** Before we unpick some of that, Will, can I ask a few questions about the Digital Regulation Cooperation Forum? As you know, this Committee, in a number of previous inquiries, has studied the issue of digital regulation. We called for what we termed a digital authority, which was a more formal way of bringing together all the regulators in this space. We identified a number of aspects of regulation that needed to be addressed. We asserted that it was about not just how you regulate platforms but how you regulate effectively, in the incredibly fast-moving digital age, right across the piece. Everything is digital and the regulation needs to be digital.

We called for greater co-ordination of regulators but also of Parliament and the Government, with UK expertise looking forward at developments in the tech area and getting ahead of them, rather than whack-a-mole responding to them. We were also worried about the accountability of regulators. As regulators are given greater and greater powers, and regulate on the basis of principle rather than statute-based rules, there is an accountability gap. We called for the regulators to be more accountable to Parliament through a joint committee to which the digital regulator would report.

Do you think that what you are proposing address the concerns that we raised and the issues we felt needed to be addressed through greater co-

ordination?

Will Hayter: I do not think it is the only way of addressing those concerns, which we would agree with, but it is an important part of that. To take those points in order, I very much agree with the forward-looking piece. Indeed, that is a core part of the reasoning for the recommendations in the market study. It underlines the importance of the Digital Markets Taskforce and the importance of the Government taking a pro-competitive approach in legislation, rather than through an enforcement mechanism. That is necessary, as you say, for getting ahead of things, not allowing for a whack-a-mole approach.

We each individually, as authorities, have a lot to do on that front. In the CMA, we have made a lot of progress in building up our data and technology insights unit, with a mixture of data engineers, data scientists and behavioural scientists. A particular part of that team is focused on horizon scanning and trying to spot the next developments coming down the track.

We are very happy to be held accountable through parliamentary committees. We are very pleased to be here today for that reason and for any other committees to call us to account for the work we are doing. I am sure we would be very happy to do that jointly with the ICO, Ofcom and other regulators. As I think you will know, the DRCF is not the only forum for collaboration between regulators. There is also the UK Regulators Network and the UK Competition Network, which we convene.

On the government side, the co-ordination is more for departments than for us. As I said, we are very happy to be as accountable as possible. We are very keen to be forward looking and see the co-ordination forum as a part of that, but not the only component.

The Chair: Picking up on accountability, you are clearly going to work together and I think one thing you are going to do is develop regulatory policy. It seems to me that, if that is going to happen, you could make regulation more effective. You could effectively expand the scope of regulation through joint action.

I wonder how the accountability works for that. Would you envisage the new body itself being accountable, or the individual elements being accountable? Will the new body have a chair, or will you have a rotating chair among the component regulators? Will you have any external appointees to this new co-ordinating body to give an external perspective?

Finally, in the same area of thinking, you each have slightly different regulatory cultures. You are an economic regulator. By virtue of what you do, you balance the interests of competition, investment and the attractiveness of Britain to investment. You balance all those economic factors. Ofcom is a regulator of content and an economic regulator. It has an interest in the economic health of the sector it regulates and has content regulatory responsibilities, which it balances. Many people think it does a good job of balancing those two aspects. The ICO does not really have an economic balance. It has been criticised a little for not

taking sufficient account of economic issues as a regulator. Which of those regulatory cultures will dominate the thinking of this joined-up regulatory approach?

Will Hayter: That is a good set of questions. I will do my best to pick them all up, but please pull me up if I do not. First, to clarify, the forum is not a statutory body. It is not a decision-making body and it cannot direct its members. It is comprised of three equal members, being the CMA, Ofcom and the ICO.

As to whether it could expand the scope of regulation, each of the three of us has our own statutory objectives and a different statute that governs what we do. The forum does not change how we go about meeting those objectives; nor does it suggest any expansion of our activities. What the market study has proposed and the task force is working on would, indeed, be a new set of regulatory functions. The decision whether to make that happen in practice is one for government, not for us, so I do not think there is an expansion of scope there.

On your question about chairpersonship, it is a gathering of equals. In effect, the three CEOs or equivalents meet and run things fairly informally between them. As to the different cultures, that is an important part of the benefit of such a gathering. I would recognise some of the description you gave of the different cultures. A good amount of cross-fertilisation can be done through the forum and, indeed, already happens through other means. For example, both Daniel and I used to work at Ofcom previously.

On the ICO and how it approaches its work, clearly that is more of a question for the ICO. Daniel and Simeon may have observations, as part of the discussion on the market study, about interactions between competition and privacy considerations, the work we have done in the study and the proposals we have made as part of the recommendations there for further work with the ICO.

A very important and concrete part of the co-operation is that the Digital Markets Taskforce comprises a majority of CMA people, but with secondees from both the ICO and Ofcom. That has already been tremendously helpful in making sure we are as joined up as we can be.

The Chair: The CEOs sitting together in a room, presumably hosting each other in their respective boardrooms from time to time, does not sound dramatically different from what one hopes was already happening. It was quite a big announcement. There do not seem to be any new resources or any leadership. Is this just good and obvious co-ordination where it should be happening, rather than anything more fundamental?

Will Hayter: This kind of co-ordination should always happen and has been happening. Partly, it is a statement of intent; partly, it is making this a more regular occurrence. As part of the set-up of this, there are at least some dedicated resources in terms of people from the respective teams. Given the respective statutory roles of the three authorities, I do not think it would be right for one of the three to somehow direct the

other two. That could compromise one of the authorities' objectives. This seems to us a proportionate way to go about things, given our respective strategy remits.

Simeon Thornton: As Will says, this is very much within the context of our current statutory roles. To draw out the experience we have had on the market study specifically, we have had very constructive engagement with ICO. A really important theme that has come out has been the interaction between data protection regulation and competition. It is probably fair to say that we have not interacted as much as we might have done in the past. That is changing. As Will says, this forum is a statement of good faith intent.

Increasingly, platforms are playing a quasi-regulatory role, deciding on the appropriate interpretation of data protection regulation, not just for themselves but for third parties. There are some very illustrative examples of that, for example Google's announcement earlier this year that it was going to phase out third-party cookies on Chrome. That sounds like quite a technocratic thing, but it has the potential to dramatically reduce publishers', including newspapers', ability to target digital advertising.

It seems to us that that is not the only case where a decision taken in the name of privacy might have a very big impact on competition. Because of that, it is increasingly important that we work with the ICO in considering responses to such issues. Yes, it is very much within our current statutory remit, but it is necessary for us to engage on these topics in the future.

Q151 **Baroness Quin:** If the digital markets unit is given the green light, what length of time do you estimate it would take for it to be set up and for the code of conduct to come into place? If I can roll a supplementary question into that, if there is a long delay in setting it up, have you made any assessment of whether there would be a financial impact upon publishers?

Daniel Gordon: To build on the comment about co-ordination, we have co-ordination in day-to-day business, but at the moment, with the regulatory landscape changing, it is particularly important that the three bodies work together when new powers are being developed. That is just to tee up what we are saying.

It is probably worth being clear about what we are recommending, why we are recommending it and the background to that. The time taken to implement it is important relative to the alternatives that are available for policy implementation. The core finding is that digital markets are really important in their own right. That was following a recommendation your Committee made to get under the skin of these previously opaque markets. I think we have done a good job of that, in quite a detailed way.

It is also about the underpinning of Google and Facebook in particular, the main digital-driven platforms. To put it very bluntly, for a number of years there has been a view that, while these platforms had a major

market share, they were still subject to competition because somebody else could come and replace them at any point. We saw that in the earlier days of the internet, with Yahoo! being replaced by Google, for example. That has been the mantra for quite a long time.

One really important finding to underline here is that, on the basis of the analysis we have done and the position of the digital advertising market, which underpins those platforms, we do not believe that is a realistic, credible way to conceive of the market. The roles of Google and Facebook are now best seen as entrenched. Their competitive positions are effectively unassailable. That prospect of competitive entry, of looking to your heels for another alternative coming round the corner, is no longer there.

It is not one single factor that accounts for that. It is a range of factors. There are network effects; there are scale effects. There is the really important role of data. There is the ability to leverage from one market to another. These all combine and reinforce each other to get to the position we are in. When you are in such a position, the normal approach to competition law and competition enforcement needs to shift. You need to accept the premise that companies are predisposed to have and exploit that market power in different ways across the different markets they work in.

That is the background to why we are recommending a shift in the regulatory regime, so that it sets clear principles and rules up front. A comment was made earlier about whack-a-mole. If you are using standard ex-post competition law, you will look at these practices as they appear in the market and deal with them one by one, sometimes not that quickly. They will appear consistently in different markets, taking different forms, and you will always be behind the curve. This is critical background to our recommendation for a new pro-competitive regulatory regime.

The regime needs to be agile and ongoing. There is no measure that we could take now that we could guarantee will deal with all the problems now and for the foreseeable future. These will change. We know that from what we have seen in these markets in the years that we have experienced them. Technology varies. The ways of expressing market position will vary as well. You need a regime that is agile, monitors the market on an ongoing basis, takes steps to address it and sets the rules up front. Otherwise, you are permanently in a position of dealing with yesterday's problem.

That is the central reason why we have not chosen to go for a market investigation reference at this point. A market investigation references is a one-off exercise. Necessarily, by construct, it is based on building a picture of a market at one time, on the evidence we have available during that investigation. Similarly, the remedies we put in place must be based on the identification of the problem we have at that time. While that may address some things, it is limited as a means for addressing the problems at source, on an ongoing and perpetual basis, as they appear across a range of markets.

I apologise for setting out the backdrop. That is important when we are looking at the timescales, because we are not really comparing apples with apples, the same sorts of policy measures going through different routes. They are very different considerations.

On the timeframe specifically, the task force will report at the end of this year. That has been requested by the Government and we take that as an indication that they are keen to move and progress with legislation quickly. The DMU could be legislated on early next year. It is a matter for legislators, of course. It is not in our gift at all. In terms of implementing the regime, the various steps of designating strategic market status, the code of conduct and the pro-competitive measures would need to be in place. Those could run in sequence, so we would be looking at 2022 realistically. I guess it could happen quicker if there is a strong appetite from the Government to press for that, but that is probably the realistic expectation.

Specifically on the impact on publishers, you will see in our report we have quite an extensive discussion on the impact on consumers. That is the lens through we come at things. Our statutory duty is towards consumers. We have quantified what we can there. Some bigger issues such as impact on innovation are harder to quantify, but those are the forms of impact: on innovation, data and prices to consumers, if higher advertising prices feed through into prices in the shops. We have not quantified the impact on any particular sector, but the work in the report could be used by somebody who wants to advocate that.

Going to the core point, I think we would all be on the same page. There is clear detriment here. The sooner measures are put in place to address it, the better.

Q152 **Baroness Meyer:** You more or less answered my question as well. We were all talking about the timing and how long it would take to set up the digital market unit and the code of practice. How long do you think it would take to implement the pro-competitive interventions that were addressed in the report? Maybe Simeon has something to add to what he said previously.

Simeon Thornton: There is an important distinction here between what we call the code, which really manages the day-to-day customers' concerns in their interaction with platforms, where the interventions are very quick, and what we call pro-competitive interventions, which are really about tackling the sources of market power. As you highlighted, we set out quite a wide range of those potential interventions—for example, requiring Google to provide access to click and query data to rival search engines to overcome economies of scale in data, increasing interoperability between Facebook and different platforms, and even the separation of some of Google's activities in advertising intermediation.

These are big measures and we think they have a real possibility of transforming the market. Consistent with that, the time taken to assess them and form a final view will be somewhat longer than the interventions under the code. In the report, we have indicated that we

think decisions on those interventions could be taken within a statutory timescale of around 12 months to allow appropriate time for consultation and discussion with parties.

It is not as if you would implement them all at once. There is a big choice for the DMU as to how to flex the more nimble and flexible interventions under the code, dealing with concerns in the context of market power, with these bigger interventions to tackle the sources of market power. In some cases, it may conclude that it wants to implement one of these big interventions straightaway. We have identified some areas in search where there might well be a compelling case for that. In other areas, it might conclude, "Let's see if we can manage this situation through the code effectively before pressing the button on a really big transformational impact on the market".

There is a lot of discretion for the DMU as to when it deploys these tools, but we think in combination they would be very powerful.

Q153 **Baroness Buscombe:** The report states: "It is not clear from the evidence available to us at this time whether publishers do or do not receive adequate compensation for the use of their content" from platforms. We would like to know whether the CMA was either unable or unwilling to gather sufficient evidence. Was there a conscious decision not to look at this area?

We have already touched on the breadth of the investigation and the remit of the report, but could you expand on that a bit, please? It is pretty much common knowledge that there is a huge problem with content and publishers paying for their content. It is very much the thing of the day. A further expansion on that would be really helpful.

Simeon Thornton: It is important to note from the outset that this has been a study into digital advertising. The focus of newspaper submissions to us in the context of the study was on how to address concerns in digital advertising. This is what we prioritised in the report. To give a flavour of that, the big concerns that came out were about fees, hidden fees and the need for greater transparency over fees. We did a lot of work assessing the extent of those fees and the fees charged by Google. As I mentioned, we calculated that about 35% of the revenues go on fees.

Google's role in advertising intermediation is another big area in which we did a lot of work, particularly on its ability and incentive to leverage market power and to do what we call self-preferencing, which basically means advantaging itself in its decision-making. We did a lot of work on concerns about restricted access to data. There is some empirical work there as well. A trial was done, actually by Google but we had access to the underlying data. It demonstrated that, when you withdraw access to these third-party cookies, which are valuable for targeting, there can be a huge hit on publishers' revenues of up to 70%.

We have received concerns from newspapers in lots of areas. We have done analysis to understand the extent of those concerns and articulated particular interventions, through the code, to address them. This topic,

which was about paying for content, was not directly focused on digital advertising. I guess that is another concern that publishers have. It certainly was not as big an issue as the others that they presented to us.

We have said in the code that a DMU could consider this sort of intervention. In particular, the debate is often about the form in which these things called snippets, which are basically fragments of news articles, appear on Google search and the Facebook news feed. We think there is a case for publishers having greater control over the form in which that content is provided. That would give them a lot more bargaining power and help them.

The focus of our analysis has been driven both by our own assessment and by the steers given to us by stakeholders. As you will know, in Germany and Spain there was an attempt to mandate payment for this content. At least to date, the effects on news publishers have not been particularly positive. Certainly in the case of Spain, the Google news service was shut down and is still shut down. It is a difficult area, but the focus of our work has been digital advertising. That was the steer from newspapers.

The Chair: You mentioned Spain. Obviously, the UK is not the only country tackling these issues. Other jurisdictions are working on it too, which the next questions cover.

Q154 **Viscount Colville of Culross:** Simeon, could I keep going with what you were saying? I quite understand that this was focused on digital advertising. However, we have heard representations, particularly from the newspaper publishers, about the inability to get revenue. We heard a few weeks ago from David Dinsmore, who is from the Murdoch companies, which have huge sales in Australia. They suggested that we follow the Australian Competition and Consumer Commission, which has set up a regulatory mechanism compelling publishers and platforms to enter negotiations for payment for copyright. The publishers see this as a matter of urgency.

You have talked about the DMU, when it is set up, being able to look at including increasing revenue through copyright in its code. Should the Australian example be looked at?

Simeon Thornton: Yes. There are a number of parallels between what I understand has been implemented in Australia and our concept of an enforcement code, and, indeed, the recommendations of the Cairncross review into the sustainability of journalism. As I understand it, in Australia, there was originally a proposal for voluntary codes, which did not gain traction. To be honest, I am not surprised by that conclusion. We have been fairly clear that you need a statutory basis for a code to have real traction and to be enforceable, so we are on the same lines there.

The ACCC is currently, as I understand it, drafting this code. We did quite a lot of work in the study to set out what the content of our enforcement code would look like and how it could be assessed by the DMU. We will do further work in the context of the Digital Markets

Taskforce that Will referred to. In both cases, there would need to be statute to implement the code, so we are probably on a similar track.

I think the original Cairncross proposal was to try voluntary codes and then, if they did not work, move to a statutory basis. The right thing to do is probably to move straight to a statutory basis. Otherwise, there will be delay.

Viscount Colville of Culross: You mentioned Google closing down its news service when Spain tried to mandate this. Is there anything that the code of conduct could do to ensure platforms maintain their news aggregation services if this plan goes ahead?

Simeon Thornton: I hope that we will be in a better position than Spain for a few reasons. First, we have articulated this code as applying to Google and Facebook corporate groups across the range of activities, rather than a specific intervention in one area that they can withdraw.

Secondly, the UK market compared to the Spanish market is about four to five times bigger, so we have a bit more clout in that negotiation. To be honest, we have tried to engage with and persuade the platforms on these proposals. While I certainly would not claim they are sold on all of them, the basic premise of a code that gives greater clarity to parties is something that Google, in principle, would accept.

Finally, this is perhaps the most important point. For precisely the reasons you articulate, there is a strong interest in gaining international consensus on these interventions, so that one platform cannot play a country off against another. We have spent a lot of time in the context of the study talking to our international counterpart competition authorities. In the aftermath of the publication, we are engaging in a lot of bilateral and multilateral discussion precisely to generate that sort of consensus. Around the world, various countries are moving in the direction we are advocating. Germany, Japan and Australia all have, at different stages, movements towards a stronger ex-ante regulatory regime for platforms. It is an idea whose time has come. I hope we will move in that direction.

Q155 **Lord McInnes of Kilwinning:** This question may be directed at Daniel, because he was covering this part earlier. I want to explore a bit further the decision-making behind not implementing a market investigation into open display advertising. The report itself felt that the test had been met to carry out a market investigation. The respondents, especially publishers, were in favour of a market investigation. The Select Committee on Democracy and Digital Technologies had also supported it, albeit without a specific remit. Daniel referred to the decision being predicated on trying to stop this whack-a-mole process, but I wonder to what degree it was a resource issue within CMA.

Secondly, the reason given, as well as avoiding a whack-a-mole process and letting DMU be set up, was that it was the wrong time to do it because of Covid. When the industry is suffering so much, would it not be more sensible to go ahead with the market investigation, which would have reported more quickly than the DMU is going to be able to respond?

Daniel Gordon: It is fair to say that there is a range of factors in that decision. One is the legal threshold, which is deliberately set very low. It is very much seen as a low necessary condition. That is not the primary determinant. Resources were one of the factors, but the biggest factor was the one I identified before: is this the right way to address the problems as we have diagnosed them? For the reasons I set out, we do not think it is. You need an ex-ante, pro-competitive regulatory framework that addresses problems on an ongoing basis and can set clear principles, a code of conduct and the necessary alternatives measures alongside it. That is the core reason.

Could it run alongside? It was an on-balance decision. The reason why we have to put a statement out on this at the end of the market study is that the statute requires us to conclude. It is not off the table permanently. It remains on the table, as we have said, and we can revisit it. We might get back to that if that suits. If we run a market investigation alongside development of policy and legislation, there is always a risk that that is played off against and delays the policy development process further. Parties will, perhaps not totally unreasonably, take the opportunity to ask, "Why are we doing this now? Why are we not waiting until the CMA concludes its market investigation?" They are not like for like.

The most important thing—to the point you have made about the number of representations we have had on this—is the misconception about what a market investigation can achieve. That is not surprising, because it is a particularly UK construct. Other jurisdictions do not have the equivalent. It is based on a snapshot and the picture we can draw at that time. While it has really good powers to put remedies in place directly, those must be based on the picture as it is seen at that time. It is not an ongoing process.

The other point you mentioned was Covid. It does not help on the resourcing side, but I would not overstate that. The main argument was on the merits, as I set out.

Q156 **Baroness Grender:** I want to come back on the timing. All three of you know that wheels grind very slowly in certain circumstances, even when a piece of legislation is super-urgent. For example, post the Grenfell tragedy, there is some super-urgent legislation that we will now get at the end of the year. Therefore, when you say that the current system is detrimental and we are likely to get this by 2022, I suspect that things will slip, given Covid and Brexit, and you are looking at a longer timetable.

My main question is this. If you have, as you state, left the door open for a market investigation, would you bring that into play if it slipped to 2024 or something? In that case, how long would it take you to decide that the slippage is too long and you need a market investigation? In the absence of anything else dealing with this detrimental situation, that is the best thing you can have.

Daniel Gordon: Yes, it is clearly on the table. We have been very explicit about that. At the moment, there is reason to be optimistic. The Government themselves called for us to do the task force in March and have asked for us to report on that by the end of the year. We read optimism into that appetite for taking this forward quickly. If that is not the case, we will review. We will think about a market investigation. We will think about the range of measures that we might take in the digital and digital advertising sectors. It could be enforcement and it could be further support to government. We will take a view in the light of what we know at that point.

One of the board's top strategic priorities for the CMA is on digital markets and making sure they function. If that provides some reassurance of how it will factor into our prioritisation decisions, I would be pleased.

In terms of timeframe, to curb enthusiasm a bit, I am afraid we do not have tools that can put measures in place very rapidly either, for the sorts of reasons Lord Colville mentioned earlier about accountability. We try to do market investigations as quickly as we can. They are, however, subject to the pressures put on businesses, and we require the businesses to provide us with information. We are also, rightly, held to account for having transparent and open processes through that, so there are limits to what we can achieve.

There is a statutory timeframe, which is 18 months. There is the possibility of extending that for six months for special reasons. Then there is a further six-month implementation window for any further remedies. That is two years to two and a half years. That is not factoring in the risk of an appeal. If we are appealed, we would be appealed to the Competition Appeal Tribunal and that could take one or even two years before further measures are taken. It is not in any way a clearer, much faster route. It is not contingent on legislation, but it is not super-quick.

Baroness Grender: But there is a decision that you can take at some point. Do you have in your minds when you would take the decision to pursue a market investigation? What would your thinking be?

Daniel Gordon: We have not identified any particular prompt or factor on which the decision to do that would be contingent. That might not be appropriate. I can assure you that it remains on the table. The most realistic first point would be after the task force has reported. We will review what the best option is at that point in the light of this trade-off. Is this something we could do and something in our gift? It will not tick all the boxes that legislative regime change would and risks delaying it.

Q157 **Lord Allen of Kensington:** I have to declare an interest. I am chairman of Global Media & Entertainment. We are in the advertising business. I have a couple of points I would like to raise. In hindsight, was the CMA slow to launch this market study? Daniel, you might want to respond to this. If it was slow, was it due to, as you have touched on, resources or failure to appreciate the severity of the issue?

One of the previous recommendations was about creating an

organisation that was forward looking. Your phrase earlier was an agile and ongoing review. Do you think your organisation is fit for purpose in looking forward and horizon scanning?

Daniel Gordon: It is a perfectly fair challenge about the timing in which we launched this case. There were quite a few calls for us to do it. We recognise it is a very big issue in the competition landscape. We benefited from the prior work of the Furman review and other work carried out in the US, particularly the Stigler Center report. They provided opportunities. There would have been a risk of doing it too early. Getting a clear view of the landscape when it was settling would also have been an issue.

We probably had to delay, because the pressures of a no-deal exit from the EU were quite severe for the organisation, particularly in our mergers work. We would have had to take on immediately any merger investigations ongoing in Brussels. The organisation was feeling under significant resource pressures at the time. This was not a trivial exercise. Simeon led a very strong, very sizeable team to deliver the report that they have in the short time they have done it.

Will, do you want to comment on looking forward and horizon scanning?

Will Hayter: It is a very important point. We need to express a certain amount of humility and not imagine that we, or any other authority in this field, are perfect by any means. While we are not perfect, we are definitely trying. I mentioned earlier our data and technology insights team. There are people as part of that team whose job specifically is to look forward and try to work out what is going on. We build that very strongly into the task force process and the task force team to make the recommendations and advice as future-proof as possible.

That is part of the reason for suggesting a pro-competitive regulatory approach, as opposed to a one-off market investigation intervention of the type that Daniel was talking about, so that significant changes in the market do not have to be followed by a two-year market investigation every time.

Q158 **The Chair:** We have talked about horizon scanning a fair bit. Will, at the beginning you acknowledged it was very important that this was stepped up, that all regulators were looking forward, and that one of the benefits of you working more closely with Ofcom and ICO was that you would pool your resources and expertise to create horizon-scanning functionality. Could you do a bit of forecasting for us? Tell us, on the basis of the horizon scanning that you have done, along with the other bodies, what public policy issues you think will arise over the next three or four years from digital technology, not just in terms of competition or advertising. Between you, what public policy concerns have you identified that a committee like ours might be interested in at some time in the future?

Will Hayter: That is a big question for four minutes. If it is helpful, we can come back with something further. As part of the task force in particular, it is a work in progress and we will seek plenty of input

through the wider engagement programme on the task force, to try to work out what might come down the track. Our remit, as a competition and consumer authority, is to think about those issues. It is not to think about the wider public policy issues. We are, however, very conscious of the need to join up competition and consumer thinking with other issues: privacy, online harms and so on.

I could try a couple of possible themes, but they will be very broad brush. Where the development of algorithms and AI takes us is important. We are conscious of the risks that poses for competition enforcement and the risks of collusion through algorithm. We have done work on that in the past and it may well be valuable to do more in the future. There is an interesting question about what might happen if some of the big Chinese tech giants tried to enter the UK in a very serious way. Those are two areas. Simeon or Daniel, do you have any other big thematic suggestions?

Daniel Gordon: I am keeping an eye on the clock as well. It might be sensible to take up the offer of coming back. I agree with those. There are also issues on the consumer landscape. We have a broader question about whether, on its own terms, for bricks and mortar transactions, it needs reform. You will be able to see that from our reform programme. The ability to sway choice through rankings and presentation online is very significant.

One major finding of our piece of work is the power of defaults, in terms of being the preferred search vehicle. Most importantly, in data, we tick the defaults box to access a data site. Those defaults are set by the platform themselves and very few of us read them. We have some quite startling facts about that.

That leads on to the issue of privacy. This is an area that we flagged quite clearly in the report and we want to work further on it with the ICO. We have a very traditional view of privacy that has not kept up with the digital age: "I know what information is held about me and I trust the organisation to keep it". It misses the fact that, first, I do not necessarily know what is held about me any more. Secondly, I have a lot more ability to control my data than I once did. If we are talking about a meaningful modern view of privacy, that is equally about my own ability to control it, not just trusting those who hold it that they will not share it in an unauthorised way. Those are a couple of suggestions.

Simeon Thornton: I endorse those. The competition privacy interface is a huge topic. Although we have written quite a lot about it in the report, we have only scratched the surface. I think that will be one of the defining questions of the next few years.

The Chair: I asked the question, because it is quite important. Lord Allen touched upon the reasons for it. In this increasingly complex and fast-moving world, horizon scanning is very important. I am glad you see it as an important part of your function. It is not just your role to undertake horizon scanning to inform your own work. One would hope that a really joined-up horizon scanning function would inform policymakers, government and business about emerging risks, not least

so that we can take non-regulatory actions in time to deal with issues. If we may, we will take you up on your kind offer to collectively scratch your heads, look a bit further and write to us in due course with any thoughts you have.

Can I thank our witnesses very much for joining us today and for the evidence they have given us? If there is anything further we need, we will come back to you. We may well depend on some of the evidence you have given us in our forthcoming report, which we anticipate will be published in the autumn. Will, Daniel and Simeon, thank you very much indeed.