Beesley Lecture: A new route forward for regulating digital markets

Introduction

The Beesley lectures are an excellent place to take on the important challenges posed by regulating digital markets, as a forum that has hosted dialogue on cutting edge competition and regulatory issues for 30 years.

In the course of my talk, I first want to remind us all of the ways in which digital markets are not functioning as well as they should.

Second, I want to talk about the UK's response to these problems, particularly the Digital Markets Unit (DMU) and the government's proposals for the pro-competition regime for digital markets that the DMU will oversee.

I then want to set out for you the DMU's priorities in preparing to take on the role of overseeing the pro-competition regime for digital markets.

Finally, I want to talk about some of the recent cases the Competition and Markets Authority (CMA) has taken forward on digital markets.

The case for change

First then, I want to remind you of why we are having this discussion this evening. Digital markets have come to play a central role in our personal, economic and social lives. For many people, this trend has substantially quickened over the last couple of years, as the pandemic has led us to live, work and consume online more than ever before. In 2020 the average time spent online by UK adults reached 4 hours a day – a new record, with activities like video calls with friends and family and remote working becoming part of daily life for many of us. Digital markets have also opened up exciting new opportunities for businesses to innovate and reach new customers, and for buyers and sellers to find each other in ways that were not previously possible. The UK has been at the forefront of this wave of innovation: we are Europe's leading producer of tech 'unicorns', now one of only three countries to have more than 100. You can see then that digital markets are critical for economic growth and fostering innovation; for delivering great new opportunities to consumers and businesses; and for our personal and social wellbeing as individuals.

And this is why it causes grave concern when digital markets are not working as they should. We can see increasing evidence that the competitive forces in some digital markets are weakening. A small number of very large firms now hold extremely powerful positions in key digital markets. They have built and entrenched their market power on the back of powerful network effects which make them extremely difficult for new entrants to challenge. As we found in our online platforms and digital advertising market study, these firms can

gather and make use of vast quantities of data, enabling them to target products and services in a way that their competitors cannot. And they are able to leverage their market power into adjacent markets, including through acquisitions of innovative start-ups, making use of envelopment strategies to maintain their market power in their core activities and building mutually reinforcing ecosystems of products and services that consumers never need to leave. They have also extended their influence vertically: see for example Google's key role at every stage of the online advertising intermediation process – and bear in mind that you will quite likely be viewing those ads while using the Google search engine, accessed through the Google Chrome browser.

Having fortified their positions, these large companies are now able to dictate, direct or influence many digital markets from their strategic position. They are able to shape consumer choices by deciding how and when consumers are presented with information. They set the terms and conditions to which businesses must agree to access the market. They decide how to use consumers and businesses data, often with little regard to data privacy considerations, fair and reasonable contract terms or wider harms. And they can exercise this great influence largely unconstrained by competitive forces.

This does not just matter for individual consumers and businesses: it matters for innovation and growth, and therefore for the economy as a whole. This is visible in the acquisition strategy of these powerful firms, notably their tendency to acquire innovative new entrants and potential challengers. This dynamic is thwarting innovation and reducing incentives to develop businesses with real-world profitability. While being acquired by a giant may be a lucrative exit strategy for a small number of entrepreneurs, for many others, the arrival of a digital giant in their neighbourhood spells doom. This is why we see investment 'kill zones' in markets entered by the most powerful digital firms. These acquisitions, over time, represent a potentially enormous loss of consumer welfare.

The growth in power and influence of these firms has implications for people not just as consumers, but as citizens in democratic societies. The digital world has become a central forum for democratic exchange. But there are real concerns about the impact of some digital platforms on the democratic process: for example, due to their vulnerability to exploitation by bad-faith actors and their role as a vector for fake news and disinformation. The digital sphere also carries a range of other potential harms for society, including the sharing of illegal and abusive material and its potential impact on mental health, particularly of young people as we were sadly reminded yet again 2 weeks ago with the murder of the British Member of Parliament, Sir David Amess.

In recent years, competition authorities, including the CMA, have attempted to respond to competition concerns in digital markets through our traditional enforcement tools. I will say a bit more about some of these cases later on. However, it has become increasingly clear that our existing tools are not sufficient for the task. They are often too slow to grapple with fast-moving digital markets: firms who lose interoperability with a major digital

platform will suffer serious detriment very quickly. They cannot wait for the length of time that it takes a competition authority to bring enforcement action under antitrust rules let alone years of litigation. Existing tools are also ineffective in securing real change: remedies have often been insufficient to restore competition and even the largest fines do not appear to deter these very well-resourced firms. Last week, we fined Facebook £50m for a breach of an initial enforcement order and a major UK newspaper was quick to point out that it was the equivalent of 15 hours of profits for Facebook! We need greater scope to take faster, pro-active, and targeted action to promote competition in these markets.

In relation to mergers: of 400 acquisitions made by the largest digital firms between 2008 and 2018, none were blocked by competition authorities. There is now a general consensus that some of these acquisitions should not have gone ahead and that they allowed these firms to amass and reinforce their market power. However, given the forward-looking nature of merger assessments, and its inherent uncertainty, it can be difficult under the existing regime for the CMA or other leading competition authorities to show that a merger will be more likely than not to result in a substantial lessening of competition, even where the loss of competition could result in significant harm in the long-run.

Concerns about digital markets are not unique to the UK. Competition authorities and policymakers around the globe recognise the urgency of addressing the lack of competition in digital markets. Indeed, this consonance is unprecedented in decades of experience with global antitrust enforcement and policy: this reflects the gravity of concern and of the challenges we have in addressing them with our existing tools. We have arrived at an inflection point in competition policy, and while the future trajectory of many jurisdictions move in the same direction, proposed responses differ.

The UK’s approach

Last December, the CMA, with the Office of Communications (Ofcom) and the Information Commissioner’s Office (ICO) – working together as the Digital Markets Taskforce – provided advice to Government on addressing competition concerns in digital markets. This advice proposed an ex-ante pro-competition regime for the most powerful digital firms, as well as strengthening existing competition and consumer laws. I will focus today on the ex-ante regime, but the other proposals are also very important to deliver the outcomes that UK consumers expect.

Our proposed regime would apply only to the most powerful digital firms – those having ‘strategic market status’ (SMS) in a particular activity. For firms that meet this test there are 3 key pillars of the regime:

- An enforceable code of conduct that sets out the ‘rules of the game’ and aims to prevent firms from taking advantage of their powerful position, for example by exploiting the consumers and businesses who rely on them or excluding competitors. The principles of the code are based on fair

trading, open choices, and trust and transparency.

- Pro-competitive interventions – like data access remedies, consumer choice, interoperability – these remedies address the roots of the firm's powerful position.

- And finally, an SMS merger regime designed to ensure closer scrutiny of transactions involving SMS firms. The regime would require advanced reporting of all transactions, mandatory notification for a subset of deals that meet clearly defined thresholds and have a UK nexus, and the adoption of a more cautious standard of proof.

This regime will be overseen by a new Digital Markets Unit – established in shadow form within the CMA this April to begin preparations for the regime, with the expectation that the DMU, and the regime, will be placed on a statutory footing as and when parliamentary time allows.

The UK proposal, together with those in the EU, US, Australia, Germany, Japan and other jurisdictions all reflect a consensus that additional mechanisms, powers, or safeguards are necessary to address competition concerns in digital markets. While we are all trying to tackle similar concerns, we do so in different ways, and this reflects our respective backgrounds and context – including the nature of the legislative process, and our respective histories of regulation, including for example how we have historically balanced administrability and specificity, certainty versus flexibility, speed versus in-depth deliberation.

The competition law inheritance of the UK regime is reflected in its proposed aim: to promote competition in digital markets for the benefit of consumers. In contrast, the European Commission's proposed Digital Markets Act (DMA) seeks to promote "fairness and contestability" and is explicitly separate from competition law.

In considering which firms should be caught by the new regime, the UK proposal is based on an economic assessment as to whether a firm has substantial, entrenched market power and whether the effects of its market power are likely to be particularly widespread and/or significant. This contrasts with the European Commission's proposed DMA and many of the bills under consideration in the US legislative bodies. The US criteria for "covered platforms" and the EU's "gatekeepers" facilitate self-assessment and provide for a designation based on quantitative criteria, such as turnover and active users.

Moving on to the UK's proposed code of conduct: in our advice to government as part of the Digital Markets Taskforce, we recommended an adaptive approach with the objectives set out in legislation, and discretion for the DMU to design the code principles and associated guidance necessary to deliver on these objectives. Enabling the DMU to implement this layer of detail will help ensure the requirements of the code are evidence-based and targeted at the particular activity, conduct, and harms they are intended to address,

avoiding unnecessary or disproportionate regulation. This discretion also allows the code to be forward-looking and where necessary, adjusted over time such that it remains fit-for-purpose.

The code seeks to prevent SMS firms from taking advantage of their powerful positions, for example by exploiting users or excluding competitors, but it does not on its own address the underlying reasons the firm attained a powerful position in the first place. This is what the pro-competition interventions (PCIs) aim to do. We consider that such action is vital to drive long-term dynamic changes in digital markets. PCIs could involve a range of mechanisms, including: increasing consumers' control over their data, or mandating third party access to data; requiring interoperability between services; interventions to facilitate active consumer choices; and separation remedies, for example to require that particular business units are operated separately. In considering PCIs, our focus is again on ensuring such remedies are grounded in an evidence-based assessment. They would only be adopted following an investigation which has to determine, on the facts of each individual case, that the pro-competitive intervention is "an effective and proportionate remedy to an adverse effect on competition".

Whilst the UK regime proscribes similar conduct to the proposals in Brussels and Washington, the approaches taken to applying regulation do differ. The DMA, and some of the Congressional proposals, are more prescriptive and, in the case of the DMA, self-executing. The US proposals rely on an enforcement model to prohibit a wide range of conduct, and provides for an affirmative defense. In contrast, many of the obligations in the EU's DMA will always apply to all designated gatekeepers, with a narrowly drafted exception.

The third and final aspect of the proposed UK approach is a new regime to more effectively monitor, and if necessary block, digital mergers that could pose a future threat to competition. The changes consulted on by the government include: a new reporting requirement on firms designated as SMS so they have to inform the CMA of all mergers, with a subset of the biggest deals subject to mandatory review before completion; a broader and clear jurisdiction for the CMA to review SMS mergers, through the introduction of a transaction value threshold and a UK nexus test; and a change in the probability threshold for phase 2 to give the CMA more scope to tackle potential future threats to competition. Taken together, these changes aim to swing the pendulum back towards protecting consumers and providing a digital economy in which competition and innovation can thrive.

It is important to note that these reforms do not in any sense close off an exit route for innovative start-ups. First, the largest digital firms play a relatively minor role in the UK start-up ecosystem: of more than 800 foreign acquisitions of UK companies since the start of 2020, only a handful appear to have involved Google, Facebook, Amazon, Apple or Microsoft. Second, most of these mergers are likely to be benign: – we expect the proposed changes to lead to in-depth reviews in perhaps 2 or 3 more cases per year than at present.

The merger reforms are explicitly pro-innovation and pro-investment for the digital economy as a whole: constraining the SMS firms' ability to entrench

their market power by acquiring nascent challengers and to acquire their way into multiple new markets will leave more opportunities for more new UK startups to grow and succeed. The merger changes are therefore really important in ensuring that the UK remains the tech innovation capital of Europe. If start-ups are overly focused on exiting through an acquisition by an SMS firm, their incentives will typically be to develop products that will support the existing ecosystem of the SMS firms, rather than to compete in a way that would allow them to effectively challenge the dominance of these digital giants. This could create a 'ceiling' to their incentives to innovate. An acquisition of a start-up by a large digital firm can also discourage other firms from innovating in that market, as firms developing similar products would recognise their inability to compete against the digital giant.

These regimes are all in their infancy, many still only at the proposals stage, and only time will tell whether they will be successful. We are confident in the proposed UK regime. However, it will need to be tested in contact with the real world. In particular, the final legislation will need to ensure that regulatory interventions can be implemented quickly and effectively without the ability to delay matters for years through litigation, as happens today in antitrust proceedings. We look forward to seeing other approaches implemented and the competition and regulatory policy community will need to watch all these efforts carefully to learn about what works. It is also important to bear in mind that structural remedies – break-ups – are in play if ex-ante regulation does not deliver. In particular, structural remedies become increasingly attractive to us if other jurisdictions are also interested in structural solutions.

Our preparations for the statutory DMU

So I have outlined the emerging UK regime and the tools we hope to have available to us, if the necessary legislation is passed. I now want to say a bit more about the practical preparations the CMA and the "shadow" DMU are making to be ready for overseeing the digital markets regime.

First to skills and expertise. Promoting competition in digital markets requires a set of capabilities and technical knowledge that has not been historically common in competition authorities. One of the advantages of establishing the DMU as an ex ante regulator is the opportunity to gain and apply these skills to develop well-designed rules that are sensitive to the needs of the market. In the CMA, our Data, Technology and Analytics – DaTA – unit is a centre of excellence in fields such as big data analytics, engineering, technology insight, behavioural science, eDiscovery and digital forensics. These capabilities will be critical to the effective functioning of the DMU once it is established. Indeed, the DaTA unit is already working to support a wide range of CMA cases and to establish thought leadership, through work programmes to ensure that the CMA has the necessary, cutting-edge technical capabilities for future cases.

A good example of how we are already deploying these capabilities in active cases is the current market study into Apple and Google's mobile ecosystems,

which examines the effective duopoly that Apple and Google hold over operating systems, app stores and web browsers. We have deployed the full range of the DaTA Unit's capabilities alongside our lawyers, economists and markets experts. Our technology insight advisers have mapped the markets for mobile operating systems, browsers and app stores. Our behavioural scientists have identified the specific defaults and choice architecture features in the app stores and operating systems. Our engineers have used the data platform they built to ingest very large datasets from market participants, and our data scientists – working with our economists – are applying a range of analytical methods to interrogate these data. Understanding this market is a key part of our preparations for the digital regime.

Our new data capabilities have enabled us to use data analysis tools for the transfer and analysis of huge data sets. For example, in the digital advertising market study, we analysed several terabytes of granular search and advertising data from Google and Bing, which produced unique insight into Google's scale advantages. And we have also built our own tools for the monitoring of markets for compliance with competition and consumer law. We have also found that these capabilities enable us to improve the speed and effectiveness of our investigations. For example, our new Evidence Submission Portal, which we developed in-house, can take submissions from parties featuring millions of documents and conduct automated checks to quickly verify that parties are submitting the right information. And our eDiscovery specialists are enabling our frontline teams to use the best and latest technology, including machine learning, for sifting through the reams of documents. These techniques are very important when you consider the quantity of data to which cases in digital markets can give rise.

The DaTA unit is also taking forward work on algorithms, which are a central feature of digital markets that the DMU will need to get to grips with. We are interrogating firms' algorithmic systems to better understand the harms they can cause to consumers and competition, for example, in our consumer protection case into how fake and misleading online reviews are detected and removed. These topics cut across regulatory remits, so we are also working closely with other regulators to identify the key issues of shared interest. We will be publishing more on this work in the Spring of next year.

As a final example, we are doing focused analysis on online choice architecture. There is growing interest from consumers, government and regulators about how the environment in which we make choices online may manipulate or deceive us. Choice architects – who design these environments within firms – can wield great power to change our behaviour. They can make us pay over the odds by sharing only a headline price with us, or by telling us falsely that our item is short of stock. Through our Behavioural Hub, we have brought together multidisciplinary expertise to identify why such practices are deployed, the harm they cause and what our response to them should be. We are soon to launch a major programme of work in this area.

So you can see, we are bringing together a range of cutting-edge technical skills with the more traditional legal and economic toolkit of a competition authority to better understand digital markets and protect consumers from harm. By drawing on these skills we reduce the information asymmetry between

the DMU and the firms we will be regulating. A greater technical understanding of markets allows us to enhance our diagnosis of issues and our design of remedies, all the more important as we move to ongoing and deeper oversight of firms and specific markets within the DMU.

Alongside this expertise, we also need to build our in-depth knowledge of digital markets. Our approach will need to be forward-looking. We will need to collaborate with others who have detailed knowledge of these markets, such as other regulators, business and consumer organisations, expert bodies and academics, to build a detailed understanding of how digital businesses currently operate and how they are likely to develop in future. We will need to continuously scan the horizon to identify the potential impact of new technologies and business practices on the dynamics in the market. Doing so will provide the basis for swift action to investigate and respond to these issues at an early stage, should the need arise.

However, it is important to note that we expect the DMU to remain focused on the activities of a small number of the most powerful firms where consumer harm is likely to be most significant, and I think government agrees with us on this point. The legal test for designating a firm as having Strategic Market Status will set a reasonably high bar and, as I have already said, the designation process will be based on detailed competition analysis. We do not expect the regime to apply to a large number of firms.

A final key element I want to highlight in our preparations for taking on the regime is the relationships we are building: with market participants, with other regulators and internationally.

The DMU will need good relationships with market participants, to understand their perspectives on what is happening in digital markets. This is one important difference between the role of an ex-post competition agency and an ex-ante regulator: the DMU will work to establish long-standing open and collaborative relationships with the parties who are subject to, and affected by, its regulations. Of course, this will include the powerful firms who are the focus of the new rules. But we also want to establish detailed discussions with other firms in the market, including the start-up community and challenger firms, to ensure we hear their voices and can consider any problems they see arising. And of course we also need to have a really strong voice for consumers and small businesses in the regime, to make sure we fully understand their experience of digital markets.

We are also working hard to build our relationships with other agencies with an important role in regulating digital markets. In the UK, a cornerstone of efforts to improve regulatory co-operation is the work of the Digital Regulation Co-operation Forum. This is enabling us to work closely alongside other regulators with a strong interest in digital markets, including Ofcom, the ICO and the Financial Conduct Authority.

The DRCF members all play important roles in digital regulation. The UK’s digital regulation landscape is rapidly evolving: for example, as well as the creation of the DMU, the government is appointing Ofcom as the regulator for online safety and the legislation is currently making its way through

Parliament to establish that regime. This year has also seen the ICO's new Age-Appropriate Design Code come into full effect. The need to co-operate closely as this landscape takes shape is one reason the DRCF is so important.

The DRCF has many benefits: it enables us to work together to build shared capability and skills. It enables us to pool our respective expertise when undertaking activities like horizon-scanning to better understand new technology and its implications. And it also enables us to assess issues in a holistic way, such that we can better understand the problem, and devise solutions that are coherent across different regulatory regimes. Many of the problems in digital markets are interrelated. The recent allegations against Facebook are a good example of this. Each regulator cannot look narrowly at their own issues, be they competition, privacy or the distribution of harmful content. Rather we must work together to understand the root cause of the problems, and to address them in a joined-up way.

This is exactly what we have been doing in our work on Google's Privacy Sandbox, about which I'll say more in a second. But we have also been working more broadly with the ICO on the interrelationships between competition and data protection law. Earlier this year we published a joint statement with the ICO setting out our thoughts on how the 2 regimes interact.

As far as we know, the DRCF is the first such approach of its kind internationally – although I note the recent announcement in the Netherlands of their newly-established Digital Regulation Co-operation Platform, which has similar objectives. While every jurisdiction has a different regulatory landscape, I believe that the DRCF approach to co-operation on specific areas of mutual interest in digital markets is a useful model for others to adopt.

Of course, the importance of strengthening dialogue with other regulators is not confined to the UK. As I said earlier, these are global challenges, which are posed by global firms. Dealing with them therefore requires a global response. Strengthening international cooperation is therefore another key priority for us. In April, we issued a joint statement with the Australian and German competition authorities setting out the need for robust merger enforcement to drive post-pandemic economic growth. And in June, I highlighted the importance of working closely with the European Commission as we both launched independent investigations in parallel into how Facebook gathers and uses data across its services.

The CMA has also been leading the focus under the UK's G7 Presidency on digital competition, as part of which the UK government has asked us to lead work to strengthen cooperation between competition authorities on digital markets. Next month I will host an Enforcer's Summit as part of this work where we will discuss opportunities for long term coordination and cooperation on common policy areas.

So there is much work to be done to prepare for taking on the new regime. I am pleased with our progress so far.

Lessons from the CMA's current work in digital markets

However, we are not sitting idly and waiting for new powers. I want to conclude by highlighting some of our live digital enforcement cases. I think these cases give us some important lessons in how the DMU will need to approach the regulation of digital markets.

We have live investigations in digital markets across all of our existing tools. I have already talked about our mobile ecosystems market study. We recently also announced a forthcoming market study into the music streaming market, to ensure this culturally-vital market is working effectively. We will take forward work to scope and launch this study as soon as practically possible. We also have several live Competition Act enforcement cases in the digital sphere. For example, we are investigating whether Facebook is abusing its position in social media or digital advertising markets through its collection and use of data. We are also investigating concerns about the terms and conditions for app developers accessing Apple's App Store. One case that it is worth focusing on in a bit more detail is our investigation into Google's 'Privacy Sandbox' changes under the Competition Act. This case is novel in how it leads us to grapple with the questions of competition and privacy in the digital economy. In this case, Google is proposing to remove access to third party cookies on Chrome to protect the privacy of users, replacing them with a set of alternative tools to enable targeted advertising. However, this change would also have a major impact on advertisers, publishers and other technology firms, causing them significant competitive disadvantage if Google is able to benefit from its extensive data on users while they are not.

This case brings us face to face with the powerful – some would say 'quasi-regulatory' – role that the large digital platforms are at times playing in some digital markets. It requires us to look harder at how they are exercising that role to ensure that they are doing so appropriately. It is important to note that, as I said earlier, we do not see a fundamental tension between competition and data privacy concerns in this case: instead we are focused on ensuring that measures to promote privacy are introduced in a competitively-neutral way that does not unduly favour the incumbents.

This case is also interesting because it is an example of the CMA using existing competition tools to intervene before harm has occurred. Google pre-announced the changes, and have not yet implemented them. Indeed, Google is still going through a process of designing and testing the alternative tools that will replace third party cookies. The draft commitments from Google, which we recently consulted on, would provide a framework that seeks to ensure the competitive neutrality of the changes. They would involve the CMA working with Google to test the impact of the changes once they are made to ensure they do not harm competition. Post-implementation testing and trialling of changes in the market to understand their competitive effects is likely to be a strong feature of the digital markets regime.

There is therefore much in this case that we would hope and expect to see

when the digital regime is up and running: the need to consider privacy issues as part of competition questions; an open dialogue with firms about developments in the market and their potential competitive effects; and the opportunity to intervene before harm occurs, rather than waiting until afterwards and trying to respond.

In merger review, our current digital cases underscore the CMA's targeted approach to intervention. For example, following an in-depth review, in August the CMA issued provisional findings that Facebook's acquisition of Giphy is more likely than not to result in a substantial lessening of competition. These findings are preliminary but they demonstrate the CMA's willingness to engage in deep scrutiny of complex digital markets where there is scope for a merger to lessen competition. In contrast, last month, the CMA declined to pursue action in Facebook's acquisition of Kustomer. The CMA conducted a detailed Phase 1 review, with extensive input from a wide range of third parties as well as more than 25,000 internal documents from the merging parties. The CMA concluded that despite Facebook's significant market power in online display advertising, this transaction does not give rise to a realistic prospect of a substantial lessening of competition in the UK based on, among other factors, our assessment of the market where Kustomer is active. Our approach to regulating digital markets is – and will continue to be – based on the facts of each individual case.

As a final example, I want to talk about our recent consumer enforcement work in digital markets. For online markets to work well consumers need to be able to trust what they read, so they have the confidence to make decisions based on accurate information. A key focus of the CMA's consumer enforcement work has been tackling online practices – like fake reviews and Instagram influencers' use of unlabeled endorsements – that make it tougher for consumers to make the right shopping decisions.

Traditionally, enforcers, including the CMA, have targeted the perpetrator: the fake reviewer, the influencer that has posted this material, or the business that commissioned the activity. However, given the growth in the scale of this type of misleading content, enabled by platforms' ability to connect everybody more easily, it is tough to genuinely disrupt these illegal practices by tackling one bad actor at a time. So over recent years we have increasingly focused on the platforms – and whether they are doing enough to keep their own users safe from these practices. Platforms' ability to connect us all is being exploited by bad actors, and to address the scale of the challenge will require platforms to take responsibility for protecting all of us from illegal material that has the potential to mislead us and to distort markets.

In June of this year, we opened an investigation under consumer law into the efforts made by Amazon and Google to combat fake and misleading reviews on their platforms. This work builds on the undertakings we secured from Facebook in October 2020 to tackle hidden advertising by social media influencers on its Instagram platform, and the commitments secured from eBay, Facebook and Instagram to tackle the trading of fake online reviews on their platforms.

It simply isn’t enough for platforms to take a passive stance where they only deal with illegal material when drawn to their attention – they need to develop systems that detect such material and then remove it or suppress it – and then ban or sanction those responsible. Consumers will not participate freely in digital markets if they cannot trust the information they are presented with. Furthermore, allowing such reviews is unfair on law-abiding businesses, who face competitive disadvantages.

So you can see in the CMA’s existing work the ways in which we are already developing and applying many of the approaches that will be central to the DMU: considering the interactions with wider policy objectives like data privacy; taking action before harm is caused, rather than after; horizon-scanning and responding rapidly in fast-evolving markets; carefully weighing where we should intervene and where we should not; and promoting trust and transparency to ensure consumers are empowered and protected when engaging in the digital economy. Indeed, many of these principles will become increasingly central to the way in which the CMA as a whole approaches its work. The DMU as an ex-ante regulator will inevitably alter the DNA of the CMA, and I think you should expect to see an evolution in our approach over the coming years. What will always remain true though is that across all our work our actions will remain rooted in promoting competition, grounded in rigorous, evidence-based assessment.

I look forward to hearing Judge Ginsburg’s response and the thoughts of the audience on these points.

Thank you.