

# Speech: David Currie on why competition matters to the whole of the UK

It is a great pleasure to have the opportunity to talk to you this morning as the outgoing Chairman of the Competition and Markets Authority (or CMA). The Whitehall and Industry Group provides an important forum where business and government can interact and debate key issues facing the country.

And I firmly believe that my topic today is one such issue: what is the importance of competitive markets to our economy and our society, and to us all as consumers, citizens and taxpayers? And how are they best achieved in our rapidly changing times?

## **A historical perspective**

Let me start with a historical perspective. If we go back nearly 50 years, the competition regime was very different from today. The CMA's predecessors, the Office of Fair Trading (OFT) and the Monopolies and Mergers Commission (MMC), though very influential, had essentially advisory, not decision-making, powers. Ministers were the ultimate decision-makers, forming a judgement about the "public interest", not always very clearly specified, mirroring a wider tendency for government to intervene in economic matters.

The Thatcher and Reagan years saw a steady retreat from such state intervention. Increasing disillusionment with the performance of the British economy, a growing realisation of the failures of state planning in the Soviet Union and eastern bloc, growing frustration with nationalised industries all combined to bring about an increasing withdrawal of government. In the competition sphere, we had the Tebbit Doctrine, forswearing ministerial intervention in merger decisions, leaving it to the competition agencies to decide on the merits of the case on competition grounds, not wider public interest considerations. This represented the start of a trend to take ministers out of competition policy.

The decisive reinforcement of that trend came with the change of government in 1997. The Labour government not only maintained this vow of abstinence, but hard-wired it into legislation. The Competition Act of 1998 aligned UK competition law with European law (which had itself been shaped in large part by British influence); and then the Enterprise Act of 2002 transformed the MMC into the Competition Commission, and made it the sole arbiter in merger and market inquiries, subject only to judicial review.

Ministerial intervention was limited to 3 highly specific areas of public interest: national security, media plurality, and, from 2008, financial stability. For the rest, competition considerations determined the outcome through an increasingly refined and defined calculus. An important benefit for international businesses was that this approach was increasingly

converging across the major world economies.

However, a separate and distinctively British feature has been the market investigation regime, established by the Enterprise Act. This allows the CMA to investigate whole markets – not just individual companies – that are perceived not to be working well for consumers and intervene directly to make the market work better. In contrast to competition enforcement, these powers may be deployed even when no one is breaking the law. Indeed, that provides the unique aspect of this regime, which has been copied by only a handful of countries around the world. And the exercise of these powers is subject only to judicial review, though that represents a significant, necessary and appropriate restraint on their use. Crucially for my theme this morning, the market investigation regime is wholly independent of ministers.

## **The basis of an independent competition regime**

There is [considerable empirical evidence](#) that effective competition, encouraged by the appropriate use of competition tools, is crucial for economic performance and productivity growth, and acceptance of that linkage is a key reason why competition policy has been at the heart of industrial policy over the past 25 years. That it should be very largely independent of democratically elected politicians may therefore seem surprising. So it is worth recapping the reasons why ministers and Parliament, across party lines, agreed largely to vacate the field.

The first was the learning from the 1960s and 1970s that government intervention often misfired, with unintended and undesirable consequences. Markets don't always work well, due to a variety of market failures. The CMA can and does advise government at all levels on how to intervene in ways that do not harm consumers' interests. But even with good intentions, government can easily make matters worse by stepping in. That is especially the case if such interventions are driven by short-term political pressures, not on well thought-through analysis of the problems in a market and what can be done to address them.

The second is that ministers may well wish to tie their hands. If they have the powers to do anything, then they will inevitably be subject to acute lobbying on all sides. And when in this climate they do intervene, they assume ongoing responsibility when things have to be changed. Better that an independent regulator makes the judgements, based on a clear framework set by Parliament.

The third is that there may be real economic benefit from putting in place a regime where political influences do not have an undue impact on market outcomes. Long term investors welcome the greater certainty that this brings, minimising the political risk premium.

For those of my generation, these were lessons well learnt, and they explain the evolution of the system towards a largely minister-free competition regime. But I think it is very possible that we have seen the high-water mark of this independence.

The financial crash, growing unease about globalisation, large swathes of people who have missed out on any rise in income and are struggling to get by, and concerns about the impact of technology and digitisation particularly on the vulnerable – all these concerns have weakened confidence in the efficacy of markets. This has been reflected politically, with Donald Trump advocating protectionism and Theresa May expressing concern about those left behind and the fairness of “untrammelled free markets”. And we hear increasing calls for government to step in to make sure markets work well and fairly for everybody.

My proposition today is that competition still matters and that it is a key part of making markets work well for everyone, including vulnerable consumers. It is vital that we do not give up on the idea that competition, and competition-based solutions, are a force for good and can help to address the issues that concern politicians and people across the country.

It is true that competitive markets do not serve us all equally. Some groups in society, particularly the more vulnerable, do not always reap the rewards from an economically well-functioning market that others enjoy. It is important that the CMA and other competition authorities reflect on this and do what we can do address it, and I will come to this shortly. But let me first set out why competition really does matter.

### **How does competition benefit us?**

Some might argue that practices that dampen competition are victimless. Well, the reality is that such practices do real harm to the public.

Adam Smith called such practices “a conspiracy against the public”. David Lewis, the first head of South Africa’s post-apartheid Competition Tribunal referred to a cartel that was raising the price of bread beyond the reach of many millions of the poorest South Africans as “thieves at the dinner table”.

So anti-competitive practices, mergers and market structures or features that harm competition are not victimless. They are bad for our society and therefore bad for us all.

Let us turn it around – how does competition benefit us?

Competition law and policy help us all – as customers and taxpayers – by giving businesses the incentive to improve on price, quality, and service standards, to innovate, to treat customers fairly and to become more efficient and therefore more productive. In a virtuous circle, well-informed and engaged customers then distinguish between good and bad products and services, switch away from poor providers and spur businesses to innovate and to compete. New entrants emerge with fresh ideas and fresh offerings to satisfy customers and keep incumbent firms on their toes.

And all these spur efficiency, quality and innovation benefiting us all.

Businesses and the economy also benefit. Competition drives efficiency and productivity. It ensures a level playing field for firms that put their

customers first. Businesses – especially smaller businesses – benefit from better upstream competition. Government benefits from buoyant tax revenues. And open and competitive markets supported by robust competition policy promote innovation and long-term growth.

So vigorous competition matters for us all – as shoppers, as taxpayers and as citizens.

## **Competition isn't everything**

However, as I mentioned earlier, that competition really matters isn't everything. The outcomes from the workings of competitive markets often serve some groups of customers better than others.

In many markets, prices are higher to some than others – that has always been true, but may be accentuated in the online world where sophisticated algorithms based on large quantities of data can drive pricing tailored to individuals. And unfortunately those who lose out can be the most vulnerable – the elderly, the less well-off, the less-educated, among others. Vulnerability has many dimensions and we are all at risk of becoming vulnerable at some stage in our lives regardless of whether or not we are young, healthy, well-off, able-bodied, well-educated. Unsurprisingly, therefore, this is seen as unfair, and 'fairness' and 'treating people fairly' is a major part of the current political lexicon.

## **Fairness, trust and vulnerability**

And competition authorities around the world are increasingly talking about fairness. [Renata Hesse of the US Federal Trade Commission](#) spoke last year of how “companies [that] harm competition ... infect the economy with unfairness”. [Margarethe Vestager, the European Commissioner for competition](#), said last year “we have to show that competition makes markets work more fairly for everyone”. And her [Director General, Johannes Laitenberger](#), said earlier this year: “There are too many people out there who feel the turn that the economy has taken in the past few decades has left them behind ... People end up feeling excluded. They may lose trust in the system altogether.”

That link to trust in markets is critical: a well-functioning market system depends on trust in markets, trust in business, and trust in competition. If a widespread perception of unfairness erodes that trust, then the market system will work less well and we will all be the losers.

There is, however, a problem with fairness: there are often very different views on what is fair and unfair in a range of situations. Easier to define and operationalise is the associated concept of vulnerability, which has many quite clearly-defined dimensions. The UK competition agencies have a long record of focusing on markets that matter for ordinary citizens, and of taking an interest in those who are struggling to get by. And in its various reports, the OFT expressed concern about market outcomes that, while benefiting consumers overall, made vulnerable consumers worse off. So although concern for vulnerable consumers has especial resonance now, it is not new to us.

So competition authorities need to be sensitive to the question of fairness and vulnerability, and I will illustrate in a moment how the CMA does this. We have a clear primary statutory duty, given to us by Parliament, to promote competition for the benefit of consumers. This means, as I just said, that while we need to be sensitive to concerns about unfairness and vulnerability, that cannot drive us. Our interventions to make markets work therefore may well contribute to spreading wealth or making outcomes feel fairer, as I will explain below, but there are other parts of government and other policy instruments more specifically set up for tackling issues of inequality and public welfare.

With that important proviso, how do we in practice address questions of fairness and vulnerability in what we do?

First, the overall enforcement of the competition regime helps.

When companies abuse their market power, when they fix prices with their competitors, or when a merger significantly reduces competition, we all lose out. Wealth and power moves from the consumers to the owners of assets, and inequality in society deepens. [Empirical evidence](#) shows that the exercise of market power, which competition policy restrains, works to the benefit of the minority of the very asset-rich, and to the disadvantage of most others.

I, like many others, would regard this as unfair and we are all potential victims. And while it is true that competition does not always benefit the most vulnerable in our society, it is also the case that anti-competitive practices frequently work against them.

Therefore, our core work – to stamp out anti-competitive practices, to prevent mergers which harm competition, to make sure that companies do not abuse their market power – is critical in preventing vulnerable consumers and the population at large from actions and from outcomes that many would consider to be unfair.

Second is through the selection of the cases that we pursue and markets that we investigate, taking actions whereby vulnerable people are protected. Take, for example, our markets regime. Many of us experience forms of vulnerability in the market for legal services: indeed some would argue that this very important market is one where most are essentially excluded, unless either very well-off or poor enough to qualify for the limited legal aid regime. Our [market study in legal services](#) identified a whole set of measures that aim to help make this market work better for people.

We recently announced the conclusions of our [market study into care homes](#), a market which many encounter for the first time when they are elderly and at their most vulnerable and where family support is difficult because of lack of knowledge and experience.

We have proposed a set of reforms to how this market works, but also launched an enforcement investigation against what we see as crucial breaches of consumer law that work to disadvantage vulnerable people.

In our [energy market investigation](#), we identified the fact that customers on prepayment meters suffer particularly adverse terms and lack the same ability to switch as other customers. The price cap that we have imposed with effect from April 2017 is already saving those customers money – £300 million a year in total and an average of £75 per customer. Whilst there were other reasons that these prepayment meter customers couldn't get as good a deal as direct debit customers, they are typically the poor and disadvantaged. We were open to a wider price cap that widens the coverage to other vulnerable people who are not on prepayment meters, if we could find a reliable way of identifying them. But the conclusion of our report was that a much wider price cap of the kind now being considered by government would damage competition and harm consumers in the long term.

And in our enforcement work, we have chosen cases that also bear on the question of fairness and vulnerability. The most high-profile of these are the cases that the CMA is pursuing against pharma companies involving major price hikes on drugs that are out of patent that may have cost the cash-strapped NHS several hundreds of millions of pounds. This may therefore affect the service that can be delivered to those needing NHS treatment – including many vulnerable people. If we decide that the law has indeed been broken, we will have to see if those decisions stand up to legal appeal. If they do, the NHS will be entitled to seek appropriate compensation from the companies in question.

And alongside our competition powers, we exercise our consumer protection powers in support of our statutory competition duty. In consumer law there is a specific concept of unfairness, in cases where contract terms are unfairly tilted in favour of the business at the expense of the consumer. Using this and other consumer laws, we are investigating suspected illegal practices by [secondary ticketing websites](#), against [care hire intermediaries](#), and against [care home providers](#) and [online hotel booking sites](#) following our recently concluded market studies. And we're also investigating issues in other markets for goods and services that matter to millions of people, some of them vulnerable, including [online dating](#) and [online gambling](#). In another market, that for [online games for children](#), we clamped down on purportedly 'free' games that directly and inappropriately encouraged children to make in-game purchases.

And we know we have more to do. So in our [draft Annual Plan](#), published for consultation last week, we have proposed taking a particular interest in vulnerable consumers, including reaching out to those groups who regularly deal with people in vulnerable circumstances to understand more about how we can help them through our work. We also recognise that there is an important debate taking place about issues like fairness and vulnerability, and we intend to encourage and play a full part in that discussion.

So to conclude, our primary purpose, given to us by Parliament, is to promote competition to the benefit of consumers. In this, we can do a great deal to help ordinary people get a good outcome in their dealings with businesses.

History suggests that we can be most effective in ensuring competition works to the benefit of consumers and the economy if government gives us the space

to carry out our work and is mindful of the risks of stepping in – even if it is with the best of intentions. We are not competition zealots – we recognise that on occasions, take for example the market for payday loans, greater competition alone does not always work to benefit all consumers and direct protections are sometimes necessary. Vulnerable consumers deserve particular focus and wider considerations of fairness and inequality are legitimate, though often a matter for other parts of government to address. We don't have all the answers, but will continue to work to advance our understanding and help drive the debate.

And we do believe that on the whole vigorous competition works to the benefit of consumers, spurring businesses to be more efficient, to innovate, and to make better offerings at keener prices to entice customers from their competitors. The result is that as customers we enjoy better quality goods and services and better value for money. As taxpayers we benefit from better value for money in the delivery of goods and services to government if anti-competitive practices that raise prices are stamped out. And as citizens we benefit if the economy performs well because of the higher productivity that results from more vigorous competition.