Speech: UK competition enforcement – where next?

Increasing case flow

“The CMA visibly reinvigorated….”

“Ramping up the agency’s activity.”

“A big turnaround… from where they were 3 years ago.”

“A real focus on getting things done.” (1 – see footnotes at the end)

That’s not my verdict on the Competition and Market Authority’s (CMA) recent performance – although I agree with it. It’s the view of Global Competition Review’s annual ranking of the world’s top antitrust authorities, published in July this year, and summarising our performance in 2016.

It’s also in line with other press comment. In January this year the Financial Times (4 January 2017) declared that the CMA has “sharply stepped up enforcement activity”.

More to the point – it’s borne out by the facts:

Why is it good news that competition law enforcement activity has been stepped up? If you’re a company hoping to stay out of trouble, you might not think increased activity by the enforcement authority is that marvellous.

But it is good news in the public interest. Our aim as a public authority isn’t to get nice comments in the ratings guides. It is, however, to have vigorous and effective enforcement of competition law – specifically, of the prohibitions against anti-competitive agreements and cartels, and against unilateral abuse of dominant market positions which are in the Competition Act 1998 (2).

The aim is to protect ordinary consumers – millions of people up and down the country, all of us in fact – from the anti-competitive practices that harm us.

It is obvious to most of you, but it can’t be said often enough: Vigorous competition exerts a downward pressure on prices for consumers, and gives suppliers incentives to improve quality and to innovate in the products and services they sell us.

The point of taking competition enforcement action is to combat anti-competitive practices, which tend to weaken competition, and so take away these benefits from ordinary consumers.

Combating anti-competitive practices, and so promoting competition, is good for businesses too. Anti-competitive practices put up the costs that

businesses face in input goods and services from upstream suppliers. They often exclude businesses from markets they want to serve. And by softening the spurs to efficiency that competitive pressures bring, anti-competitive practices weaken the performance of businesses.

And combating anti-competitive practices is important for the economy as a whole. If competitive pressures that help businesses to be more efficient and to perform more effectively are weakened, productivity is held back and the whole economy suffers. That's important for all of us too – for jobs, and for our standard of living.

So the CMA's recent efforts to ramp up competition enforcement are critically important for us all – as consumers, as businesses, and as people who rely for our jobs and our standard of living on an improving economy. At the CMA we have done much to heed the recommendation of the National Audit Office (NAO) in its February 2016 report on the UK competition regime, that we must "step up the flow of successful enforcement cases".

Fairness and rigour in our case work

But I've always said that our increased case flow must not be at the expense of rigour in our analysis, and fairness in our processes. The UK competition regime has stringent safeguards in place for this – not just parties' rights to a 'full merits' appeal to the Competition Appeal Tribunal, but also:

- a separation of powers between the officials who conduct the investigation and the 'Case Decision Group' which makes the final decision on whether there is an infringement (so avoiding the situation where the same group of people act as 'investigator, prosecutor, judge and jury' in a case),
- a strong Procedural Officer to adjudicate disputes about process between the parties and CMA officials, and
- behind the scenes, thorough internal checks and balances and 'peer review' to strengthen quality assurance.

There are good reasons for us to insist on rigour and fairness, as well as increased case flow – reasons of public policy. As a competition enforcement authority, we need to hear all the arguments and all the evidence, and we need to assess these as fairly and rigorously as possible, so that we can get to the right answer – which won't always be an infringement decision. Yes, we certainly want to stamp out practices that are, really, anti-competitive – for the reasons I've given above: protecting consumers, businesses, and the wider economy. But, at the same time, we don't want to make the mistake of banning legitimate business conduct through over-zealousness and a failure to take account of all relevant evidence and arguments, including evidence and arguments that 'exculpate' the parties we are investigating; that is harmful too, because it can have a 'chilling' effect on economic activity that is legitimate and beneficial, and has a chilling effect on innovation – and, if that happens, again we all lose out.

Some people say that our mechanisms for achieving rigour and fairness go too far, and make it too hard for us to enforce competition law effectively.

Certainly, the Case Decision Groups and the 'full merits' appeals are disciplines that are not to be found under the EU competition regime, or under those of many other jurisdictions around the world. The NAO report from February 2016, which I've mentioned, included a quotation from someone who had told the NAO that "the UK was the best jurisdiction in the world to defend a competition case".

There is a reasonable debate to be had about this. But we don't want to return to the situation we had 5 years ago when the government spoke of the UK's competition regime having a problem in "the quality and robustness of administrative decision-making (including in addressing perceptions of confirmation bias)" (3).

So that's the good news: stronger and more vigorous competition enforcement in the UK, protecting consumers, businesses and the wider economy – along with strong mechanisms for analytical rigour and procedural fairness to help ensure that we don't just make a lot of decisions, but that, so far as possible, we make the right decisions.

So what's not to like? What are the challenges we now face?

Let me just outline a few as we survey the UK competition enforcement scene in late November 2017.

First challenge – maintaining effective case flow

Our first, and most obvious, challenge is to keep up this more effective case flow – to maintain vigorous enforcement of competition law, to the benefit of consumers, businesses and the wider economy.

This is not straightforward, since there are – as you will appreciate – many other types of work that the CMA has to do, and therefore many other demands on our finite resources: to investigate market sectors; to examine mergers, including big ones like Tesco/Booker or Fox/Sky TV; to hear regulatory appeals; to advise government – and to defend our bigger decisions in an appeal process that is exhaustive and also, given the considerable time this takes, often exhausting!

Yet, despite these other calls on our staff's time, we are determined to maintain and enhance effective enforcement. When we hear allegations of anti-competitive agreements or abuses of dominance, we have to prioritise, and we won't always have the resources to launch a full investigation. But no one should conclude that it isn't worthwhile drawing these to our attention. We are very much open to complaints and other information about alleged anti-competitive practices, and we will always take them seriously and consider them carefully.

In this context, we very much welcome the Chancellor's announcement in last week's Budget to provide the CMA with an extra £2.8 million a year, from next April, so that we "can take on more cases against companies that are acting unfairly". (This is in addition to, and separate from, funding that is likely to be required on the UK's exit from the EU in connection with the CMA taking

on cases previously reserved to European Commission jurisdiction.) This extra annual funding will allow us to pursue more competition enforcement cases, and we are determined to put the money to good use.

Even if we do not launch a full investigation, there may be other ways we can address the issue. Sometimes we will launch a full investigation, and at other times we may deal with it through other means designed to put the infringement to an end – such as warning or advisory letters. But to repeat: effective enforcement relies on people drawing possible infringements to our attention, and we are very much open to business to receive those.

Second challenge – innovativeness in ways of enforcement

In the past couple of years, we have sought to be innovative in competition enforcement. Securing infringement decisions is important – and, as I and others have pointed out, recently we have been issuing more of these than in previous years. But issuing infringement decisions does not represent the sum total of our competition enforcement activity. We are determined to maximise the effectiveness of competition enforcement – to the benefit of consumers, businesses and the wider economy – by making full and appropriate use of the range of powers that Parliament has conferred on the CMA, deploying our various 'tools' flexibly and smartly in response to the specific needs of a particular situation. This is our second big challenge.

Compliance

We put considerable effort into helping businesses comply with the law, rather than just punishing them if they don't. Prevention, as they say, is better than cure: getting companies to comply with competition law, and not break the law in the first place, is better than launching investigations and issuing fines to punish law-breaking that had already happened. It avoids the problem in the first place, affording greater protection to consumers. And if it's effective, it's cheaper than conducting a full investigation – a more efficient use of taxpayers' money.

And we have research evidence that there is considerable, and startling, lack of awareness among many businesses of what competition law requires. For example, one survey showed that 60% of sales people in businesses either didn't know or thought it was OK for competitors to agree to market share. 45% either didn't know or thought it was OK to agree prices in order to avoid losing money.

So, it's become our practice that, after almost every infringement decision, we have made a point of targeting compliance messages to the industry concerned: speaking at trade association meetings and providing businesses in the sector with compliance materials which are designed to be as user-friendly as possible.

We also produce compliance materials that are not limited to a particular sector, but are of more general use. So, to address concerns that smaller

businesses – SMEs – were relatively unaware of the requirements of competition law, and the penalties for breaking competition law, we produced a tailored suite of compliance materials for SMEs. These include 8 animated films, a quiz, an ‘at-a-glance’ guide to competition law, a checklist of things to avoid, and case studies about businesses which have broken the law and how they have been punished. They can be viewed on our website, and at other online outlets. And on cartels, we have launched a ‘stop cartels’ campaign on social media that has raised awareness of the law, and also generated new information supplied to the CMA on suspected cartels.

But there is a symbiotic relationship here; enforcement and effective compliance are complementary. It is the deterrent effect of our enforcement action that gives businesses a strong reason to take compliance seriously.

Warning and advisory letters

Where we think it is not appropriate to prioritise our resources on a full investigation, but we suspect that there is or may be an infringement, we often send to the business concerned a warning letter or an advisory letter. These involve no legal finding that there has been an infringement, but explain to the business our concerns about its practices, and recommend that the business carries out a self-assessment of its business practices to ensure that it is complying with competition law. A warning letter is ‘stronger’ than an advisory letter in that, in addition, it will request that the business writes to us with details of what it has done, or is planning to do, to ensure that it complies with competition law.

It has long been our practice to publish a register of warning and advisory letters, but we do so in ways that protect the identity of the businesses concerned as we have not found them to be in breach of competition law, by the due process of a full investigation, and so it would be wrong to ‘name and shame’ them.

Some commentators have told us that the deterrent effect of this is weakened because we don’t make public with sufficient clarity what kind of conduct or agreement it is that we object to. We have heeded that criticism: since February this year, for new items on our register, we now give as much detail of the type of practice we are concerned with, and the sector, as we can, consistent with protecting the rights of the parties to anonymity.

Settlements and commitments

We also make use of settlements and commitments decisions, to speed up our case work.

Let’s be sure we understand the difference between them.

- A settlement is a formal legally binding decision, in which a business admits that it has infringed competition law. It is an infringement decision. But because the party has admitted liability relatively early, before the proceedings have run their full course – and thus saved us time and expense (as well as saving the business concerned time and

expense) – we will normally reduce the fine, by up to 20%, depending on how much time is saved. It also makes an appeal (with the time and expense that entails) much less likely.
- A commitment is also a formal legally binding instrument, but it is not an infringement decision. It is an enforceable obligation, voluntarily assumed by a party under investigation (following the launch of a formal Competition Act investigation) to cease the infringement that the CMA is alleging. It is not a finding of breach, it does not amount to an admission of liability, and it does not result in fines. But it does put an end to the alleged anti-competitive practice that was concerning us in the investigation.

Some people disparage the use of settlements and commitments as a 'soft' form of enforcement, which is harmful to deterrence, and also to the integrity of the competition regime, because it does not create a proper body of precedent.

The response to this criticism differs as between settlements and commitments:

- Settlements do result in a formal infringement decision, which is fully reasoned, and so provide just as much precedent as any other infringement decision. They also involve fines, giving a deterrent effect – and, although those fines are reduced by up to 20% as a quid pro quo for the business concerned admitting its infringement, that sends its own deterrence message to companies: rather than contesting a case where there is strong evidence of an infringement, it is worthwhile to settle, admit the infringement, and move on.
- Commitments, it is true, do not involve a fully reasoned decision, or a legal statement that there has been an infringement. They are therefore, obviously, of less precedent value, legally, than infringement decisions (including settlement decisions). But it is not true to say that commitments have no precedent value: they indicate to the wider world (to businesses and their advisers) the kinds of agreement or conduct that cause the CMA concerns, and indeed what we regard as 'safe' practices. When we accept commitments, we publish a document setting out what were our competition concerns, and our reasons for them – albeit more briefly than in a full infringement decision – as well as how those competition concerns have been addressed by the commitments.

We won't reach settlements or commitments in every case. But sometimes, as part of a balanced portfolio, it is appropriate to do so.

In the case of settlements, we secure an infringement decision and can close the case, releasing resources to look into, and combat, other suspected anti-competitive practices.

In the case of commitments, where there is no particular reason to impose fines or issue a fully reasoned infringement decision, we can put an end to what we consider to be an anti-competitive practice, so protecting consumers, and (again) we can therefore release resources early to enable us to combat other anti-competitive practices. We have thought that doing this was

appropriate in 2 cases recently – an alleged exclusionary practice in online auction bidding platforms, where we issued a commitment decision in June 2017, and some long-standing practices that we considered were restrictive of competition in the provision of funfairs, on which we announced in August this year our intention to accept commitments proposed by the relevant body, Showmen's Guild of Great Britain. But we are not promiscuous in our use of commitments. Since the CMA came in, we have issued 15 formal infringement decisions, and accepted, or indicated an intention to accept, commitments in just 4 cases.

Addressing concerns pre-launch

You might not be aware of another innovative approach we have taken to resolve a competition problem – even before launching a case. In January 2017, after we had expressed concerns to BMW UK about its alleged practice of stopping its dealers from listing BMW cars and Minis on the 'carwow' online sales channel, BMW agreed to change its policy and put an end to the practice. We had solved the problem without the time and expense of a formal investigation. And in doing so we had helped consumers shop around for these cars online, and signalled our commitment to encouraging online competition.

Interim measures

We have also sought to make use of our interim measures functions where appropriate.

Let me explain why. Competition Act investigations, if they are to be fair and rigorous, inevitably take time, but sometimes (particularly in fast-moving markets such as technology sectors) an anti-competitive practice can so weaken a competitor which is harmed by it that the damage to competition (and, therefore, to consumers) has been done before one gets to the infringement decision designed to address it.

The solution offered by the law is interim measures: in cases of urgency, with the threat of significant damage to a business, an order to suspend the alleged anti-competitive practice for the duration of the competition investigation, pending final resolution with the decision on whether or not there is an infringement.

You might not have noticed it, but we recently dealt with an interim measures case successfully – we received an application for interim measures in November 2016, and by June had come to a decision. But it wasn't actually necessary to impose interim measures in the case, temporarily suspending the alleged anti-competitive practice, because shortly before we were due to make a final decision on whether to impose interim measures the party concerned gave commitments permanently ending that practice – this was the online auction bidding platforms case I mentioned earlier. But it was an example of how, when faced with an interim measures application in a fast-moving market, we were able to resolve the problem within just over 6 months.

There is a question whether we might be able to move even more quickly – which, in certain cases, might be essential if competition is to be

preserved. In March this year, the EU's Commissioner for Competition, Margrethe Vestager, said that the "administrative burden to follow procedural rules and respect companies' rights of defence' in interim measures cases was preventing the European Commission from applying interim measures". This is an issue which the UK regime also faces, with quite onerous disclosure requirements – whereas, as Margrethe Vestager noted, some other national competition authorities have been more successful in applying interim measures (4). It is an issue which we in the UK are looking into.

Withdrawing immunity from fines

As many of you will know, the law (5) provides that parties to an agreement infringing the Competition Act prohibition on anti-competitive agreements will be immune from being fined for the infringement if the combined turnover of all parties to the agreement does not exceed £20 million (provided that it is not a price-fixing agreement). This is to make the Competition Act less onerous for very small businesses.

But it has always been a limited immunity from fines, which the CMA has discretion to withdraw if it considers that an agreement which it is investigating is likely to infringe the prohibition. This summer we decided to exercise our discretion to withdraw immunity in the case of a particular practice. It concerned a supplier of mobility scooters, that had provided in agreements it had with 3 retailers that the retailers either must not advertise its prices online, or must not do so below specified prices. Four years earlier, a warning letter had been sent to that supplier (and to other mobility scooter suppliers) warning that such restrictions on online advertising would in the CMA's view infringe the prohibition.

The withdrawal of immunity in this case has been effective, and the supplier has ended the restrictions and agreed to inform its retailers. We have shown, first, that we are prepared to use the power to withdraw immunity from fines where appropriate, second that doing so can work to end an anti-competitive practice, and third that ignoring our warning letters carries real risks.

'No grounds for action' decision

In August this year, we issued a formal Competition Act decision, which was not an infringement decision, but its opposite: a decision that, on the evidence available, there were no grounds for an infringement finding.

We reached this decision within just 6 months of launching a formal investigation – concerning promotional deals in the supply of impulse ice creams, which we suspected of being an abuse of dominance. We closed the case because we did not think that the evidence we were able to gather having launched a full investigation justified a finding of infringement.

It had become a bit of a habit of competition authorities to close cases by saying that they were no longer an administrative priority for us, but we thought it deserved a reasoned decision, so we issued a formal 'no grounds for action' decision.

Disqualification from company directorships

A final innovation to mention relates to ensuring personal responsibility for competition law compliance.
In December 2016, we secured a disqualification of a director of a company that had breached the Competition Act from holding any directorship of a UK company for the next 5 years. This was the first time a director disqualification had been secured for a competition law infringement since the UK competition authorities were given this power in 2003.

The message is, I hope, clear. It is essential that directors and managers of companies in breach appreciate that they must take personal responsibility for the breach – and therefore for competition law compliance. Failure to do so puts in question their fitness to be a director of any UK company. That was the first such disqualification since the regime came in, but we certainly do not intend it to be the last.

Third challenge – size of cases

In the past, some critics have scoffed that we focus only on small-scale infringements.

I mentioned at the beginning Global Competition Review's (GCR) annual ranking of the world's top antitrust authorities. A year earlier, that GCR report had said about our performance back in 2015: "some observers snipe that the CMA just isn't taking on the big cases these days" (6).

I don't think anyone would accuse us of that now – with the £45 million of fines we imposed in the pharmaceutical pay-for-delay case in February 2016 on GlaxoSmithKline and others, and the £89 million of fines we imposed on Pfizer and Flynn Pharma in our December 2016 decision on excessive pricing for the anti-epilepsy drug phenytoin.

But there is value in pursuing smaller cases too:

- consumers in smaller, local markets are as deserving of protection as anyone else, including in remote parts of the country and in all regions of the UK

- moreover, small businesses are important drivers of the country's economic growth, and it is critical – to their performance and therefore the economy's performance overall – that they should not be immune to vigorous competitive pressures

And often, our smaller cases yield big results. Take our finding of an infringement for collusion in the online sale of posters. A fine of less than £165,000. Two small companies, one of which was a whistle-blower and hence immune from fines. That might all sound trivial. But the case had a big impact:

- it showed that online retailing is subject to competition law no less than more traditional retailing; showed that collusion through the use of price-matching software can infringe competition law
- it led to a significant post-decision compliance programme, which was given ballast through the support of online marketplace providers helping to make the CMA's advice available to online sellers
- and led to our first-ever director disqualification on competition law grounds – sending a powerful signal about personal responsibility

That's not trivial at all.

Or take our infringement decision for price-fixing in respect of estate agents' fees. A fine of just £370,000 on 6 local estate agents. Affecting just one small town in Somerset – Burnham-on-Sea. But, again, the case had a big impact. Estate agents' services are a product that millions of ordinary people use, and so a competition law intervention has real resonance about what competition enforcement can achieve for consumers. And it had media coverage worth its weight in gold in compliance impact.

Fourth challenge – protecting competition in the digital economy

A fourth challenge is to do with a fundamental change in the economy, and its competitive dynamics, that we all observe around us. This is what is commonly known as digitalisation: the shift of a significant, and increasing, proportion of commercial activities and transactions to electronic or online platforms.

At one level – and importantly – this represents a boon for competition, and for consumers:

- Online retailing, involving less reliance on costly physical premises, is typically cheaper and more efficient than traditional methods, lowering prices for consumers.
- It offers alternative ways of obtaining and enjoying products and services (for example, e-books arriving alongside hardbacks and paperbacks) so that consumers benefit from innovation.
- And it makes it quicker and easier to shop around, particularly when information is provided by digital comparison websites and by online review sites, which is beneficial for consumers in itself and also intensifies competitive pressures and spurs to lower prices, higher quality, and so on. Many of these important advantages have been examined in the CMA's recent market study into digital comparison tools.

But, as with any other new form of economic activity, there is the potential for abuse. It is incumbent on the CMA, as on any other competition authority, to keep on top of these risks, and to seek to ensure that the potential benefits to consumers and competition are not outweighed by countervailing harms. You will know that in our case work we have recently been looking at a range of competition issues in digital sectors, and continue to do so – including online sales bans, resale price maintenance for internet sales,

‘most favoured nation’ provisions in price comparison websites. A critical question is the extent to which the digitalisation of commerce is not merely one type of economic development among many, but represents a paradigm shift in competitive dynamics, requiring us to rethink some of the tenets and conceptual categories of competition law and policy.

Let me give you a flavour of the kind of issues we will need to address:

1. The use of price-matching software for collusion: Our infringement decision last year on the online sale of posters involved coordination of pricing through price-matching software. In that case, the parties had consciously reached an agreement to coordinate pricing. But what if, without such conscious agreement, but with artificial intelligence, the software of competing businesses spontaneously coordinates their prices? Is that an agreement or ‘meeting of minds’ that would fit the legal definition of a breach of the prohibition on anti-competitive agreements? And, if not, do we need new laws to ‘catch’ this potentially harmful development?
2. Free riding: When online retail sales channels compete against more traditional ‘bricks-and-mortar’ shops, how do we get the balance right between preserving the choice and competitive stimulus offered by the new online sales channels, while at the same time not allowing the kind of ‘free-riding’ by which shoppers browse in the bricks-and-mortar shops, and receive pre-sales advice and service, but then go off and purchase the product more cheaply online? That is unlikely to be a sustainable model – if the businesses which invest in physical retail premises, with physical stock to browse and sales assistants to advise, cannot recoup their investment (because the shoppers make their actual purchases elsewhere) they will not survive in business for very long. Not to mention the social cost of our high streets dying. Getting the balance right is a recurring issue in cases of online sales bans and platform bans, selective distribution systems and restrictions on advertising prices online.
3. Personalisation: Online commercial outlets know more and more about us as consumers, storing up data about our age, where we live, our tastes, our buying habits, our willingness to shop around, our willingness to pay high prices, and so on. Until a decade or so ago, in the supermarket, the department store or the shopping mall, we have thought ourselves to be anonymous – but online sellers seem to know an awful lot about us (sometimes more than we ourselves know). That allows for personalised pricing – that is, different prices set for each individual shopper. When that happens, does the supplier then have an inordinate amount of market power relative to the consumer? If so, what can or should be done about it?
4. And finally, when it comes to taking enforcement action, should we take the view that, given that technology markets are fast-moving, one should hesitate to intervene and rather let competitive markets take care of themselves – companies that appear to have market power at a particular moment are quickly superseded by others. Or does the fact that these are fast moving markets entail that we need to take action particularly quickly, to avoid anti-competitive practices stifling new competition –

including through the use of interim measures?

These complex, and fundamental, choices are faced not only by the CMA, but by competition enforcement authorities across the world. We are thinking hard about them, and we are committing fully to the debate worldwide, and will continue to do so. At the CMA we propose to establish within the organisation a new data unit whose remit will include serious expert analysis of these issues.

Fifth challenge – the UK leaving the EU

I now turn to the fifth challenge we currently face, and it's by no means the smallest. Some of you might feel, having not heard me mention it so far, that it's the elephant in the room.

I'm talking of course about Brexit – the effect on competition law enforcement of the United Kingdom leaving the European Union.

It will be obvious to you that, unless we remain subject to the EU competition regime, for example through some kind of EEA-type arrangement, there will be a big effect on competition law. That's because, as we all know, competition law in this country has operated at both EU and UK levels, and the UK regime is very substantially modelled on that of the EU.

Clearly there are big challenges to face: post-Brexit, the CMA is likely to have to take on cases that were previously the preserve of the European Commission. And these are typically the larger and more complex cases. We will need the skills and the resources to do so. We will also want to preserve, so far as possible, the benefits of productive exchanges of information that currently exist between the CMA and the European Commission, and between the CMA and national competition authorities of EU member states. And we want as orderly a transition as possible so that international enforcement cases affecting UK consumers are properly dealt with as we move to the new arrangements.

But one detects in the competition law community a tendency to see only the difficulties of leaving the EU, and not the opportunities – putting the competition law community rather out of touch with public opinion as a whole as expressed in the June 2016 referendum.

Because, although there are clearly major hurdles of the type I have just outlined, there are also real opportunities – notably, an opportunity for the UK competition authorities, courts and policy makers to shape competition enforcement in the ways they think most appropriate, most correct legally and economically, and most suitable for our national conditions, rather than being constrained to conform to EU jurisprudence and policy whether right or wrong.

Take the debate on section 60 of the Competition Act 1998, the provision that, in essence, requires the UK courts and competition authorities to apply our prohibitions so far as possible consistently with EU jurisprudence.

- On the one hand, there are clear advantages in businesses being subject to competition laws that do not differ too radically from each other, particularly in the case of businesses that operate multi-nationally. But that is in any way the case – in most respects, competition law imposes the same requirements on businesses across the globe. Whether under the UK or the EU regime, the US or the Australian, the Russian or the South African, it's unlawful for businesses to collude on price, for example, or to engage in bid-rigging when tendering for contracts.

- Yet at the margins, there are issues on where there are legitimate differences – loyalty rebates, for instance, which have been the subject of intense economic and legal debate, or online sales restrictions, or price discrimination.

Clearly, it makes sense for any competition regime (including the CMA's) to have regard to international best practice – whether expressed in the US Supreme Court or the Court of Justice of the EU or in other respected and distinguished forums.

But, once we are outside the EU, if the view of the UK competition authorities or courts is that the better view on one of these issues is X, why should they be constrained from applying X just because a foreign court, the EU Court of Justice, has case law which says Y, case law which might be outdated?

It makes sense for the UK authorities to be able to diverge from EU precedent if they think that that is the right course of action, consistent with a better reading of the law and economic analysis.

At the same time, it would be unfortunate if the UK competition authorities and courts had to operate in a vacuum, with no precedent basis for their decision-making, other than the relatively limited basis of 17 years of domestic precedent under the Competition Act.

A balanced approach to section 60, which allows us to have regard to EU jurisprudence, but not be bound by it, and to be free to diverge where appropriate, seems a real opportunity for the UK to be at the cutting edge of competition law analysis and enforcement.

Section 60 apart, for us to take on the additional workload of cases that until now have been the exclusive preserve of the European Commission is undoubtedly a big challenge and an enormous undertaking for the UK competition regime. But, considering what we have achieved in just a few years – 'a big turnaround' to quite the comment I started with – we are certainly up for that challenge, and there can be real grounds for confidence that we can continue to deliver effective enforcement, on a bigger scale than ever – benefiting all of us, as consumers, as businesses and as citizens.

1. Global Competition Review, Rating enforcement 2017, July 2017.

2. And also, at least so long as the United Kingdom is a member state of the European Union, in Articles 101 and 102 of the Treaty on the Functioning of the EU.

3. Department for Business, Innovation and Skills, Growth, competition and the competition regime – Government response to consultation, March 2012, paragraph 6.8.

4. Remarks made by Margrethe Vestager following speech at Bundeskartellamt 18th Conference on Competition, Berlin, 16 March 2017, quoted on MLex 16 March 2017.

5. Competition Act 1998 section 39 read with The Competition Act Small Agreements and Conduct of Minor Significance) Regulations 2000 (SI 2000/262).

6. Global Competition Review, Rating enforcement 2016, 13 July 2016.