Institute of European and Comparative Law, University of Oxford

UNIVERSITY OF OXFORD

Trends in Retail Competition: Private labels, brands and competition policy

Report on the seventeenth annual symposium on competition amongst retailers and suppliers

Held on Friday 13th May 2022
at Mary Sunley Building, St Catherine's College Oxford

Sponsored by

Bristows and oxera

In memoriam

Professor Ulf Bernitz (1936 – 2022)

Founder of the Oxford Symposium – Trends in retail competition

The Institute of European and Comparative Law and its members mourn the passing of Professor Ulf Bernitz in July 2022, a longstanding member of the Institute and founding father as well as dedicated co-ordinator of the Oxford-Stockholm collaboration.

Ulf was a specialist in both European Union law and private law, with a particular interest in consumer law, competition law and intellectual property law. He was a leading legal figure not merely in Sweden, his home jurisdiction, but over many decades engaged with other systems and colleagues from all over the world. Having read law at Stockholm University, Ulf showed an early fascination with the common law, obtaining a Master of Comparative Jurisprudence at New York University in 1963. There followed a glittering academic career. Based in Stockholm, Ulf soon established himself as the Swedish doyen of European Community (later: Union) law. Always keen to enhance and promote the reputation of Sweden as a powerhouse in EU law scholarship, Ulf's contributions to both academia and legal practice are far too numerous to be listed here in full. Suffice it to say that besides publishing widely in his fields of expertise, he served as a highly respected legal expert in various commissions, headed a range of specialist bodies, held visiting positions in Oxford, Paris, London, Riga and Örebro, and was awarded an honorary doctorate by Copenhagen University.

The Institute's connection with Ulf goes back over twenty years. In 2001, he was instrumental in setting up the successful collaboration between the Universities of Oxford and Stockholm, spearheaded on the Oxford side by the Institute of European and Comparative Law and on the Stockholm side by the Stockholm Centre for Commercial Law. As Director for the Wallenberg Foundation Oxford/Stockholm Association in European Law, Ulf initiated or supported countless seminars, conferences and publications which have since sprung – and continue to spring – from this collaboration. Long into his retirement and until May 2022, Ulf regularly visited the Institute and contributed enthusiastically to its activities. No less than three books in the Institute's own series ("Studies of the Oxford Institute of European and Comparative Law") were co-edited by him over the years.

Ulf was a much-loved member of the IECL community. When news of his death broke, tributes came flooding in. Steve Weatherill, emeritus Jacques Delors Professor of EU Law, writes: "It is over twenty years since I first got to know Ulf, first as a colleague and then quickly as a friend.

He has, for more than twenty years, been a staunch supporter of European law in Oxford and of links between Oxford and Sweden. We owe him an incalculable debt, though he would never have wanted it calculated. Ulf was not a man who worried about details or transactions or obligations, he was concerned only to help. And help he did – a lot. Conferences, lectures, seminars, examination of postgraduate students – you could rely on Ulf. He was always supportive, energetic, enthusiastic, full of ideas and ambition, and unfailingly cheerful. The only time I saw him shaken from his normal good humour was in 2016, on learning of the outcome of the referendum. Brexit shocked him. He was not alone in that of course, but his concern was real and deep, and it was, I am sure, provoked by his affection for this country." Steve concludes: "Ulf was the kindest of men. He will be remembered with great fondness in Oxford in general and in the Institute in particular."

Ariel Ezrachi, Slaughter and May Professor of Competition Law, remembers that "Ulf's positive attitude and excitement were always a driving force. He would provide a calming steady contribution in the organisation of events, a creative mind in the explorations of new frontiers, and would go to every length in support of new initiatives. He retained a deep curiosity, and a wonderful enthusiasm to explore new areas of law." And John Noble, Director of the British Brands Group and co-organiser – together with Ulf Bernitz and Ariel Ezrachi – of the Annual Symposium on "Trends in Retail Competition", recalls that Ulf at their last meeting in May "gave no inkling [of his illness] and contributed to the programme and dinner afterwards as he usually did, with huge charm, knowledge and style. It has been entirely thanks to him that the Symposium series ever happened and each year I have hugely enjoyed my interaction with him. He was true gentleman with a lovely sense of humour and a fine touch."

The Institute is tremendously grateful to have benefited so much from Ulf's kindness, wisdom and engagement. He will be sorely missed by all who knew him.

Birke Häcker
(*Director of the Oxford Institute of European and Comparative Law*)

CONTENTS

OVERVIEW

This report provides an overview of the seventeenth annual symposium discussing Trends in Retail Competition. The symposium, held for the first time as a hybrid event, covered key themes relevant to competition involving branded producers and distributors, including the regulation of digital markets, consumer policy and protection and developments governing vertical and horizontal agreements.

The symposium opened with a keynote presentation that outlined the UK's approach to the regulation of digital markets, the anticipated parliamentary delay in setting up the regulatory framework and the practical implications for retailers and brands in the meantime.

This prepared the ground for the first session, on the regulation of digital markets. A discussion on the role of codes of practice opened this session, followed by a presentation from the European Commission on the Digital Markets Act, who it applies to, the obligations it imposes and how it will be enforced. A discussion was then held on how the rise of platforms has changed competition law and market dynamics, vertical issues such as dual distribution and online sales restrictions and how suppliers and retailers are reacting to the new environment. The session closed with a presentation on recent shifts in approach to the regulation of digital markets in the US.

The second session focused on consumer policy, protection and enforcement, comprising a discussion involving a regulator, consumer representative, academic, lawyer and branded supplier, with input encouraged from the floor. This explored how consumers think about products and make decisions and how business practices may influence consumer behaviour. Whether current consumer law works for the challenges posed by digital markets was assessed, with the discussion closing with the relative advantages of prescriptive and principles-based approaches to consumer law being explored.

The final session focused on vertical and horizontal agreements, looking at the changing competition landscape and the policy response. Regulations relating to vertical and horizontal block exemptions have been or are being updated both in the EU and UK, providing a context for the discussion. Specific themes explored included changing approaches to information exchange, the distinction between joint purchasing and buyer cartels and striking the right balance between encouraging sustainability and ensuring competition law remains effective.

The event was hosted by the Oxford Institute of European and Comparative Law in conjunction with the Centre for Competition Law and Policy and was sponsored by Bristows LLP and Oxera Consulting. It was held under the Chatham House Rule.

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PROGRAMME

09.30 Introduction
Professor Ulf Bernitz

KEYNOTE PRESENTATION
The impact of competition and consumer policy on the shaping of markets
Alex Baker, *Fingleton*

SESSION 1 – THE REGULATION OF DIGITAL MARKETS

10.10 **Panel discussion: Codes of practice and the regulation of digital markets**

Chair Helen Gordon-Lee, *Former Legal Adviser to the Groceries Code Adjudicator*
Panellists Catherine Batchelor, *Digital Markets Unit*
Rona Bar-Isaac, *Addleshaw Goddard*

11.10 **The Digital Markets Act and the regulation of digital**
Thomas Kramler, *DG Comp, European Commission*

11.30 **Panel discussion: Retail competition and the impact on shoppers and the High Street**

Chair Ariel Ezrachi, *Oxford University*
Panellists Daniel Diot, *ILEC*
Jan Werner, *EuroCommerce*
Thomas Kramler, *DG Comp, European Commission*
Toby Pickard, *Institute of Grocery Distribution*

12.40 **A US perspective on the regulation of digital markets**
Bill Kovacic, *George Washington University School of Law*

SESSION 2 – CONSUMER POLICY AND PROTECTION

14.00 **Panel discussion: Consumer policy, protection and enforcement in fast moving consumer goods markets**

Chair Christine Riefa, *Reading University School of Law*
Panellists Agustin Reyna, *BEUC*
Jason Freeman, *Competition and Markets Authority*
Henda van der Walt, *Tilda*
Mateja Durovic, *King's College London*
Michael Coley, *Gough Square Chambers*

SESSION 3 – VERTICAL AND HORIZONTAL AGREEMENTS

15.40 **Panel discussion: The changing competition landscape and the policy response**

Chair Sean-Paul Brankin, *Bristows*

Panellists Avantika Chowdhury, Oxera Consulting
Danica Malloy, *Coca-Cola Europacific Partners*
Tim Capel, *Competition and Markets Authority*

16.50 Closing remarks
Professor Ulf Bernitz

KEYNOTE PRESENTATION

THE IMPACT OF COMPETITION AND CONSUMER POLICY ON THE SHAPING OF MARKETS

Alex Baker, Fingleton

Recent proposals for digital markets regulation in the UK

In December 2020, the Digital Markets Taskforce (led by the CMA and incorporating expertise from Ofcom and the ICO) published its report to the Government setting out its advice on the new pro-competition regime, the key pillars of which are:

- Establishing a Digital Markets Unit (**DMU**) with specialist expertise and objectives in relation to digital markets;
- A new regulatory framework to work alongside existing competition and consumer laws;
- Enabling powers to allow the DMU to devise tailored enforceable codes of conduct, regulate the behaviour of firms with strategic market status and make pro-competitive interventions to address sources of market power; and
- A special mergers regime for firms with strategic market status.

The motivation for the proposals is the general consensus that existing competition and consumer tools are inadequate at dealing with the size and power of global tech firms. They are also perceived as inflexible and slow given the rapid pace of change of digital markets, and incapable of addressing underlying sources of market power.

In devising the proposals, the Digital Markets Taskforce learnt from the regulation of UK grocery industry. For example, despite the scepticism of the CMA's predecessors, the Groceries Code Adjudicator helped demonstrate that enforceable codes of conduct can help regulate behaviour *ex-ante*. Another example is the Competition Commission's investigation into the UK grocery market, where it was concerned about the buyer power of supermarkets over suppliers, something that would deliver lower prices to consumers. Over time, there has been a shift in understanding that sometimes features of markets benefitting consumers in the short term can lead to harm in the longer term, which partly explains the calls for a different regulatory regime for digital markets.

The Queen's Speech this year suggested that the UK's legislative agenda would include new competition rules for digital markets. These rules would be set out in a draft Digital Markets, Competition and Consumer Bill (the **Bill**), which would include the Digital Markets Taskforce proposals except for those relating to a special mergers regime. Later media briefings on the Bill suggested it would be introduced to parliament when parliamentary time allows.

The Government's timeline to introduce the Bill "when parliamentary time allows" indicates that it is not a top priority. Given the current stage of the general election cycle that the UK is in, it is not clear that digital markets regulation will become a key political priority in the near future. Therefore, it is unlikely that the Bill will be introduced for at least three years (i.e., after the next general election). In that time, digital markets will evolve, the UK will learn more about the issues under debate and other countries will adopt their own approaches which we can learn from, meaning that the proposals that

will be debated by parliament when it is eventually introduced are likely to be different from those proposed today.

Practical implications for retailers and brands

Without new digital markets regulation, and because the existing law is inflexible in responding to changes to the market and behaviour, changing retailer behaviour will have to rely on the tools currently available to the various regulators. The fragmentation of responsibility across regulators increases the chance of gaps in regulation, creates coordination and accountability issues amongst regulators and makes it more difficult for stakeholders to ascertain the correct regulator for a particular issue. The proposals could help with some of these issues; for example, the DMU would be able to make more holistic decisions about the best way to tackle issues, leading to potentially quicker and more comprehensive action.

The current inflationary pressures mean that the implications for the priorities of retailers and brands may be worse in the short term. The increased cost of living will influence the enforcement priorities of the CMA and other regulators, a key focus being driving prices down. There will also continue to be a focus on vulnerable and low-income group consumers. Any competition or consumer arguments that are not rooted in lower prices or any enforcement action that could result in price increases will unlikely be accepted or taken.

Action being taken by the CMA

The CMA is able to act in a number of ways that can assist in the absence of digital markets regulation and in current economic climate, such as:

- Obtaining funding for a DMU that functions within the CMA to support the CMA's casework;
- Continuing to undertake targeted market studies, for example in online advertising and mobile app ecosystems;
- Taking more targeted and robust enforcement action, including in relation to mergers (which the CMA considers to be a highly useful tool in preventing concentration in markets).

The global debate on digital markets regulation

The Furman Review in 2019 – one of the first reports of its kind – gave the impression that the UK could lead the way in shaping global digital markets regulation. However, any delay in implementing UK regulation, as is predicted, will mean that the UK will lose its chance to influence other countries. Governments in countries who implement such regulation in the meantime will be at the frontier of global digital markets regulation.

SESSION 1
THE REGULATION OF DIGITAL MARKETS

Codes of practice and the regulation of digital markets

Chair *Helen Gordon-Lee, Former Legal Adviser to the Groceries Code Adjudicator*
Panellists *Catherine Batchelor, Digital Markets Unit*
Rona Bar-Isaac, Addleshaw Goddard

Where we are now

In March 2019, the Furman Review was published which set out (i) the state of competition in digital markets and (ii) some proposals to boost competition and innovation for the benefit of consumers and businesses. Based on the Furman Review, the Digital Markets Taskforce (**DMT**) published its advice for the regulatory landscape. The Government consulted on the DMT's advice in July 2021.

In May 2022, the Government confirmed that it would take on the majority of the proposals and the Queen's Speech stated that the Government would introduce a draft Digital Markets and Competition Consumer Bill (the **Bill**) with the expectation that it would be scrutinised and introduced swiftly.

Proposal for a UK regime

The key proposal is for the Digital Markets Unit (**DMU**), which currently sits within the CMA in shadow form, to oversee a strategic market status (**SMS**) regime. Firms with SMS will be those that have substantial entrenched market power that provides them with a strategic position. The DMU will apply a holistic assessment to decide which firms have SMS. They are also considering introducing a revenue threshold so that only a handful of firms are caught.

Firms with SMS will be subject to:

(i) Conduct obligations (i.e. a code of conduct) to prevent the firm from taking advantage of its position and to prevent exploitative conduct;
(ii) Procompetitive interventions by the regulator, i.e. looking at the underlying causes of a firm having significant market power and implementing remedies to make the market more dynamic;
(iii) Additional reporting obligations e.g. regarding M&A.

The guiding principles of the new regime will be to ensure that the conduct obligations work, by focusing on three pillars: predictability and legal certainty for firms and the wider market; flexibility so that they can apply to a range of different firms in different markets and activities; and speed to allow action to be taken swiftly.

The proposed legislation contains three objectives: fair trading, open choices and trust/transparency. Each objective has conduct requirements, which set the boundaries within which the DMU can tailor conduct obligations to the firm and its activities.

Principles-based regulation allows for firms to put forward evidence that their conduct provides net consumer benefits and should be permissible on the basis overall if you consider impact on privacy, consumer outcomes on choice etc.

Digital Regulation Cooperation Forum (DRCF)

The DRCF, comprising the CMA, Ofcom, the ICO and the FCA, is a forum for cooperation on matters of mutual interest in relation to digital regulation (e.g., algorithms). Collaboration helps build technical understanding and capabilities more efficiently by all members scanning the digital horizon for emerging technologies and potential issues. In addition, the DRCF promotes coherence of regulatory regimes set by each regulator, to limit the effect of tension between differing policy objectives of regulators.

Comparing and contrasting different types of code

In developing a code, there are many factors to consider.

It is important to strike a balance between clarity/certainty and flexibility. This was done effectively when developing the Groceries Supply Code of Practice (**GSCOP**), where, despite significant changes in the market, principles were developed with clear guidance on how to implement them. While developing a code for the digital markets is more challenging due to the size of the players and rate of innovation/change, the development of the GSCOP has shown that a set of principles can be coded with certainty but still can also allow for future-proofing and interpretation.

A code works well when it is evidence-based, i.e. developed with a firm's SMS status in mind (e.g. whether a firm has entrenched market power, how it uses it and the potential harms resulting from it).

A voluntary code appears to work well in ecosystems where all players are peers. However, an imbalance of market power involves confidence-building which may not be achievable in the digital ecosystem given its size and rate of innovation/change.

In summary, it is important to find a balance in an ecosystem where retailers and suppliers have different priorities. However, it should be noted that even if an agreement were reached, the implementation of the code could differ depending on the regulatory body.

Different incentives for compliance and relative effectiveness

Several tools to ensure the code is effective are being discussed, such as:

- the introduction of credible financial penalties, potentially entrenched in legislation;
- an engaged and proactive regulator to make firms believe they will be called to account; and
- senior management responsibility.

Critical elements for effectiveness / monitoring for effectiveness

A significant challenge will be ensuring that information flows to the regulator in an unhindered way. To do this, there must be a robust enforcement structure, but also firms must feel confident that sharing information will not expose them.

This collaborative approach was taken by the Groceries Code Adjudicator (**GCA**) when developing the GSCOP. The GCA established relationships with senior individuals in regulated businesses to obtain information on a "business as usual" basis (rather than investigative), and publicly reported on the

information while preserving businesses' integrity and confidentiality. This prompted changes in business practice and improved retailer compliance. By ensuring that they could communicate openly without risk of exposure or adverse consequences, suppliers' perspectives changed and they were encouraged to come forward.

While the digital markets business model is vastly different, learnings can be taken from this experience. Although firms in the digital markets industry are hesitant about speaking to regulators, confidence can be built by developing an effective code that sets out the principles and practices that are sufficiently open and transparent. This includes not allowing any "back room deals" between firms and the regulator.

Overlapping regulation and importance of cooperation between regulators

G7 countries have been collaborating on an overarching structure for the regulatory regime. Although implementation will be different between countries, G7 are working together to ensure that there are no significant tensions.

The Digital Markets Act and the regulation of digital

Thomas Kramler, DG Comp, European Commission

Overview of the Digital Markets Act (DMA)

The emergence and development of digital markets has sparked a worldwide debate about whether the current competition law tools available are sufficient to deal with its challenges. While the European Commission has had a good track record of enforcing competition law against big tech (e.g. against Microsoft, Google, Apple and Amazon), the general consensus globally is that something further is required that complements the *ex post* antitrust rules that are currently available.

The DMA is a new piece of EU legislation that aims to bridge that gap by introducing *ex ante* legislation which is based on internal market rules. This means that it aims to set out the rules up front so that companies know what they must do to comply, which contrasts with the *ex post* approach, in which regulators intervene only once the harmful conduct has occurred. It also contrasts with the UK approach in which regulators appear to have more input into the content of the rules.

The main drawback of the approach set out in the DMA is that it is less flexible because the rules have already been set out. This has posed challenges when drafting to ensure that they are future-proof, given that the digital markets sector is constantly evolving. However, there is support for a more stringent system in which the legislator has already made the difficult decisions, and the regulator only has to enforce the rules; the fact that the DMA has been through the democratic process gives it a certain amount of legitimacy.

Who it applies to

The DMA is intended to be asymmetric, i.e. only applying to a handful of "gatekeeping" companies that meet the relevant criteria and who provide the core platform services listed in the Act, e.g., search engines, video sharing platforms, personal communications services, etc.

A company is a "gatekeeper" if it meets the following criteria:

(i) It must have a significant impact on the internal market;
(ii) It must be an important gateway, i.e. acting as an intermediate between end users and business users; and
(iii) It must have had an entrenched position in the EU for three years.

If a company meets the criteria, the Commission can decide whether the company should be classed as a gatekeeper under a quantitative designation (i.e. based on end/business user numbers) or a qualitative designation (i.e. based on the market position). The quantitative designation will initially be preferred, because it imposes a strong presumption that a company is a gatekeeper if they fulfil the numbers which will be difficult to rebut.

Obligations

The obligations under the DMA will apply as soon as a company is designated as a gatekeeper. The obligations are sufficiently broad to be able to apply to all gatekeepers, but also precise enough to provide certainty.

The drafting of the obligations was driven by experience of the Commission and other authorities such as the CMA in several antitrust cases, e.g. in the mobile or advertising markets. A few examples of the obligations are:

- a prohibition of using business users' data when a gatekeeper provides a similar service;
- a prohibition of sourcing data from third party sites;
- user-facing requirements, such as the requirement for a choice screen for voice assistance/search/operating systems; and
- interoperability requirements e.g. relating to APIs.

Compliance and enforcement

Some obligations are clear and straightforward enough to be applied directly. For other obligations, gatekeeper companies can contact the Commission to ask how to apply them based on their specific business models; the Commission can (but is not obliged to) then respond with more detailed instructions.

As with any new legislation, some companies will be willing to engage with the Commission about how to implement their strategies in compliance with the DMA, but where others are not, the Commission is prepared to litigate. Both DG Comp and DG Connect will be in charge of enforcement as a joint venture.

Timeline

The DMA has already been provisionally agreed by core legislators. The following timeline is expected:

- The EU parliament to vote on the text in early July 2022;
- Endorsement by the Council of the EU over the summer 2022;
- DMA entry into force in October 2022;
- DMA to apply 6 months after coming into force – approximately in April 2023;
- Potential gatekeeper companies have two months to notify the Commission of their potential gatekeeper status;
- The Commission must then decide whether these companies are gatekeepers within 45 days;
- Gatekeeper companies must comply with the obligations within 6 months.

Summary

The enactment of the DMA will mean that regulators have an additional tool when dealing with gatekeeper issues in the EU. Regulators should decide whether to implement the existing *ex post* approach or the *ex ante* approach under the DMA depending on the conduct. While some situations will not fit neatly into any category, the additional source of legislation should help to limit any grey areas.

Retail competition and the impact on shoppers and the High Street

Chair *Ariel Ezrachi, Oxford University*
Panellists *Daniel Diot, ILEC*
Jan Werner, EuroCommerce
Thomas Kramler, DG Comp, European Commission
Toby Pickard, Institute of Grocery Distribution

For both a retailer and a branded supplier, understanding the consumer is key to generating more sales. Whilst the online retail and grocery market is built to collect vast amounts of consumer data for tracking and targeting purposes, the high street has also found ways to collect data by developing hybrid models in the last few years, e.g. Click & Collect, in-store tracking and brand membership cards. Competition concerns arise when there is an imbalance of power between retailers, suppliers and online platforms or marketplaces.

There are also concerns that a consumer has an unrealistic view of their autonomy when shopping. Although the online shopping environment does provide the consumer with a great deal of information and choice, it was ultimately designed to collect data about them. Therefore, there could be merit in basing theories of harm and policies on the fact that consumers are not fully autonomous. There is work to be done on identifying the additional tools required and ensuring that legislation and enforcement keep up with the pace of development of the market.

How the rise of platforms has changed competition law and market dynamics

The European Commission (the **Commission**) launched an inquiry into the e-commerce sector in 2015, carrying out a number of studies on market trends in order to evaluate the Vertical Block Exemption Regulation (**VBER**). Two main trends were identified from those market studies:

(i) e-commerce has become mainstream; and
(ii) there has been an increasing amount of "platformisation", i.e. a growing number of platforms are being set up and there is more concentration on a smaller number of online platforms.

Smaller retailers and brand owners are more likely to use existing marketplaces that provide them with consumer reach (rather than setting up their own operation which involves a significant cost). This dependency gives existing online marketplaces market power, especially where there is intermediation between sellers and buyers. This increase in market power can lead to competition law issues. At the same time, the attempt by suppliers to exclude smaller retailers from using platforms can exclude such retailers from retail sales overall (see below).

There is also a risk of disintermediation. Retailers that sell products on online marketplaces do not have access to data about the people buying their products, whereas the marketplace does. This leads to hyper-scaling marketplaces having a data advantage by collecting large amounts of data, compared to smaller retailers who can only collect data from people buying directly from their website. The DMA tries to address this issue, but there is still work to be done.

It is evident that there is therefore an ongoing tension – platforms need to be efficient, but the imbalance of power can lead to harm to the consumer.

Vertical competition and the friction between retailers and suppliers on online marketplaces

The VBER has recently been updated; the new version came into force in June 2022. It is relevant for all members in the supply chain, particularly small and large retailers and wholesalers.

One important feature of a supply chain is dual distribution. This refers to distribution arrangements where a supplier sells its products through retailers as well as directly to consumers, in competition with the retailer. Dual distribution has increased in the last few years (especially with big brands and in the grocery sector) and does not necessarily lead to competition issues. However, because there is a relationship between the retailer and supplier, if the supplier misuses the product sale information provided to it by the retailer for its own purposes, the relationship can become imbalanced. This is partly addressed in the VBER, and the Guidelines on Vertical Restraints set out which information can and cannot be shared. The restrictions on information sharing are sufficiently clear for larger organisations, but there is doubt over whether they are clear enough for SMEs.

Another trend impacting vertical competition is suppliers restricting retailers' sales through online marketplaces. This means that SMEs have to set up their own websites but may sell nothing through it due to limited customer reach. Authorities should be aware of the use of marketplace bans and look to the DMA to regulate such suppliers' conduct if it is abusive.

ILEC's complaint against Amazon in France

ILEC (an organisation representing suppliers) expressed the view that in France, Amazon is seen as a threat to other retailers, because (i) it claims that it does not have to respect French legislation and (ii) it does not have the same cost burdens of setting up shops. While suppliers view Amazon as an opportunity because it is an additional portal, it is also viewed as a risk due to abusive practices.

In 2020, ILEC commenced a claim against Amazon in France. The main practice complained of was margin compensation, i.e. demanding payments from suppliers due to the item not being profitable. They were also accused of reducing product visibility due to non-profitability. Amazon rebutted the claim by stating that French legislation relating to commercial relationships did not apply to contracts but Luxembourg legislation instead.

Recently, a decision was handed down by the French courts which confirmed that ILEC had the ability to bring the claim and that French legislation did apply to the relationship between French suppliers and Amazon, even though Amazon is based in Luxembourg. The parties are expecting a decision on the substantive issues in September this year.

How consumers and suppliers are reacting to the new environment

While the pandemic accelerated the rate at which shoppers bought food and groceries online, online grocery shopping in the UK still represents a relatively small section of the market (online grocery represents approximately 10% of the market, projected to increase to 12% by 2026). In France, the main online shopping model used by retailers and consumers is the "drive" concept, i.e. click and collect.

For grocery retailers, online shopping and click and collect is not very profitable due to the delivery, staffing and time costs associated with it. For this reason, there is a push to drive consumers back in store. However, online shopping allows retailers to collect valuable data about consumers. Physical stores have

been trying to collect similar data with various technologies, e.g. scan and go technology, heat-mapping and cameras in-store.

Other developments in the grocery sector include robotic/drone deliveries (currently being tested in the UK), instant shopping platforms (Whoosh, Getir, Gorillas) and shops without check-outs (Tesco, Amazon).

The trend towards online shopping has led to volatility, which suppliers are having to consider and manage, e.g. the speed of online sales, lead/delivery time once an item is purchased, setting up a direct-to-consumer website and packaging requirements.

Key changes in the new VBER

As discussed above, the VBER has recently been updated for the first time in 12 years. The changes show how market development has translated into legislation. The key changes are:

- a new block exemption that outlaws wide parity clauses, i.e. those that prohibit companies who sell on one platform from putting better offers on a second platform. The block exemption introduces more competition between platforms because sellers do not have to centralise all their offers on one platform, meaning they are likely to use more than one platform;
- clear Guidelines confirming that online marketplaces or online intermediate services for thousands of sellers are highly unlikely to qualify as agents. Platforms would previously circumvent competition laws by claiming to be agents working on behalf of sellers, which is now more difficult;
- the ability for suppliers to charge different prices depending on the distribution channel (online or in-store, known as “dual pricing”), provided that the price isn’t so high that it prohibits online selling;
- clear guidelines explaining in more detail what information exchange is acceptable in dual distribution scenarios (i.e. when a supplier also runs its own retail operations;
- more lenient exclusivity rules, allowing up to five exclusive distributors in one territory. Previously, suppliers could only appoint one exclusive distributor which led to artificial slicing of the market; and
- new rules relating to online restrictions, which try to strike a balance between giving suppliers enough flexibility to impose quality requirements in terms of how the online offer should look, but not allowing severe restrictions such that retailers cannot practically sell online anymore or use the internet effectively.

A US perspective on the regulation of digital markets

Bill Kovacic, George Washington University Law School

For much of the past forty years, USA has been viewed as a brake in the expansion of a regulatory regime for competition. In this period, the US scepticism about vigorous competition law enforcement to police mergers and dominant firm conduct often are seen as having played a part in allowing tech companies to become the huge conglomerates they are today.

The Biden administration has undertaken a dramatic change to this approach. In July 2021, Joe Biden signed an executive order declaring that the US will promote competition as a core element of economic transformation in the US. This change in direction was stimulated by a partnership between Tim Wu (a White House official advising on competition and technology issues), Lina Khan (chair of the Federal Trade Commission (**FTC**)) and Jonathan Kanter (head of the Antitrust Division of the Department of Justice (**DOJ**)). The order declared the formation of a Competition Council and 72 prescriptions, which includes more DOJ/FTC enforcement, revision of the US merger guidelines, and expanded recourse to FTC competition rulemaking.

The executive order aims to establish a "Whole of Government" Competition Program. Biden recognises that to achieve this, there needs to be a collective effort by several public agencies influencing the development of the competitive process. Agencies are being encouraged to use competition mandates from larger legal frameworks, some of which have not been employed for decades.

In addition to the executive order, an unexpected coalition has formed between left and right wing political parties in relation to big tech, although both sides seek stronger controls for different reasons (e.g. Republicans believe that Donald Trump lost the election because of the interference of big tech). This was clearly demonstrated by the hostile style of questioning by both parties of big tech CEOs at a congressional committee hearing in the summer of 2020. The acute hostility toward big tech of many committee members and other legislators has created a combustible environment in which new legislation can be adopted. Concerned that new statues have yet to be enacted, critics who favour sweeping reforms are now urging the coalition to take action or risk losing face.

Legislation possibilities

The FTC has express statutory authority to issue prescriptive consumer protection rules, but its power to promulgate competition rules is less certain. In 1973, in an expansive reading of the agency's mandate, the US Court of Appeals for the District of Columbia concluded that the FTC has authority to issue competition rules. Subsequent decisions of the US Supreme Court and courts of appeals have not questioned that ruling directly, but their recent jurisprudence has cast doubt upon the philosophy and interpretational approach of the 1973 court of appeals decision. The FTC likely would encounter strong (perhaps fatal) resistance before the Supreme Court in trying to defend a competition rule that imposed significant strictures upon big tech. Congress could avoid this collision and place the FTC's competition rulemaking program on solid ground by passing a new law that clearly gave the agency a broader mandate.

There are therefore three policy streams unfolding to achieve digital regulation in the US: (i) enacting new legislation; (ii) applying existing law enforcement tools (such as litigation and merger control); and (iii) using existing powers to establish *ex ante* regulatory commands.

The following proposals have been made at a federal level:

- Providing more resources to the DOJ and FTC; they are currently underfunded to carry out the mandates before them;
- Taking and extending main proposals for a broad tech-related change directly from the European Commission Digital Markets Act, e.g. non-discrimination mandates;
- Applying narrower measures, through litigation or legislation, to app stores;
- Enhancing merger control;
- Retooling antitrust doctrine generally, e.g. by knocking out precedents that shield dominant firm exclusionary conduct from effective oversight, and;
- Creating an omnibus privacy regime.

The following activities are occurring a state level:

- New York is on the verge of adopting a statute, modelled on Article 102 of the Treaty on the Functioning of the European Union, that prohibits abuse of dominance;
- California is driving the process of setting data protection standards that companies will have to comply with on a national level.

While the US is keen to be an influencer in the digital regulation movement, it risks losing the chance of obtaining "first mover advantage" if it continues to lag behind Europe in developments and action.

Current cases against big tech in the US

Although the US has often been seen to be lagging behind other jurisdictions in relation to digital regulation, it has demonstrated more recently that it is willing to take a tougher stance when considering structural relief (i.e. breaking up dominant enterprises) compared to the European Commission, which considers that such measures should be left as a "last resort".

The biggest monopolisation cases against big tech include:

- Three cases against Google led by the DOJ, Colorado and Texas (trial currently scheduled to begin in September 2023);
- Two cases against Facebook led by the FTC and New York (trial estimated to begin, at the earliest, in February 2024);
- One case against Amazon by the District of Columbia

Given that cases will take a few years after trial to go through the appeals process (including, perhaps, a trip to the Supreme Court) before reaching a final decision, there are concerns over whether the prosecution of antitrust monopolization cases is a method fit for purpose, even for mature and stable technologies. A system that takes five years or more to generate litigation outcomes in highly dynamic technology sectors is prone to be trapped in a hopeless chase, riding a bicycle to catch a Formula One race car..

Key obstacles

While new legislation and policies can be produced, a key issue is how they are implemented: can government bodies cross the often treacherous distance between an idea and its effective realization in practice? In the past, public policy has produced so many disappointments because actual government performance has proved difficult.

Major implementation obstacles include:

- The uncertain depth and durability of support for major legislation;
- Lack of agency resources and capabilities. So far, globally, only the UK has been able to build the requisite analytical capabilities by using market studies, the creation of a Digital Markets Unit, and the assembly of specialists across agencies via the Digital Regulation Cooperation Forum (**DRCF**). The FTC and the DOJ are taking learnings from the CMA in this respect;
- A sceptical judiciary that does not consider that the last 40 years of limited regulation has been so detrimental to the US economy;
- Institutional parochialism. The DRCF is so far ahead of many other institutions in trying to create a true synergy of competition, consumer and data protection activities. The FTC has the capability of all three aspects but bringing them together effectively in practice is a challenge.

A global connection and concerted efforts from agencies around the world not only create leverage that will force concession and bring about changes, but will also allow agencies to share knowhow to understand what is and is not effective.

SESSION 2

CONSUMER POLICY AND PROTECTION

Consumer policy, protection and enforcement in fast moving consumer goods markets

Chair	*Christine Riefa, Reading University School of Law*
Panellists	*Agustin Reyna, BEUC*
	Jason Freeman, Competition and Markets Authority
	Henda van der Walt, Tilda
	Mateja Durovic, King's College London
	Michael Coley, Gough Square Chambers

How consumers think about consumer products

Decision-making is largely based on emotions, which can change very quickly depending on a variety of internal and external factors.

Internal factors

Humans have two thinking processes: System 1, which is fast, instinctive, efficient and normally carried out by our subconscious; and System 2, which is slower and involves planning and post-rationalisation. When shopping, consumers avoid using the more time-consuming and draining System 2 to make decisions, instead falling back on System 1 because it relies on experience and pattern recognition.

External factors

There are several external factors that can influence choice and potentially harm consumers. The following are considered relevant to digital markets and today's economic climate. While work is being done to combat or alleviate the effects of some, there is consensus that more regulation is required to protect consumers.

- **Greenwashing**. Sustainability is an increasingly popular tool that brands use to influence consumers. As sustainability has become more popular, greenwashing, i.e. businesses making unsubstantiated claims of sustainability, has increased. To protect the consumer from such harms, the CMA adopted the Green Claims Code and the Chartered Trading Standards Institute published information on greenwashing to educate shoppers and businesses.
- **Brand lookalikes**. These are retailer own-brands that are designed to look similar to familiar brands in order to increase the ability of own-brand products to compete. They influence consumers by using the same colour and font as the popular brand, leading the consumer to think they are choosing the brand but which may later lead to disappointment when they realise they have chosen the wrong product. There have been a number of court cases dealing with this issue.
- **Dark patterns**. These are user interfaces that have been crafted to trick users into acting in a certain way, such as using fine print terms & conditions to influence users to sign up for a subscription or service that the user didn't intend to.

- **Fake reviews**. While in-store shopping only involves asking the opinion of the salesperson, online shoppers are heavily reliant on reviews when buying goods or services. Shoppers can be misled by fake reviews, some of which have been scripted specifically for that shopper.
- **Inflation**. Increased costs of production drives brands to increase cost prices for retailers and in turn, drives retailers to increase retail prices for consumers.

Business practices influencing consumer behaviour

The digitalisation of markets has led to the development of online choice architecture, i.e. the presentation and placement of choices to influence consumer behaviour. Businesses have consulted behavioural insights experts to understand how people behave and how they can exploit the way we think through heuristics and behavioural biases. These insights are then used to make decisions about (i) how choices are structured and how products are ranked; (ii) how to present choice information e.g. drip pricing and information overload; and (iii) whether and when to create choice pressure, e.g. by installing a slow loading bar or displaying pressure selling messages. All of these practices may not be in the best interests of the consumer if they are being used to lead them to make the choice that the company wants.

The practices above can distort consumer behaviour but can also weaken competition. If retailers use practices that prey on people's susceptibility to make bad choices, this can give rise to an unfair competitive advantage. Businesses sometimes use this advantage to exploit and maintain market power.

Does current consumer law work for the challenges posed by digital markets?

Enforceability

The main issue with consumer law currently is lack of enforcement, whether national or cross-border, despite the fact that digital markets have opened avenues for new types of harmful practices to emerge (as described above). Work is being done to improve this; for example, the CMA has opened cases against some of the big players, and Europe has enacted a new Enforcement and Modernisation Directive to strengthen consumer rights by adapting the European legal landscape to the challenges of the digital world. There are also some substantive gaps, such as the lack of any real action consumers can take against businesses.

Outdated laws

Given the pace of development of digital markets, the mechanisms available may not be fit for purpose to assess the harmful practices described above. There are two main EU Directives in force to protect consumers: (i) the Directive on Unfair Commercial Practices, enacted in 2005 and (ii) the Directive on Unfair Terms in Consumer Contracts, enacted in 1993. These Directives will need to be updated to suit the current pace of digitalisation and new laws will need to be enacted to fill in any gaps.

Can consumer law assist in cases of brand lookalikes?

Brands seeking to take action against brand lookalikes would normally bring an action in the law of passing off. This action would usually be brought by the brand holder, given that they have the most to lose from allowing the activity to go on unchecked. Consumers are unlikely to bring these actions due to the perceived trivial nature of the harm to one individual. In any case, the law of passing off has been eroded over the years by case law, which means that brands will find it more difficult to bring successful claims. The only other avenue available is enforcer-led injunctive relief, but this would require lengthy legal proceedings before a claim is finalised.

A range of enforcement remedies may be the answer

Emphasis often gets placed on particular types of enforcement. However, a solution may be deploying a broad range of enforcement remedies appropriately in the right cases.

Prescriptive vs. principles-based consumer law

There is a discrepancy between prescriptive legislation that bans specific types of unfair practices or actions and principles-based legislation that is more flexible. For certain practices, principles-based legislation does not provide enough certainty for businesses and is difficult to enforce.

Consumer law represents a middle ground by having principles as its foundation, while also setting out clear rights for the consumer, obligations for businesses and some entrenched prohibited actions. As digitalisation progresses, the rules become more flexible, but this creates risks for the consumer as it is not possible to capture all types of unfair practices in legislation. The way consumer law evolves will need to be considered carefully in order to capture as many practices as possible.

Another obstacle with principles-based consumer law is the way it is interpreted by the UK courts. The UK tends to take the black-letter-law perspective by looking for the meaning of words rather than principles behind them. When judges fail to consider the principle or purpose of the law (i.e. which is to protect consumers and drive good market conduct), there are risks of improper interpretation which can have knock-on effects on the consumer in the long run.

A principles-based law could be successful in the digital environment. One scenario is the shift of online platforms from trying to absolve any liability by insisting that they are hosts under the E-Commerce Directive, to a situation where social media companies (e.g. Facebook) are giving undertakings to carry out automated checks on their platforms, deploy algorithms and employ people to review suspected unlabelled advertising on social media. This was achieved through the enforcement of a principles-based professional diligence law. Caution should be taken, however, given that we are yet to see this circumstance being tested in court.

SESSION 3

VERTICAL AND HORIZONTAL AGREEMENTS

The changing competition landscape and the policy response

Chair	*Sean-Paul Brankin, Bristows*
Panellists	*Avantika Chowdhury, Oxera Consulting*
	Danica Malloy, Coca-Cola Europacific Partners
	Tim Capel, Competition and Markets Authority

Recent updates to vertical and horizontal block exemption regulations

The new European Vertical Block Exemption Regulation (**VBER**) and associated Guidelines on Vertical Restraints (**Vertical Guidelines**) came into force on 1 June 2022. The UK adopted equivalent legislation, namely the Vertical Agreements Block Exemption Order (**VABEO**) on the same date and the related guidance (**VABEO Guidance**) was published in July 2022.

The European Commission (**EC**) also published two draft revised Horizontal Block Exemption Regulations (**HBERs**) on research & development and specialisation agreements in March 2022, as well as draft Horizontal Guidelines. These are due to enter into force in January 2023. So far, the Competition and Markets Authority (**CMA**) has published its recommendation to the Secretary of State for Business, Energy and Industrial Strategy (**BEIS**) on the retained HBERs in the UK.

Trends in competition law in light of vertical relationships

While it may appear logical to adopt separate guidance for horizontal and vertical agreements, in reality, this approach may not be as fit-for-purpose when dealing with scenarios where, in addition to there being a vertical relationship, retailers compete with suppliers on a horizontal level with own-brand products. This trend is also seen in digital markets, where online platforms are developing their own businesses that compete with that of their suppliers.

For example, the VABEO Guidance makes a distinction between retailers selling own-brand goods manufactured by a third party and those manufactured in-house, and states that the VABEO can only be used to exempt agreements in the former scenario. In practice, suppliers and retailers entering into contracts will rarely consider how the retailer produces own-brand products, and instead will view all own-brand products as competing. Therefore, while the new rules mean analysis is only required for agreements that are horizontal in effect, in reality, practice is unlikely to change; suppliers will still apply the same level of review to each agreement.

The CMA considers that the VABEO Guidance and the Vertical Guidelines are not only clear for straightforward distribution agreements, but also provide additional detail to assist with the innovative developments that are being brought to market. In drafting the VABEO Guidance, the CMA has had to strike a balance between aligning closely with the EC's approach in order to provide certainty, but also ensuring its independence as a non-EU country by carrying out its own fact-gathering exercises.

Information exchange

In general, the EC's approach to information exchange in the Vertical Guidelines has been accepted by legal practitioners. In general, some positive aspects are:

- they implement a relatively permissive regime in dual distribution scenarios;
- they reflect an economic approach by providing a good level of detail about factors such as type of information, aggregation level and frequency of exchange; and
- they provide more certainty for such scenarios by setting out a "white" list of information that may be exchanged and a "black" list of information that is unlikely to benefit from the VBER, which has been followed in part by the CMA in the VABEO Guidance (see paragraph 10.148).

There is concern, however, that the Horizontal Guidelines are not as clear as they used to be. For example, the previous guidance was relatively clear that information exchange of intended conduct would be a considered cartel-like and restrictive by object and therefore automatically unlawful, and exchange of past and current information was unlikely to be considered in the same way. The draft Horizontal Guidance is less clear as it appears to broaden the definition for information exchange, suggesting that any competitively sensitive information exchanged with a competitor is potentially cartel-like and therefore unlawful (see paragraph 448). This means that competitors will now need to pay closer attention to ensure that all past, current and future competitively sensitive information can lawfully be shared before doing so.

Joint purchasing vs buyer cartels

Most businesses seek to increase sale prices in order to make profit. For this reason, it is clear that seller cartels are restrictive by object as they tend to drive prices up, potentially leading to harm to the consumer. At face value, it may not be obvious how buyer cartels can cause harm, given that they tend to drive purchase prices down. However, they become problematic when, for example, large international buying groups force suppliers to agree to financially unreasonable terms. This can, in turn, harm the consumer if the product is delisted and/or prices are driven up in other environments due to reduced supply. In contrast, joint purchasing arrangements (JPAs), which are permitted, are beneficial in circumstances where smaller retailers combine to form a buying group that can compete with national retailers.

It can be difficult to distinguish JPAs from buyer cartels, given that the purpose of both is to drive purchase prices down. The new draft Horizontal Guidelines provide some assistance by clarifying that JPAs must have a legitimate goal of combining the buying power of smaller players. They also confirm that following through is essential – it will not be sufficient to enter into a JPA but then fail to implement it. In practice, in order to help prove an arrangement is a JPA rather than a buyer cartel, it will be useful to (i) be open with regulators about any purchasing arrangements with other businesses; (ii) have a written agreement that documents the arrangement; and (iii) ensure that all evidence in favour of a JPA is collected and kept up to date.

While the EC has stressed that it intends to keep the JPA regime permissive, the draft Horizontal Guidelines have become more limited due a trend of case law that suggests that purchase prices should be treated in the same way as sale prices. Now, JPAs that do not involve collective negotiation, and instead influence purchasers' individual negotiations with suppliers, are considered to be restrictive by object and therefore unlawful (see paragraph 316). The draft Horizontal Guidelines take

the position that if purchasers deal independently with suppliers then they should make their own independent purchasing decisions.

Sustainability

Horizontal agreements that on their face restrict competition can be exempted under Article 101(3) of the Treaty on the Functioning of the European Union (TFEU) if (i) restrictions are indispensable to the agreements' benefit and (ii) consumers get a fair share of the resulting benefits. The draft Horizontal Guidelines provide guidance for how to apply Article 101(3) to sustainability agreements. In assessing the meaning of a "fair share of the benefits", the draft Guidelines have adopted a narrow approach when interpreting collective benefits, (i.e. agreements that have a positive impact on society rather than just the individual consumer), stating that they can only be taken into account where consumers in the relevant market "substantially overlap" with the beneficiaries outside the market.

The draft Guidelines demonstrate the difficulties of striking the right balance between encouraging sustainability and ensuring competition law remains effective. Competition law on its own is unlikely to be sufficient to tackle environmental issues; a combination with regulation and taxation is likely to be more effective. In addition, while the draft Guidelines provide some examples of sustainability standards, the fact that these standards are not mandatory could lead to a mismatch in competition between suppliers who want to become 100% sustainable and those who still offer conventional goods at lower prices. Having a mandatory minimum standard could help to level the playing field while allowing flexibility for businesses to exceed those standards if they wish.

BIOGRAPHIES

Professor Ulf Bernitz

Institute of European and Comparative Law

Ulf is co-ordinator of the Stockholm-Oxford Collaboration and in this capacity he has been a member of the Institute since 2001. He is Professor of European Law at Stockholm University and Visiting Professor at Örebro University.

Ulf is working and researching primarily in EU law, focusing in the first place on the relation between EU law and national law. He takes special interest in intellectual property law, competition law and marketing and consumer law. He is preparing a book on the effects of EU law by way of influencing and changing national law. He is also engaged in revising several textbooks.

MORNING PROGRAMME

Alexander Baker

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Alex is Managing Director and advises clients on merger control and regulatory issues, informed by over 15 years' of experience as an advisor and as a professional economist for government, regulators, and industry. He combines detailed technical insight into the approach of regulators and policymakers with an understanding of commercial.

He has advised on complex merger reviews, including the main retail and tech mergers in the UK, and has helped clients successfully navigate market studies and regulatory investigations in a variety of jurisdictions.

Previous employers include the Office of Fair Trading, Monitor, the BBC, and PwC. Alex is a non-governmental advisor to the International Competition Network, a Trustee of the National Institute of Economic and Social Research and a member of the Football Association Council.

Helen Gordon-Lee

Former Legal Adviser to the Groceries Code Adjudicator

Helen offers mediation, coaching, facilitation, training and consultancy to individuals and organisations in a range of sectors. From 2013-2020, she was Legal Adviser to the UK's first Groceries Code Adjudicator, helping to establish the GCA as an exemplary modern regulator of the 13 largest groceries retail businesses in the UK. She has since supported the development of a Code of Conduct for the Canadian groceries sector and the implementation by the Republic of Ireland of the Unfair Trading Practices Directive and associated Regulations.

During almost 20 years advising central Government and its arm's length bodies, Helen gained extensive experience of creating and implementing legislation, dealing with unintended consequences, addressing issues and resolving disputes. Helen is a Fellow of the Chartered Institute of Arbitrators and an accredited interpersonal mediator.

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Addleshaw Goddard

Rona is a Partner and Co-Head of Addleshaw Goddard's Retail & Consumer Sector Group who specialises in UK and EC competition and merger control law. She advises UK and international clients on the wide range of competition law matters, including of anti-trust litigation. She is recognised as a leading practitioner in her area and was acclaimed as one of the Lawyer's "Hot 100" for her contributions.

Her clients span a variety of sectors, including comprehensive experience of advising in the retail and consumer sector for over 25 years. She advises both multi-national FMCG businesses and major retailers.

Catherine Batchelor

Digital Markets Unit, Competition and Markets Authority

Catherine is a Director within the Digital Markets Unit at the UK Competition and Markets Authority, where she is responsible for leading work to prepare for the new pro-competition regime for digital markets. She previously led the Digital Markets Taskforce, providing advice to the UK Government on the design and implementation of pro-competition measures for digital markets, building on the proposals put forward by the Digital Competition Expert Panel, chaired by Jason Furman. She also leads the CMA's work on wider areas of the CMA's digital markets policy.

Prior to joining the CMA, Catherine worked at the Financial Conduct Authority, the UK's conduct regulator for financial services in a range of roles including considering competition and innovation within financial services, including a secondment to HM Treasury as Head of FinTech Strategy.

Catherine holds a BSc in Economics as well as an MSc in the Economics of Regulation and Competition.

Thomas Kramler

DG Comp, European Commission

Thomas is head of the unit dealing with e-commerce and data economy in the European Commission's Directorate General for Competition. Before that, he was Head of the Digital Single Market Task Force responsible for the e-commerce sector inquiry.

He holds a law degree and a PhD from the University of Vienna, Austria, and has graduated with a Master's degree in European Community Law from the College of Europe (Bruges).

Previously Mr Kramler was deputy head of the unit responsible for antitrust cases in the information industries, internet and consumer electronics sectors.

Before joining the European Commission, Mr Kramler worked as agent representing the Austrian government before the European Courts in Luxemburg.

Professor Ariel Ezrachi

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Ariel is the Slaughter and May Professor of Competition Law at the University of Oxford and the Director of the University of Oxford Centre for Competition Law and Policy. He is the co-editor-in-chief of the Journal of Antitrust Enforcement (OUP) and the author, co-author and editor of numerous books, including, *How Big Tech Barons Smash Innovation* (forthcoming 2022 Harper Collins), *Competition Overdose* (2020 Harper Collins), *Virtual Competition* (2016, Harvard) and EU Competition Law, An

Analytical Guide to the Leading Cases (7th ed, 2021, Hart). Professor Ezrachi's research and commentary have featured in The Economist, The New Yorker, Wall Street Journal, Financial Times, The Guardian, Nikkei, New Scientist, Politico, WIRED, BBC, and other international outlets.

Daniel Diot

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Daniel is Secretary General of the Institute for Consumer Business Liaison (Institut de liaisons et d'études des industries de consommation).

Jan Werner

EuroCommerce

Jan is Head of Legal Services International at METRO AG, a wholesaler active in about thirty countries worldwide. He joined Metro in 2005. Before that he was Legal Counsel at Continental AG, a tyre and automotive parts manufacturer.

As Head of Legal Services International Jan is overlooking legal matters for Metro in sixteen countries, covering Middle & Eastern Europe as well as Asia. This covers especially expansion, new market entries and regulatory restrictions on operations for retailers, especially in Eastern Europe.

Further, Jan is Chairman of the Supply Chain Committee at EuroCommerce, the largest European trade association. In this role he is contributing to discussions about the changing environment for retail and wholesale. Current discussions centre on the revision of the Vertical Block Exemption Guideline, the Horizontal Block Exemption Regulation, the Digital Markets Act and Territorial Supply Constraints.

Jan is admitted to the German bar and holds a Master of Laws (LL.M.) degree from University of Georgia.

Toby Pickard

Institute of Grocery Distribution

Toby is Head of Insight for Retail Innovation & Futures, helping major brands and retailers future proof their operations. He creates insights and presentations that are used at retailers and brands Innovation Centres, Customer Collaboration Centres and Strategy Days. He created IGD's STAR model, which is the Four Forces of Change Framework that is shaping the future of retail.

Professor William Kovacic

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Bill is Global Competition Professor of Law and Policy, and Director of the Competition Law Center, at George Washington University. He is a Non-Executive Director with the UK's Competition and Markets Authority and has previously been Chairman of the US Federal Trade Commission. He has advised many countries and organisations on antitrust, consumer protection, and the design of regulatory institutions. He holds a J.D. from Columbia University.

AFTERNOON SESSION

Professor Christine Riefa

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Christine is a Professor of Law who teaches Commercial Law, Law and technology, and legal skills. She is leading the project Cross-border enforcement of consumer law. She is a consumer law specialist with international expertise and has advised governments on reform of consumer laws in different hemispheres. She is widely published with work cited in official documents from international institutions and academic scholarship. She is currently working on a monograph on Consumer Protection and Global E-commerce.

Agustin Reyna

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Agustín is Director of Legal and Economic Affairs at The European Consumer Organisation, BEUC. The primary task of BEUC is to act as a strong consumer voice in Brussels and to ensure that consumer interests are given their proper weight in all EU policies. Agustín supervises five policy teams (Financial Services, Digital, Consumer Rights, Competition, and Consumer Redress and Enforcement) and coordinates the organisation's work on competition law enforcement. Agustin is EU chair of the Intellectual Property committee of the Trans-Atlantic Consumer Dialogue, a network of over seventy-five organisations representing consumers' interest in the US and the EU. Since 2018 he acts as non-governmental advisor for the Commission to the International Competition Network. He holds a PhD. in law from the University of Bremen and often publishes in scientific journals on issues related to EU law.

Jason Freeman

Competition and Markets Authority

Jason is Consumer Law Director, managing a team of lawyers advising on legal issues across a range of CMA enforcement projects and market studies. He is also responsible for CMA legal know how. He has extensive experience of enforcing consumer law across many diverse parts of the economy, including use of covert investigations, litigation, tackling cross border jurisdictional issues and working with overseas counterparts.

Henda van der Walt

Tilda

Henda is an accomplished shopper, e-commerce and brand marketing business leader with first-class career achievements in diversified international blue-chip organisations.

She has a well-established reputation for shaping powerful customer propositions, achieving flawless in-store and e-commerce platform executions to promote a robust trade and brand identity while fostering strong collaborative retail relationships with joint business planning agendas.

Henda has a high-level understanding of shoppers, consumers, competitor differentiation, product popularity and visual merchandising trends, including growth and profitability across e-commerce platforms, while supporting the development of comprehensive shopper marketing strategies, brand equity and incremental merchandising to accelerate category growth.

Professor Mateja Durovic

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Mateja is a Reader in Contract and Commercial Law for The Dickson Poon School of Law. He is also the Deputy Director of the Law School's Centre for Technology, Ethics, Law and Society (TELOS) and Academic Director of the Executive Programme on Consumer Law. As well as King's, he is a Visiting Professor of Law at a number of universities across the world.

Prior to joining King's, he was Assistant Professor at the School of Law, City University of Hong Kong. He holds a PhD and LLM degrees from the European University Institute, Florence, Italy; LLM degree from the University of Cambridge; and an LLB degree from the University of Belgrade, Serbia.

Michael Coley

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Michael specialises in consumer and regulatory law. He has a broad practice in all areas of commercial regulation, including trading standards, competition, data protection and privacy, and intellectual property. He acts on behalf of businesses, local authorities, regulators, and consumers in both civil and criminal proceedings. He is also able to advise and act in judicial review proceedings arising from regulatory decisions. Michael has particular sector knowledge in aviation, automotive, and IT/tech.

Before starting in private practice, Michael worked at the Court of Appeal, where he served as Judicial Assistant to the then-Lord Chief Justice, Lord Judge. During his time at the Court of Appeal, Michael was seconded to the Leveson Inquiry, where his work dealt with competition law and merger control.

Michael's consumer law practice spans the full range of civil and criminal actions in the area. He has a well-established trading standards practice, and regularly appears on behalf of trading standards authorities in criminal prosecutions and civil actions. Michael also has a substantial advisory practice in this area, and regularly advises local authorities and businesses on regulation and compliance.

In addition to the regulatory aspects of consumer law, Michael's practice encompasses contractual issues, issues relating to the sale and supply of goods and services, and competition law.

Sean-Paul Brankin

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Sean-Paul is an of counsel in the competition team based in Brussels, who is dual English and Belgian qualified with over 25 years of EU and UK competition law experience, as both an advisor and an enforcer. His practice covers complex advisory work, merger control and competition litigation.

Sean-Paul has extensive experience counselling clients in relation to the interaction between IP and competition law and issues arising in relation to potential dominance. He has been involved in contentious matters before the European Commission and UK authorities, has litigated cases before the European Community courts in Luxembourg, the UK Competition Appeals Tribunal and national courts in the UK and elsewhere. He has significant experience in a range of industry sectors including pharmaceuticals, food and FMCG, and financial services.

A former Legal Director at the Office of Fair Trading, he was the lead legal advisor to the mergers unit and the head of internal scrutiny.

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Avantika provides expert economic advice on competition matters and commercial disputes, including antitrust and damages litigation. She has advised clients in relation to mergers, horizontal and vertical agreements, and abuse of dominance, including in the context of private litigation and investigations by the European Commission and other competition authorities.

Avantika has acted as an expert in antitrust and damages litigation and in wider commercial disputes before the High Court in England, the UK Competition Appeal Tribunal, and courts in Ireland and the Netherlands. She has broad sectoral experience, with specific expertise in the life sciences and technology sectors and in digital and intellectual property issues. She is listed in The International Who's Who of Competition Lawyers & Economists and is an active contributor to policy discussions through regular publications and speaking engagements.

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Christian is the Head of Unit G1 (German and European Antitrust Law) in the Federal Cartel Office's General Policy Department. His previous functions include acting as Case Handler in the 2nd Decision Division as well as Coordinator of ECN matters within the FCO. Before joining the FCO, Christian worked as a research assistant at the Max Planck Institute for Comparative and International Private Law in Hamburg, where he wrote his PhD-thesis on the concept of Good Faith in EU private law..

Danica Malloy

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Danica is the Associate Director, Legal for the Away from Home channel at Coca-Cola Europacific Partners where she works on a wide variety of matters for the GB business. As a generalist in-house lawyer, Danica has had the opportunity to expand her breadth of legal knowledge to a wide variety of areas including competition, data privacy, pensions, employment, IP, advertising/marketing and food safety.

Danica started her legal career as a Mergers and Acquisitions associate at Greenberg Traurig in Miami, Florida before moving to the UK where she joined CCEP as a member of the Corporate legal team working on general corporate and company secretarial matters. Danica holds an MBA, a JD and is qualified to practice law in both the US (Florida) and the UK.

Tim Capel

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Tim is a Legal Director at the UK Competition and Markets Authority (CMA). Having previously led the legal teams on a range of CMA merger, cartel and antitrust investigations, Tim is currently working in the CMA's Policy & International team. Before joining the CMA, Tim was a Senior Associate in the competition practice at Hogan Lovells.

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