Centre for Competition Law and Policy
Institute of European and Comparative Law

UNIVERSITY OF OXFORD

Trends in Retail Competition: Emerging competition dynamics

Report on the twenty-first annual symposium on competition amongst retailers and suppliers

Held on Friday 5th June 2026
at Mary Sunley Room, St Catherine's College, Oxford

CONTENTS

OVERVIEW

The twenty-first Oxford Symposium, held in June 2026 at St Catherine's College, was chaired by Professor Ariel Ezrachi and hosted by the Centre for Competition Law and Policy alongside the Institute for European and Comparative Law.

The event took place against a backdrop of rapid technological change, geopolitical uncertainty, cost-of-living pressures and growing political expectations of competition authorities. The programme examined the intersection of competition policy with artificial intelligence, fairness, growth, digital pricing and the emerging retail media sector.

The opening keynote addressed the deployment of AI across grocery supply chains, drawing on historical lessons from the nuclear, internet and digital ages. It warned of trust deficits arising from the technology sector's culture of rapid deployment, the risks of concentration and unmanageable scale, and proposed a regulatory framework centred on horizon scanning, mandatory testing, auditing and deeper institutional collaboration.

The first panel examined the goals of fairness and growth for competition authorities, the practice of priority setting in competition enforcement, and the Italian Competition Authority's approach to food supply chain investigations. It also considered proposed reforms to the CMA's phase 2 merger process and the evolution of access issues from physical to digital, including the role of the DMA and DMCC. The panel concluded with a reflection on the limits of competition law as a fairness instrument and the tension between outcome-based enforcement and structural intervention.

The second panel focused on merger control, examining the European Commission's draft merger guidelines, the theory of exploitative portfolio effects, and recent UK merger cases in the food sector including the Hovis/ABF, Cérélia/Jus-Rol and Greencore/Bakkavor transactions. It highlighted the increasing sophistication of spatial analysis and market definition techniques and the practical challenges of empirically testing novel theories of harm.

The afternoon keynote set out the UK Government's objectives for competition policy, addressed the proposed reforms to CMA decision-making, discussed the retail sector and cost of living, and outlined the Government's vision for consumer protection and welfare, emphasising the importance of simpler, more effective and more future-facing consumer policy.

The third panel examined the competition and consumer protection implications of algorithmic pricing, both dynamic and personalised, supported by detailed empirical evidence on surge pricing in US supermarkets and academic research on personalised pricing and ride-hailing markets. It also addressed the emerging challenges posed by agentic AI in retail and consumer markets, including the prospect of AI agents negotiating prices on behalf of buyers and sellers.

The final panel explored the rapidly growing retail media sector, examining the three-way dynamic between brands, retailers and consumers. It considered the mechanics of retail media campaigns, the role of first-party data and loyalty schemes, measurement and attribution challenges, competition concerns around access and market power for SMEs, and the regulatory challenges arising at the intersection of competition law and data protection.

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KEYNOTE ADDRESS

Technology, AI, competition and regulation

William Kovacic, Professor of global competition law and policy, George Washington University ; Former chairman, U.S. Federal Trade Commission

Overview

The keynote addressed the application of artificial intelligence and digital technology across grocery supply chains, from suppliers, production, processing, distribution, consumption and waste disposal, and the profound implications for competition policy and regulatory design. The central argument was that this technology will fundamentally change the operation of grocery supply chains and everything connected to them, and that policymakers must ensure it serves beneficial purposes.

What is at stake

The keynote identified several categories of risk arising from the rapid deployment of AI in supply chains. These include data breaches, ransomware demands, and the breakdown of supply processes where communities could run out of food if a system fails. A further concern was the erosion of essential human skills: while machines will increasingly replace humans in operational roles, it is residual human skill that remains indispensable to the functioning of these supply chains. If those skills are not preserved, the ability to manage critical functions will be lost.

Historical lessons: the five ages since 1945

The keynote situated the current moment within a broader historical framework, identifying five technological ages since 1945: the nuclear age (1945), the jet age (1952), the space age (1957, introduced by Sputnik), the internet age (1983) and the digital age (2007, when Steve Jobs introduced the iPhone). A recurring lesson from these earlier revolutions is that the urgency of deployment often outpaces consideration of adverse consequences. Those responsible for bringing transformative technologies to market have repeatedly failed to appreciate the possibility of malicious uses, and identifying such side effects before they materialise is part of the challenge today.

The culture of rapid deployment and trust deficits

The keynote drew on a personal anecdote from a meeting with a senior Facebook representative during the speaker's time at the Federal Trade Commission. The representative was described as perhaps the most effective business advocate the speaker had encountered, with command of her subject matter and, unusually, a remarkable ability to listen. When asked how Facebook decided to deploy capacity and new ideas, she explained that if the company was not launching a new function roughly every six months, it was considered "brain dead" and its younger user base would migrate away. The approach was to move products into the market as fast as possible and, if problems emerged, to retrofit solutions later, encapsulating the "move fast and break things" philosophy. This urgency to deploy quickly was described as a defining characteristic of how the technology sector operates.

The keynote argued that this urgency is driven in part by an awareness among major technology enterprises of their own origin stories. Each of the dominant platforms emerged not through a frontal assault on an existing business model but by approaching from the side, almost outside the immediate vision of incumbents, and then scaling up in a way that left established players utterly wrong-footed. Because these companies are aware of how they themselves disrupted others, they are acutely fearful that the same could happen to them, which drives the relentless pace of deployment.

The keynote also observed that the substantive complexity of AI regulation means that lawyers alone cannot provide the solution. The problem can only be addressed with contributions from a variety of disciplines, and this interdisciplinarity must be embedded in any regulatory approach.

The result of rapid deployment without adequate reflection has been an emerging and deepening trust deficit. Fifteen years ago, leaders of major technology enterprises were seen as godlike figures; today, they are widely regarded as pariahs. There is a pervasive concern that in rolling out new capabilities, these firms are not doing so with an eye on the well-being of ordinary human beings. The examples of Sam Bankman-Fried's attitude toward regulation and Elon Musk's stated approach to the Federal Trade Commission ("ignore it") were cited as illustrations of this culture. It was also observed that AI will inevitably be deployed by those who do not wish our societies well, and that the trust deficits already created by legitimate enterprises make it harder to build the cooperative frameworks needed to address malicious use.

The Sorcerer's Apprentice: loss of human control

The keynote invoked the image of the Sorcerer's Apprentice to capture the existential concern: that these are primal forces being set in motion which may go out of control. Having created these capabilities, human beings may lose the ability to manage them, and the capabilities may at some point manage us. Going back to the earlier technological revolutions, AI systems will increasingly manage weapons systems, transportation and communications, and through iterative learning processes they will acquire the ability to perform tasks that human beings currently do. The question is whether this force will remain subject to effective human control.

It was noted that in some major enterprises, how much an individual employee uses AI has become a performance metric, with non-use potentially leading to dismissal. This illustrates the speed at which the technology is being embedded into organisational life, often ahead of any considered assessment of its implications.

The risks of concentration and unmanageable scale

The keynote identified a concern about concentration and large firm size that extends beyond the ability to dominate markets economically. As enterprises scale dramatically, they lose an understanding of what their different constituent parts are doing. When firms say "I didn't know that was happening," they are often speaking truthfully: top management may genuinely be unaware of what is taking place within the organisation. This means that when mergers are supposed to integrate capabilities, they may not do so effectively, and safety considerations may be neglected.

The speaker argued that while AI need not be subject to the same testing regime as pharmaceutical products, there should nonetheless be a process of prototyping in which technology is tested and, in particular, teams look for things that can go wrong. In the rush to deploy, there is inadequate prototyping, insufficient testing, and no reflection on unintended consequences. The keynote drew on Vinton Cerf's observation that the architects of the internet did not spend time thinking about how malicious actors could exploit the system. The idea of an internal "adversary team", asking "what could go wrong?", and a culture of revealing dangerous side effects were proposed as essential safeguards.

A key contrast was drawn with the food services sector, where there is a recognised duty to reveal dangerous products, to take products off shelves and inform the public. With AI, there does not appear to be the same willingness to disclose problems.

The nuclear power analogy

The keynote developed an extended analogy with the civilian nuclear power industry after 1945. There was a strong urgency for peaceful applications within scientific communities (driven by guilt over the development of nuclear weapons) and within the business community. The phrase "too cheap to meter" captured the boundless optimism. The US government subsidised rapid deployment, overrode normal liability systems by capping liability, and played a key role in training operators through the naval nuclear programme.

The consequences were greatly accelerated development, but a serious mismatch between the skills required and those actually available. This led to incidents such as Three Mile Island, a thirty-year moratorium on new plant construction in the United States, and unresolved waste disposal issues that persist to this day. Had the introduction been slower, problems would have been identified earlier, skills would have been properly established, and the system would have become sustainable and reliable over time rather than suffering a prolonged collapse. This was offered as a major historical lesson directly applicable to the deployment of AI.

The value of institutional history and horizon scanning

The keynote argued strongly for the role of historical analysis in regulatory policy. Historians can identify recurring systematic phenomena, how firms do or do not anticipate vulnerabilities, and whether they develop the skills to address them. The speaker proposed that for a competition authority, an "office of the chief historian" is no longer a luxury but a must-have element of good policymaking.

Proposed regulatory framework for AI

The keynote concluded with a series of proposed next steps for AI regulation, structured around the following elements: a mandate for regulators to engage in much more expansive horizon scanning and forecasting to anticipate what is coming and to simulate what could go wrong; mandatory notification and testing requirements on industry, including reporting obligations for known defects; a routine process of auditing and evaluation; building out existing institutional platforms rather than creating new ones, specifically an expanded role for the Competition and Markets Authority (CMA) in the UK, and the Federal Trade Commission (FTC) in the United States (notwithstanding threats to the FTC's independence, with the Supreme Court potentially ruling imminently that the president can remove commissioners without cause); deeper policy integration among competition and consumer authorities globally, including the Australian Competition and Consumer Commission, with these agencies collaborating more extensively with each other; market studies and research to identify existing and potential problems, in collaboration with academic hubs committed to interdisciplinary research (citing the European University Institute, the Toulouse School of Economics and others); and an ethic of continuous and contemporaneous evaluation.

The views expressed in this keynote do not necessarily represent the official position of the speaker's organisation.

PANEL DISCUSSION

Fairness, access and growth in the UK and EU

Session Focus:

This session examined how competition authorities set enforcement priorities, whether those priorities adequately reflect broader societal and economic impacts, and how the concept of "access", both physical and digital, is evolving in UK and EU retail markets. The panel also considered proposed reforms to the CMA's phase 2 merger process and the growing tension between outcome-based enforcement and structural intervention.

Session Summary:

The goals of fairness and growth for competition authorities

The panel opened with an examination of the goals of fairness and growth and how competition agencies might interact with each of them. On fairness, it was argued that this is an inherently subjective and evaluative concept, and that it is important to consider how it relates specifically to the food retail sector rather than in the abstract. Traditionally, fairness has been associated with ideas of justice, morality and equity, and has been understood both in terms of process and outcomes.

It was proposed that fairness in the food retail sector can be understood by reference to the international human rights framework, specifically the right to food. This right, recognised in the Universal Declaration of Human Rights (1948) and subsequently identified as an independent right in the International Covenant on Economic, Social and Cultural Rights (1966), has three components as interpreted by the UN Committee on Economic, Social and Cultural Rights in 1999: adequacy (food must be sufficient in quantity, nutritionally adequate and culturally acceptable), availability (food must be available either directly from the land or through well-functioning market systems) and accessibility (encompassing both physical access and economic access, meaning that the price of food should leave individuals with sufficient resources to meet other essential needs).

It was observed that much of the political focus on fairness in the food retail sector has been directed at the relationship between supermarkets and small suppliers. However, if fairness is understood in a human rights context, the obligation extends to all participants: consumers, farmers, small suppliers and those located both within the UK and abroad, given the international supply networks of major retailers.

On growth, it was noted that unlike fairness, growth is an observable economic outcome, typically measured by reference to profits or GDP. However, these measures are distribution-blind: they do not reveal how the gains from growth are distributed. Growth is therefore not the same as fairness, and assessing whether growth in the food retail sector or the broader economy is genuine requires metrics beyond GDP and profits, including indicators such as food price inflation, market concentration, supply chain payment conditions and regional access to food.

As to the role of competition agencies, it was argued that the ultimate obligation to secure fairness, growth or the right to food rests with the state, not directly with competition authorities. The question is therefore whether agencies should adopt these as goals in their own right, or whether their duty is limited to contributing to these goals as part of the broader policy framework. On growth, there is a body of competition scholarship suggesting that efficient markets inherently contribute to growth, but this position has been challenged in both the EU (through the Draghi report) and in the UK, where the CMA has received a strategic steer to support growth, which it has interpreted through its “4P” framework with an emphasis on proportionality and reducing burdens on business.

On fairness, the position was described as more complicated. Both the Treaty on the Functioning of the European Union and the UK Competition Act contain references to fairness, including the requirement that consumers receive a “fair share” of the benefits of otherwise anti-competitive agreements that are exempted, and there are fair trading obligations. However, beyond these references, there is almost universal consensus that it is difficult, if not impossible, to translate fairness into a specific, quantifiable and actionable goal for enforcement. Agencies have been reluctant to permit conduct that detracts from the primary goal of efficiency in the name of fairness or other non-economic values such as sustainability. The conclusion was that competition agencies can contribute to fairness in the food retail sector by working to improve the availability of food through efficient markets and economic accessibility through competitive pricing, but the real challenge lies in extending this beyond consumer welfare to address the position of small farmers and suppliers, which would require agencies to look beyond narrow, price-centred conceptions of welfare, with particular attention to the exercise of buyer power and vertical mergers.

Priority setting in competition enforcement

The panel then turned to a discussion of how competition authorities select cases, drawing on empirical research conducted with competition authorities worldwide. Despite case selection being one of the most important tasks of any competition authority, there has been remarkably little systematic thinking about what constitutes good practice in priority setting, either in terms of governance or substance.

The research identified three defining characteristics of current priority-setting practices across jurisdictions.

- First, the process is predominantly reactive: the vast majority of cases are initiated as a result of leniency applications or complaints rather than proactive identification of harm.
- Second, it is insulated: NGOs and consumer voices have very limited opportunity to participate in or influence the process, and even complaints are sometimes dismissed as unhelpful.
- Third, it is consumer welfare-centric in a narrow sense: where internal guidelines or national legislation on priority setting exist (which is a minority of jurisdictions), the criteria are typically framed around consumer welfare, with limited consideration of broader social and economic impacts.

It was argued that this narrow approach has real consequences. The impact of non-enforcement, the decision not to pursue a case, falls disproportionately on lower-income groups and is not captured in current methods of assessment. The panel proposed several reforms: broadening the demographic lens applied to priority setting; expanding public participation in agenda-setting processes; focusing on sectors with clear social and economic impacts; developing substantive criteria that are more sensitive to distributional effects; and, strikingly, introducing impact assessment for priority-setting choices.

It was noted that despite competition enforcement being widely recognised as highly impactful, none of the authorities examined had formal instruments for assessing whether they are selecting the right cases.

The Italian perspective: food supply chains and market investigations

The panel heard from the Italian Competition Authority (AGCM) on its approach to case selection and its recent market investigation into the food supply chain. The AGCM's constitutional mandate is to protect the functioning of the market and consumer welfare, and its core criteria for case selection include the scale of impact on market functioning and whether a case establishes a novel principle. However, non-competition objectives are not disregarded, they play a role in deciding how to allocate resources. Recent enforcement in the pharmaceutical sector was cited as an example.

The AGCM has also pursued cases in adjacent areas with broader societal implications, such as electric vehicle charging services and high-speed rail. In the latter, a commitment decision is expected to bring a third operator into the Italian high-speed rail market by 2027, which would increase supply and substitute less environmentally sustainable modes of transport.

On food access specifically, the AGCM opened a market investigation using powers introduced in 2023. The investigation examines the food supply chain, focusing on the relationship between final distributors and suppliers. Between October 2021 and October 2025, food and grocery price inflation in Italy reached approximately 25%, eight percentage points above general inflation of around 17%. At the same time, real household income has decreased by 4% since 2004. These data points motivated the investigation into whether buyer power is being leveraged and how this translates upstream, including through mechanisms such as shelf space charges and sponsored product placements. The investigation also examines whether any cost savings achieved by retailers are being passed on to consumers downstream, and whether increasing concentration in the sector (partly a consequence of historically lacking the tools to review mergers in this sector) has given rise to downstream market power.

Proposed reforms to the CMA's phase 2 merger process

The panel considered the UK Government's proposed changes to the CMA's phase 2 merger review process. The current system involves referral to a panel of independent individuals drawn from backgrounds in academia, business and law. These panel members are appointed for eight-year terms, do not work day-to-day within the CMA, and a selection from among them is chosen to run each phase 2 merger inquiry. The rationale is twofold: to avoid confirmation bias (where an authority pursues a case and reads all evidence in light of its initial theory), and to provide a degree of independence from the institution.

The proposed reform would transfer decision-making to a sub-committee of the CMA Board, which would select a smaller group of three to five individuals, potentially including Board members themselves, for each case. While it was acknowledged that the practical effect may be limited (since Board members may prefer not to involve themselves in day-to-day case management), concerns were raised about the structural implications. Board members whose positions are at issue are less likely to resist pressure to deliver particular outcomes than independent panel members who are unlikely to be removed for their decisions.

The purported goals of the reform, increased accountability and consistency, were questioned. Competition enforcement is inherently technocratic and difficult for non-specialists to assess, and accountability should be considered in that context. On consistency, the panel expressed scepticism that the reform would deliver this in practice, arguing instead that it increases the scope for government to influence individual decisions, which would in turn decrease consistency. The overall concern was that these changes give government a more direct line to intervene in UK merger decisions, and that this is troubling for the independence and quality of the CMA's work.

The evolution of access: from physical to digital

The panel explored how access issues in retail have fundamentally changed over the past decade. Historically, access concerns were primarily physical: planning restrictions, land agreements, the ability of new entrants to secure sites, shelf space allocation, category management, and refrigerator space. While those concerns have not disappeared, the striking development in 2026 is that access is now predominantly a digital question.

The Digital Markets Act (DMA) and the Digital Markets, Competition and Consumers Act (DMCC) were described as representing a conceptual shift. Under the traditional competition law model, a party seeking access had to prove dominance, then prove an abuse, and then seek a remedy. Under the new model, designated gatekeepers may have a legal obligation to provide access on fair and non-discriminatory terms before any harm is proven. This was characterised as a profound change, directly responsive to concerns that the old model was producing structurally unfair outcomes even in the absence of identifiable abusive conduct.

However, the panel noted a significant gap between the legislative framework and its enforcement. Clients routinely express concern about a digital markets regime that does not appear to be applied effectively in practice, particularly regarding level playing field issues. Amazon's regulation under the Groceries Supply Code of Practice (GSCOP), for example, was raised as an area of concern about whether there is genuine parity of access across digital players participating in food markets.

The CMA's enforcement record on access

The panel reflected on the CMA's track record in addressing access barriers. The 2008 groceries investigation was cited as having delivered meaningful results for smaller suppliers and retailers: the controlled land order dismantled barriers to entry erected by larger retailers through control of land around their stores, while GSCOP and the Groceries Code Adjudicator were introduced to address imbalances in bargaining power in the supply chain. These were described as examples of access as fairness to market participants.

More recent enforcement examples were also discussed. The baby formula market study was highlighted as a case where regulation itself was creating the access barrier: legislation preventing manufacturers from commercially marketing infant formula was stopping new or lower-cost products from entering a market dominated by two large players, effectively denying consumers better options despite the regulation being designed to protect them. The topical example of price controls for essential goods, milk, bread and similar daily essentials, was also framed as an access issue: whether consumers can obtain daily necessities at a fair price.

The limits of competition law as a fairness instrument

The panel concluded with a broader reflection on the limits of competition law as a tool for delivering fairness and access. It was observed that much of the CMA's recent consumer-facing, outcome-driven enforcement is being conducted through market studies and fast-track regulatory tools rather than traditional competition cases. This is exposing the inherent limitations of competition law and policy as instruments for achieving fair outcomes.

Competition law can address the most egregious conduct and open structural bottlenecks, but it cannot on its own deliver fair outcomes in markets characterised by structural conditions that disadvantage certain participants. Other forms of intervention; sector regulation, price controls, the Groceries Code Adjudicator, GSCOP, are needed alongside it. The panel identified two key questions: which tool should be used in a given situation (given that the CMA now has a wide array of powers at its disposal), and whether there is genuine appetite for the more complex, slower and more painstaking route of structural market investigation, as opposed to outcome-based enforcement that produces more immediate and politically visible results.

Concern was expressed that the current political direction in the UK favours outcome-based enforcement and headline-driven interventions, such as direct price controls, over the kind of meaningful structural interventions that characterised past regulatory action. The slow pace of digital market regulation and the sluggish take-up of the new tools were cited as evidence that there may be insufficient appetite for the structural approach, even where it would be more effective in the longer term.

The views expressed in this panel discussion do not necessarily represent the official position of any panellist's organisation. The summary under each theme offers a synthesis of comments from various speakers and cannot be attributed to a single speaker.

PANEL DISCUSSION

Mergers — emerging issues and challenges for policy

Session Focus:

This session examined recent developments in merger control relevant to the retail and consumer goods sectors, with a focus on the European Commission's draft merger guidelines, the emerging theory of exploitative portfolio effects, and recent UK merger cases in the food sector. The panel considered how merger assessment is evolving to address non-price parameters, buying power, access to sensitive information, and the practical challenges of testing novel theories of harm empirically.

Session Summary:

The European Commission's draft merger guidelines

The panel opened with a discussion of the Commission's recently published draft merger guidelines, the first revision in twenty years. The guidelines were described as a modernisation exercise to ensure the Commission's analytical tools remain fit for purpose. Several key changes were highlighted as particularly relevant to retail markets.

First, the guidelines draw a clear distinction between scale and market power. The Commission takes issue only where scale translates into market power, and there is positive guidance on what pro-competitive scale means. Second, there is a significantly increased focus on innovation and investment, reflecting a more dynamic approach to merger assessment. This is also reflected in the treatment of efficiencies, where a distinction is drawn between direct efficiencies and dynamic efficiencies, the latter encompassing efficiencies that may arise over time as a result of an enhanced ability and incentive to invest that did not previously exist. Third, the guidelines contain clear reference to non-price parameters of competition, such as resilience, sustainability and security of supply. These non-price parameters now play a key role in the assessment framework, though it was emphasised that price remains highly relevant given inflationary pressures on households.

Out-of-market constraints and buying markets

The guidelines provide more detailed guidance on out-of-market constraints, that is, the extent to which products or players located outside the defined relevant market may nonetheless constrain the merged entity. Several examples were noted as particularly relevant to retail: the constraints between private label and branded products, and constraints from players operating in adjacent segments or through different sales channels. These were described as especially important for food and retail mergers, given that consumer purchasing decisions and retailer behaviour often blur traditional market boundaries.

The assessment of buying markets was also highlighted. The guidelines emphasise the importance of assessing the entire value chain, not just the selling market but also the buying market and whether a merger could give buyers such market power as to extract worse conditions from suppliers. Relevant criteria include whether there is a highly concentrated purchasing market where sellers are fragmented. This was described as particularly typical in dairy markets, where farmers are fragmented, products are perishable, and switching is limited. The Arla and DMK cases were cited as examples, though the specific structure of cooperatives (controlled by farmers) created a disincentive for the cooperative to exploit its members.

The countervailing buyer power of sophisticated retail chains was also recognised as a factor that can discipline suppliers and limit the market power of the merged entity, particularly where buying alliances exist.

Access to sensitive information as a stand-alone theory of harm

A notable development in the guidelines is the articulation of access to sensitive information as a stand-alone theory of harm, not merely an element of a foreclosure theory or a facilitator of coordination, but a self-standing basis for concern. The NewPrinces/Carrefour case in Italy was cited as probably the first case of vertical integration between a supplier and a chain retailer to address this issue directly. The Commission examined whether Carrefour could share information about its upstream suppliers with NewPrinces (and therefore NewPrinces' rivals). In that case, the concern was found to be unlikely for several reasons: the deal structure did not present a clear path for information sharing; price lists were customer-specific (meaning the information would be of limited use to other retailers); and Carrefour Italy was not a particularly large customer for the relevant products.

Portfolio effects: theory and practice

A substantial portion of the panel was devoted to the theory of exploitative portfolio effects, described as one of the particularities of the new guidelines, which systematically spell out theories that the Commission has developed in its decisional practice since 2004. The peculiarity of the portfolio effect theory is that it does not concern brands or products that compete with one another. Rather, it focuses on the market power that the merged entity acquires by holding a portfolio of brands so extensive and so relevant to retailers that the cost to the retailer of delisting those brands exceeds the cost to the supplier of losing the retailer. The mechanism is a "basket effect": the assessment is based on the idea that consumers, not finding certain brands in a supermarket, would take their entire shopping basket elsewhere, meaning the retailer's loss extends well beyond the missing brands themselves.

The panel traced the evolution of this theory through three cases. In Guinness/Grand Metropolitan (1997), the theory concerned pushing multiple spirits brands and forcing retailers to accept full-line supply. In Procter & Gamble/Gillette, the theory was around category management and leveraging a broader portfolio, though the Commission ultimately found that countervailing buyer power constrained this. The Mars/Kellanova case represented a significant advance: it is not simply that a larger portfolio creates more bargaining power, but rather the assessment is merger-specific, recognising that combining two portfolios does not necessarily strengthen the supplier's position because a larger negotiation basket can harm both sides if negotiations fail, depending on whether consumers are common or incremental switchers and on the characteristics of the products involved.

The Mars/Kellanova case in detail

Mars (with a large dog food, cat food and confectionery portfolio) proposed to acquire Kellanova (ready-to-eat cereals including Kellogg's, and Pringles defined as "stacked chips"). The deal was notified globally and cleared by most authorities, including the CMA, which raised no concerns early in the process. However, the European Commission opened a phase two investigation, focusing entirely on exploitative portfolio effects; the question being whether the addition of Kellanova's brands to Mars's portfolio would asymmetrically strengthen Mars's bargaining power with retailers, ultimately leading to higher retail prices.

The mechanism investigated was the "basket effect": whether a consumer entering a retailer and not finding either Mars or Kellanova products would drop their entire basket and shop elsewhere. This required establishing several cumulative conditions: (i) some degree of market power on the supplier side; (ii) an ability and incentive for the merged entity to play an “all-deal or no-deal” card across categories in negotiations; and (iii) evidence that consumers would actually switch their entire basket rather than simply substituting with competing brands or private label.

On the second condition, it was noted that branded goods manufacturers are typically far more reliant on individual retailers than retailers are on individual suppliers. In continental Europe, retailers are consolidated in buyer groups and alliances, and even the largest branded goods manufacturers represent at most approximately 1.5% of a retailer’s total purchases. On the third condition, the evidence suggested that where products such as Mars bars or Pringles are unavailable, consumers typically either do not purchase, switch to competing brands, or buy private label, rather than abandoning their entire basket. The growth of private label competition was described as particularly significant in undermining the theory.

The case was tested empirically through three main sources of evidence: Nielsen panel data tracking household purchasing behaviour across three countries (allowing observation of what consumers actually did when products were delisted); a Commission survey on hypothetical consumer responses to delisting; and documentary evidence on how retailers and suppliers actually conducted negotiations. Ultimately, the cumulative steps in the theory reduced the relevant consumer base to approximately 0.5–1% of a retailer’s customers. However, even that small proportion could have a significant impact, because the basket is roughly twenty times the size of the individual product, meaning even a small number of basket switchers could have an outsized effect on retailer profitability. Notwithstanding this, the Commission concluded that it did not have sufficient empirical evidence to issue a statement of objections, and the deal was cleared without remedies on a truncated phase two timeline, a relatively rare outcome.

A tension was noted between the Commission’s merger brief in this case (which clearly articulated that the direction of the bargaining power effect is ambiguous and merger-specific) and the guidelines themselves (which adopt a more general presumption that a larger portfolio confers bargaining power). It was suggested that this could benefit from clarification.

Spatial analysis and market definition techniques

The panel briefly addressed the increasing sophistication of the Commission’s market definition techniques in retail cases. Catchment area analysis, geocoding around stores, tracking customer behaviour, has become significantly more advanced. Early efforts involved fixed longitude and latitude measurements (which produced errors because the curvature of the Earth affects distance calculations), but techniques have since developed to include spatial indicators and more refined geographic assessments. These techniques, developed initially in wholesale B2B mergers (cement, beverage cans, chemicals, chocolates), have been applied at the retail level in cases involving retail fuel, sports retail (JD Sports) and banking. The embedding of this past practice into the guidelines was welcomed.

Recent UK merger cases in food

The panel turned to recent CMA activity in the food sector. The CMA continues to focus on cost-of-living issues and exercises its unique ability (given the UK’s voluntary merger regime) to select which mergers to review, balancing a desire to reduce burdens on business with the need to prevent consumer harm. In relation to global deals, the CMA is now choosing to wait and see whether other agencies will adequately address UK-relevant issues before intervening.

Several cases were discussed:

The proposed acquisition of Hovis by Associated British Foods, described as the UK's "big bread merger", involves a combination of two of the three largest national bread brands, with combined shares exceeding 80% in some market segments. The case was fast-tracked to phase two and appears on track for unconditional clearance on the basis of a failing firm defence: Allied Bakeries is loss-making in a structurally declining market where sliced bread is in "ultra-decline." Notable features include the CMA specifically calling out security of supply and vulnerable consumers as topics of interest at the outset of phase two (which is unusual in the merger context), and retailers raising concerns that an uncontrolled market exit could leave insufficient capacity to meet national demand. In Northern Ireland, the CMA examined the competitive dynamics of pancakes, soda farls and potato farls separately, a level of geographic and product granularity that produced some striking evidence, including one customer's observation that soda farls and potato farls cannot be substitutes because "in an Ulster fry, you have both of them." The CMA initially found a potential SLC in Northern Ireland but reversed that finding, and the transaction appears on track for unconditional clearance.

The Cérélia/Jus- Rol case (involving pastry) was noted as an example where the parties were heavily reliant on the distinction between private label and branded products, effectively presenting the transaction as a no-overlap case. The CMA found that private label and branded products were not distinct in that context, and the deal was blocked, a decision upheld on appeal.

The Greencore/Bakkavor case (ready meals, chilled sauces and complex salads) involved narrow product market definitions, with a finding of distinct markets for chilled sauces, Italian ready meals and complex salads. Demand-side arguments generally trumped supply-side arguments, with a single market found for branded and own-label soups together, but distinct markets for branded and own-label sauces due to customer preferences. The case resulted in a narrow concern relating to own-label sauces, resolved through a carve-out remedy.

Key takeaways

The panel concluded with several observations relevant to the consumer goods sector:

- Market definition remains critically important in consumer goods mergers, and narrow framing by the CMA can be decisive.
- Efficiencies are back on the table, particularly in the Commission's guidelines, but have not featured prominently in recent UK food cases.
- On countervailing buyer power, the CMA is clear in recent cases that it requires evidence that buyers have alternative options, potentially including a willingness to self-supply. The Commission's portfolio effects theory is here to stay, but its empirical application remains challenging and the effects can be ambiguous in direction- something that may require further clarification in the guidelines.
- Net present value analysis, balancing short-term harm against long-term efficiencies, remains a significant practical challenge in merger assessment.

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KEYNOTE ADDRESS

Competition policy, retail and consumer protection

Sarah Adcock, Director of Consumer and Competition Policy, Department for Business and Trade Public Body Representative

Overview

The keynote set out the UK Government's objectives for competition policy, addressed proposed reforms to the CMA's decision-making structure, discussed the retail sector from a competition perspective, and concluded with the Government's vision for consumer protection and welfare.

The Government's objectives for competition policy

The Government's position on competition policy is straightforward: open, competitive and fair markets are essential to long-term growth, high productivity, investment, innovation and positive consumer outcomes. In the context of global competition for investment, the UK's regulatory environment must be an asset rather than a burden. This means regulators adopting frameworks that reduce complexity and administrative burdens for businesses, with sharper accountability for regulators who recognise their role in boosting UK competitiveness.

The CMA was credited with leading the way in responding to this agenda, even before the Government issued its strategic steer. The CMA's "4P" framework Pace, Predictability, Proportionality and Process was described as having been so successful that it has not merely aligned with the Government's wider regulatory reform agenda but has helped to shape it. The keynote emphasised that competition authorities do not operate in a vacuum: they are not removed from the objectives of the consumers and countries they serve, and the wider economic objectives of national government are not irrelevant to their work. The Government highlights the importance of the level of competition in driving outcomes, but equally the importance of the user experience of competition enforcement in the UK.

Proposed changes to CMA decision-making

The keynote addressed proposed reforms to how the CMA makes decisions in merger and market investigations, specifically, the move away from the current independent panel system. Several common critiques were taken on directly.

On the suggestion that the Government had not sufficiently set out the problem it is seeking to address, the response was that the problem is clear: currently, the CMA Board sets the authority's strategy but is legally prevented from involvement in its most strategically important decisions. This does not deliver the sharp accountability that Parliament, consumers and businesses, all of whom have an interest in the impact of those decisions, should expect. That is the problem the reform seeks to address.

On concerns that the changes would undermine independence, it was stated categorically that ministers have no interest in interfering with operational decisions at the CMA. The reforms re-entrench the importance of independent decision-making: non-executive and external experts will make up 50% of any group that makes significant decisions on mergers and market cases, and the most significant decisions will require a two-thirds majority to pass. It was further noted that ministers in the UK over the past fourteen years, and across comparable jurisdictions globally, have progressively devolved decision-making to independent expert competition authorities, and that the

UK's bilateral trade agreements require the maintenance of operational independence in competition cases, meaning any direct political interference would be in breach of law.

A government response to the consultation on these proposals was confirmed to be forthcoming within the next six months, alongside a further consultation on competition collective actions expected before the end of the month.

Government intervention and public interest

The keynote acknowledged that governments have a legitimate interest where competition comes into tension with wider societal or public interests. The UK framework has built-in flexibility: for mergers, this includes public interest interventions covering financial stability, health emergencies and media plurality. For Competition Act cases, the Government can suspend competition law in exceptional circumstances; building nuclear submarines and feeding the nation during a pandemic being cited as examples. However, such interventions were described as vanishingly rare, and the primacy of competition as a driver of growth was reaffirmed as the default position.

The retail sector and the cost of living

In relation to the retail sector, the keynote noted the current focus on the cost of living. The CMA's recent market study work in the grocery sector, conducted collaboratively with businesses and including voluntary schemes, ultimately concluded that competition was working effectively in the retail sector, while identifying a small number of issues requiring further consideration. This was held up as an example of how the 4P framework can benefit businesses while providing reassurance to taxpayers and consumers in difficult times.

The Groceries Code Adjudicator (GCA) was also discussed. The GCA's most recent review, published in April, found that it had effectively carried out its role in relation to the same competition issues in the retail sector first identified nearly twenty years ago. It was noted that the GCA is shortly to transfer from the Department for Business and Trade to the Department for Environment, Food and Rural Affairs (Defra).

Consumer protection and welfare

The keynote concluded with the Government's view on consumer welfare and consumer protection. The argument was that consumer policy is not merely about dealing with harm after the event but about creating the conditions in which fair competition, confidence and growth can advance together.

The UK was described as starting from a position of strength, with a mature framework of consumer rights, a strong tradition of enforcement, and important recent reforms through the Digital Markets, Competition and Consumers Act. Those reforms have sharpened enforcement and updated the rules for modern markets, especially online. However, serious challenges remain: the system can be too complex for consumers and too fragmented for businesses; people often discover their rights only when something has gone wrong; smaller firms struggle to find clear guidance; and digital markets have created new risks- fake reviews, drip pricing, subscription traps and dark patterns- that shape whether consumers feel confident participating in modern markets.

The task ahead was described as building a consumer policy framework that is simpler, more effective and more future-facing. This can only be achieved through partnership between government, consumer groups, regulators, enforcement bodies, advice organisations, trading standards and businesses. Many businesses already understand that good consumer outcomes are not merely a consequence of growth but a precondition for it. The keynote concluded by emphasising the need to put the consumer journey at the heart of policymaking, asking consistently what any given policy means for the person who is trying to compare options, exercise rights and make decisions.

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PANEL DISCUSSION

Digital pricing, user manipulation and AI

Session Focus:

This session examined the competition and consumer protection implications of algorithmic pricing, both dynamic and personalised, and the emerging challenges posed by agentic AI in retail and consumer markets. The panel considered empirical evidence on the prevalence and effects of algorithmic pricing, the regulatory tools available to address potential harms, and the novel questions raised by AI agents acting on behalf of consumers and businesses.

Session Summary:

Defining dynamic and personalised pricing

The panel opened with a distinction between two forms of algorithmic pricing. Dynamic pricing involves prices that change in response to market conditions; supply and demand fluctuations, time of day, competitor pricing and similar factors. Personalised pricing involves prices that change based on the unique characteristics, profile or identity of the individual customer; purchasing history, browsing behaviour, location and loyalty status. The key difference is that under dynamic pricing, all consumers see the same price at any given moment, whereas under personalised pricing, different consumers may see different prices at the same time under identical market conditions. The two concepts can be layered: a price can be both dynamic and personalised simultaneously.

Both forms of pricing are enabled by algorithms, allowing prices to change rapidly and frequently, particularly in digital contexts. Benefits were identified for both retailers and consumers, including convenience, optimised pricing decisions and the ability of flexible consumers to benefit from lower prices (for example, cheaper train tickets for those with flexible travel times). However, the panel also identified potential disadvantages, principally a lack of transparency: if consumers do not know how or when a price changes, they may be exposed to discrimination, exploitation or misleading pricing claims. It was questioned, however, whether this is fundamentally different from the existing position, where retailers have always adjusted prices in ways that consumers cannot fully predict.

Empirical evidence on surge pricing in supermarkets

The panel heard detailed empirical evidence on whether the introduction of electronic shelf labels (ESLs) in US supermarkets had led to surge pricing. The adoption of ESLs by Walmart (21% US market share) and Kroger (9%) has triggered significant regulatory scrutiny in the United States, with Senators Elizabeth Warren, Robert Casey and Sherrod Brown writing to the CEOs of both retailers warning against ESL-enabled surge pricing. Proposed legislation at both federal and state levels has followed: in the US House of Representatives, a bill (H.R. 4966) would ban ESLs in retail food stores larger than 10,000 square feet, and lawmakers in fourteen US states have introduced measures to ban or restrict their use.

The speaker presented a study examining comprehensive transaction data from a US grocery retailer with $3 billion in annual revenue, which gradually implemented ESLs across over 100 stores beginning in September 2022. The dataset covered the universe of the retailer’s posted and transacted prices from July 2019 to August 2025, approximately 1.4 billion product-store-date observations across over 20,000 products. This far exceeds the six months of post-installation data requested by the senators, providing up to 35 months of post-adoption observation.

The analysis found virtually no surge pricing either before or after ESL adoption. Temporary price increases (surges) affected only about 0.0042% of products on an average store-date before ESL adoption, equivalent to roughly 0.42 products per 10,000, and this rate changed by a negligible +0.0006 percentage points after adoption (p-value 0.90). The statistical methodology was highly powered, capable of detecting a minimum effect of ±0.0014 percentage points, meaning that if even 0.14 additional products per 10,000 were experiencing surge pricing, the study would have detected it. Furthermore, benchmarking against 32 competing grocery chains in NielsenIQ scanner data showed that the focal retailer's price-change and price-growth patterns were indistinguishable from the broader industry before, during and after the ESL rollout.

The theoretical explanation offered was that supermarkets generally aim to maximise the present value of the entire customer relationship, the repeated stream of weekly baskets, rather than the profit on any single item or visit. Consequently, retailers avoid strategies like surge pricing that could jeopardise customer loyalty for short-term gains. A single consumer video of dynamic pricing posted on social media would cause significant reputational damage and drive customers to competitors.

However, the panel noted a potentially beneficial application of ESLs: expiration-based markdowns, where ESLs combined with item-level tags enable dynamic discounts on perishable goods approaching their expiry date. Prior academic work on a UK retailer piloting ESLs found that the primary effect was an increase in the share of products repriced daily, mostly via markdowns on perishables. Albert Heijn in the Netherlands was cited as a successful real-world example. This was described as the form of dynamic pricing most likely to emerge in supermarkets, with potential benefits for both consumers and the environment (reducing food waste and methane emissions from landfill). In the US, an estimated 20–30% of perishable revenues currently end up in landfill.

Harms and benefits of algorithmic pricing

The panel identified several categories of harm and benefit. On the harm side, algorithmic pricing tools can facilitate cartel behaviour, not necessarily through deliberate collusion, but through the use of monitoring software that leads to tacit price coordination. Where retailers use software to track competitor prices and set their own prices relative to a market leader, the effect can be alignment of prices across a market without direct communication. The Danish competition authority's recent decision to block the use of one such algorithmic pricing tool was cited as an example of regulatory intervention. It was observed that many businesses use such software without fully appreciating the competition law risks until an audit or investigation brings them to light.

On personalised pricing, the panel discussed the fundamental economic shift involved: traditional competitive markets produce a single price, and consumers who value a product more highly than others still pay the same price. Algorithmic pricing enables sellers to target prices more closely to individual willingness to pay, which represents a significant change. The question of whether this is welfare-enhancing or welfare-destructive was described as empirical and context-dependent. The academic literature was cited as suggesting that personalised pricing often introduces new lower prices to capture consumers who would not otherwise have purchased, with potentially positive net effects on consumer surplus, even where higher-willingness-to-pay consumers pay more. A field experiment study on personalised pricing at ZipRecruiter was discussed in some detail. That study, which used randomised controlled pricing experiments and machine learning to implement consumer-specific prices, found that while total consumer surplus declined by 23% under personalised pricing relative to optimal uniform pricing, over 60% of consumers actually benefited from lower prices. The redistributive effect was significant: personalisation primarily harmed the highest-willingness-to-pay consumers while offering lower prices to those who would not otherwise have purchased. In a validation experiment, nearly 70% of consumers in the personalised pricing group were targeted a price below the optimal uniform price. The study also identified a non-monotonic relationship between the granularity of segmentation data and total consumer surplus, suggesting that some data privacy restrictions may not in fact improve consumer welfare, a finding described as requiring caution in the current policy debate.

A significant concern was raised about the use of proxies in targeting: when large datasets are used to identify consumers' willingness to pay, the proxies employed may correlate with protected characteristics such as ethnicity or vulnerability, potentially engaging discrimination and consumer protection legislation.

The role of consumer law and self-correction

The panel emphasised that, for non-dominant firms, charging different prices to different customers is lawful. The primary regulatory concern is one of transparency and consumer protection: consumers must be adequately informed about how prices are set and whether the prices they see are genuine. The CMA's increasing activity in this space was noted as important. It was observed that in sectors such as hotels and leisure, dynamic pricing is essential to business operation and has existed for decades- the only change is the speed and sophistication of the tools.

The panel also discussed whether markets self-correct when personalised or dynamic pricing goes too far. Examples were cited of reputational damage suffered by businesses perceived as pricing unfairly- including Uber's surge pricing during a terrorist incident, which required refunds. The risk of brand damage was described as a significant constraint on exploitative pricing, particularly for large consumer-facing companies.

However, the panel also heard evidence that the net welfare effects of surge pricing in ride-hailing are positive. Academic research studying Uber's surge pricing algorithm in Houston, using detailed data on rider demand, driver supply, pickup times and matching patterns, found that surge pricing is beneficial for consumers overall. The mechanism is that surge pricing reduces pickup times (particularly the right tail of very long waits) by incentivising driver supply during periods of high demand, and prevents "wild-goose chases" where drivers are dispatched to distant riders. While individual riders pay more during surge periods, the system generates net welfare gains by ensuring that rides are available when consumers need them and that the matching process operates efficiently.

However, it was noted that the question of what constitutes adequate disclosure to consumers is extremely difficult. Telling a consumer that they are being charged the 75th percentile price because of inferred characteristics is obviously impractical. The alternative framing, presenting personalised discounts against a higher base price, was discussed, with reference to Kroger's practice of sending personalised coupons to loyalty customers. The panel questioned when such framing becomes disingenuous or misleading, noting that the consumer protection framework around genuine pricing claims has existed for a long time but that enforcement is now significantly stronger.

The Le Patorel case and vulnerable consumers

The Le Patorel case was referenced in relation to vulnerable consumers and personalised pricing. In that case, many elderly BT customers paid significantly more for their telephone lines despite receiving letters informing them of cheaper alternatives- they did not switch. The case turned on whether the prices were excessive and unfair, assessed against a counterfactual of competitive conditions. BT ultimately won the case, in part because the evidence showed that customers valued the service and could have switched. The case was cited as illustrating both the risks to vulnerable consumer groups from personalised pricing and the difficulty of intervening where consumers technically have choice but do not exercise it.

Competition authority challenges

The panel noted a fundamental challenge for competition authorities: they often cannot determine whether a given price is personalised or dynamic. Every consumer who discovers that the person sitting next to them on an aeroplane paid half the price faces the same uncertainty- they do not know whether the difference reflects their own behaviour, the other person's behaviour, or the timing of purchase. This lack of transparency was described as a major challenge for enforcement.

Academic research on the airline industry was referenced to illustrate the complexity of these dynamics. A study of dynamic pricing across over 12,000 flights in US monopoly markets found that airfare fluctuations are driven by two distinct forces: demand shocks (changes in the opportunity cost of selling a seat as departure approaches) and intertemporal variation in willingness to pay (the shift from price-sensitive leisure travellers booking early to less price-sensitive business travellers booking late). Relative to uniform pricing, dynamic pricing was found to expand output by 2.7%, primarily through lower fares offered to early-arriving leisure consumers, while late-arriving business travellers faced significantly higher prices. Total consumer welfare declined by 6.3% under dynamic pricing compared to uniform pricing, driven by the strong reduction in business consumer surplus. However, increased airline revenues more than offset this decline, and total welfare (combining firm and consumer surplus) was estimated to be 1% higher under dynamic pricing. The direction of the welfare effect depended on which source of price adjustment predominated: welfare declined when price changes were mainly driven by intertemporal price discrimination rather than responses to demand shocks. Intertemporal price discrimination accounted for two-thirds of revenue gains, with the remaining third coming from responses to demand uncertainty. These findings illustrate that dynamic pricing in practice involves a complex interplay of efficiency gains and surplus redistribution, making simple characterisations of harm or benefit inadequate.

Playing devil's advocate, the panel also heard the argument that businesses adopt algorithmic pricing to increase market share by offering lower prices and better targeting, which is, in essence, competition in its finest form. Setting aside dominant firms entrenching their positions and cartel-like behaviour, an individual business using pricing software to compete more effectively for customers was described as beneficial and something that should not be regulated away.

Agentic AI: a new frontier

The final portion of the panel addressed agentic AI; AI systems that go beyond conversational interaction to execute tasks using a variety of tools (web searches, code execution, purchasing functions). These agents can be chained together and can communicate with each other, enabling the automation of complex processes.

In the retail context, the most immediate application is shopping agents that search markets on a consumer's behalf, drawing on knowledge of the consumer's preferences, usage patterns and interests. Currently, such agents present a set of options; in the future, they may present a single recommendation or purchase autonomously on the consumer's behalf. Some agents already monitor prices across marketplaces (including beyond Amazon) and execute purchases at optimal prices, or apply discounts when items are left in a basket.

However, the panel identified several layers of concern. First, a question of disclosure and conflict of interest: are these agents merely fancier personal shoppers and brokers (in which case existing consumer protection frameworks may suffice), or do they represent something fundamentally different because of the disintermediation between consumers and markets? Second, the prospect of two AI agents, one representing the buyer and one representing the seller, negotiating prices with each other, potentially in ways that neither the consumer nor the seller fully understands or monitors. When consumers no longer see the range of prices available and an agent makes purchasing decisions on their behalf, the territory becomes, as the panel described it, “very murky.”

Third, the regulatory framework applicable to agentic AI extends well beyond competition and consumer law. The keynote address earlier in the day was referenced: employment law, cybercrime, data security and privacy all intersect with the deployment of AI agents. The panel noted that the presumption of causality in product liability is already shifting in Europe, with businesses potentially having to prove that their AI system did not cause harm rather than regulators having to prove that it did. This burden of proof shift has significant implications for businesses deploying pricing agents.

The panel also noted survey evidence from the FCA indicating that 50% of people now use AI for financial advice, described as “scary”, underscoring the speed at which consumers are delegating decisions to AI systems. The fundamental question was framed as one of responsibility: with great power comes great responsibility, and the responsibility for compliance will ultimately rest with the businesses deploying these systems.

Closing observations

The panel concluded by observing that the pace of change in algorithmic pricing and AI is significant, but that the timing is favourable: new CMA tools, new investigations and evolving case law are expected to bring greater clarity. Dynamic pricing as such was not considered problematic by the panel, the concerns arise when it leads to price alignment across competitors, when it is used to exploit vulnerable consumers, or when it operates with insufficient transparency. The challenge for regulators is to keep pace with rapidly evolving technology while ensuring that the fundamental principles of competition and consumer protection continue to be upheld.

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PANEL DISCUSSION

Retail media, network effects and multi-sided relationships

Session Focus:

This session explored the rapidly growing retail media sector and the three-way dynamic between brands, retailers and consumers. It examined the mechanics of retail media, including how brands purchase advertising space on both physical and digital retail platforms, and considered the competition, data protection and transparency implications of this evolving market. The panel assessed the opportunities and risks for participants of varying sizes, the role of first-party data, and the regulatory challenges arising at the intersection of competition law and data protection.

Session Summary:

The mechanics of retail media and key success factors

The panel opened with an overview of how retail media operates in practice. Brands purchase advertising across retailers' physical and digital assets, including sponsored search results, in-store communications and offsite social media placements. The process typically involves the brand setting out its audience objectives and desired outcomes to the retailer, which then proposes a campaign plan based on the available budget. The retailer's core advantage lies in two assets: extensive reach into consumer households (with loyalty schemes covering a significant majority of shoppers) and a large inventory of advertising opportunities across online and offline channels.

Several factors were identified as critical to the success of retail media campaigns. First, campaigns must be data-driven, leveraging shopper insights, for example, targeting consumers who have purchased related products. Second, retail media must operate as a full-funnel proposition, integrating with other media channels such as video, streaming and social media, rather than being confined to last-click interactions near the point of purchase. Third, there is a need for agreed key performance indicators (KPIs) and benchmarks, which remain largely absent. Fourth, organisational silos, between shopper marketing, media, sales, digital and insights teams on the brand side, and between equivalent functions on the retailer side, were identified as a persistent barrier to effective execution.

Organisational and budgetary dynamics

The discussion highlighted that retail media has its roots in trade marketing and shopper marketing, which have long been features of the brand-retailer relationship. What has changed is the involvement of media teams, who have historically operated separately from sales and trade functions. Retail media budgets often sit ambiguously between trade marketing (a cost of doing business with retailers) and media spend (managed by marketing teams), creating internal confusion within brand organisations. The panel observed that some brands have found retail media to be an extremely expensive channel compared to traditional trade marketing, and that the margins available to retailers from retail media are substantial, with some retailers reportedly deriving up to 25% of turnover from these activities.

It was suggested that retail media presents an opportunity to reset the brand-retailer relationship into a more equalised partnership. Historically, retailers have tended to dictate terms to brands, but the growing sophistication and profitability of retail media may create incentives for more collaborative engagement. However, the panel noted that neither brands nor retailers appear fully prepared for this shift.

Consumer data, consent and the role of loyalty schemes

A central theme of the discussion was the role of consumer data in underpinning retail media. The panel drew a clear distinction between first-party data (collected directly by retailers through loyalty schemes and transactions) and third-party data (aggregated from external sources). It was observed that the industry has broadly accepted that third-party data-driven advertising is ineffective and erodes consumer trust, whereas first-party data enables more relevant and targeted campaigns.

The legal and ethical dimensions of data use were explored in some detail. Under the GDPR, data processing must be grounded in a lawful basis, with consent for a specific purpose being a key requirement. It was noted that case law from national authorities across Europe has emphasised the importance of "meaningful consent", that is, consent which goes beyond requiring consumers to click through layers of terms and conditions and policy links. Where loyalty schemes are concerned, consumers generally understand and accept the basic exchange: they provide their shopping data in return for discounts, points or other benefits. This implicit bargain was described as a broadly accepted feature of the market.

However, the panel identified a less transparent dimension. When retailers package first-party loyalty data and sell it to third-party brands, such as major Fast-Moving Consumer Goods (FMCG) manufacturers, for the purpose of hyper-targeted personalised advertising, consumers may not fully appreciate the extent to which their data is being used. This secondary use was described as going beyond the internal purposes for which data was originally collected, raising questions about whether existing consent mechanisms are adequate.

The panel noted a tension between the Information Commissioner's Office (ICO), which regulates data privacy, and the CMA, which focuses on opening markets and promoting competition. Navigating this dual regulatory landscape was described as challenging, particularly as data has become central to the modern economy.

Measurement, attribution and transparency

Measurement was identified as one of the most significant challenges facing the retail media sector. Different retailers use different metrics and KPIs, and the data provided is often incomplete, making it difficult for brands to assess whether their campaigns are effective. The lack of standardisation across retail media networks, with each major retailer (Tesco, Sainsbury's, Morrisons, Ocado, Amazon and others) operating its own distinct measurement system, was highlighted as a major obstacle.

The panel discussed the problem of attribution in some depth. While retail media is often promoted on the basis that it is closer to the point of purchase and therefore easier to attribute, this claim was challenged. The consumer journey typically involves multiple touchpoints, social media, video, television, organic search, before arriving at a retailer's platform. Attributing a purchase solely to a last-click sponsored search result was described as misleading, and there were calls for multi-touch attribution models that weight the contribution of each interaction along the consumer journey. Some retailers were noted to be developing more sophisticated measurement tools (such as Sainsbury's Nectar360 product), but these remain nascent.

Work is currently underway by industry bodies to audit retail media supply chains, mapping data flows and money flows, with a view to building standardised operational models that would benefit both brands and retailers.

Competition concerns: access, market power and SMEs

The panel explored whether retail media risks creating barriers to entry for smaller suppliers. It was observed that large brands with significant marketing budgets can afford to purchase prominent advertising placements, such as dedicated shop pages on retailer websites or prime in-store positions, whereas smaller suppliers and SMEs face more constrained budgets and reduced visibility. Furthermore, the depth of customer data available to advertisers is tiered by price, with more granular data costing significantly more, potentially reinforcing existing advantages held by larger players.

However, the panel also heard a countervailing view: that retail media can offer smaller brands opportunities to gain market traction through targeted advertising that they would not otherwise achieve through traditional channels. In sectors subject to regulatory restrictions on advertising , such as restrictions on the placement and promotion of products high in fat, sugar and salt, retail media may offer alternative routes to market for compliant products. The consensus was that, while budgets are more constrained for smaller players, the space is not entirely closed to them, and retail media may in some cases provide opportunities for new entrants.

The marketplace dynamic was also discussed. Where retailers operate as marketplace platforms (listing products from third-party sellers alongside their own), complex competition issues arise. Marketplace operators benefit from customer data generated by third-party sellers' transactions, while those sellers may have limited access to the same data. Competitors' products may be listed alongside a retailer's own-label offerings, and the retailer may capture both the margin and the customer relationship, while the third-party seller bears costs such as returns and logistics. This imbalance of power in marketplace settings was identified as a significant concern.

Loyalty lock-in and consumer choice

The panel considered whether loyalty schemes create lock-in effects that limit consumer choice. It was generally agreed that consumers are not compelled to join loyalty programmes and that participation remains voluntary. The benefits associated with loyalty cards, discounts, exclusive offers, fuel rewards, were seen as a fair exchange for data. However, the panel noted that in sectors where a single provider dominates (such as certain airline or rail routes), the lock-in effect of loyalty points can be more pronounced, potentially requiring new entrants to offer not only competitive services but also equivalent loyalty incentives in order to attract switchers.

First-party data, third-party data and the deprecation of cookies

The panel discussed the evolving data landscape, particularly in the context of the deprecation of third-party cookies. This trend was seen as further increasing the value of retailers' first-party data assets, as advertisers seek reliable, consent-based alternatives to third-party tracking. Retailers are increasingly partnering with broadcasters and other media owners (such as Channel 4 and ITVX) to match first-party data sets, enabling more targeted advertising across streaming and digital platforms. Technologies such as data clean rooms were referenced as a means of enabling this data matching while protecting individual privacy.

The panel heard a strong view from the advertiser perspective that brands should avoid purchasing advertising based on third-party data sets, given the risks of poor data quality, privacy violations and consumer distrust. Instead, the recommended approach is to use first-party data to build audience profiles and then match those profiles, independently of the underlying personal data, on other platforms. However, concerns were raised that some major platforms (notably Meta) do not provide advertisers with sufficient access to measurement data, limiting transparency and accountability.

Opportunities and the path forward

The panel concluded by observing that retail media, while presenting significant challenges around measurement, transparency and market power, also offers substantial opportunities. For brands, it provides a closer relationship with consumers than has previously been possible, with the potential for exclusive offers and personalised engagement. For retailers, it represents a high-margin revenue stream. For consumers, it may deliver more relevant advertising, better prices and improved experiences, provided that data is used responsibly and with appropriate consent.

The importance of standardisation, transparency and responsible data use was emphasised throughout the discussion, with the panel noting that all parties, advertisers, retailers and media platforms, have a shared interest in maintaining consumer trust. Industry efforts to audit supply chains, standardise measurement and develop ethical data frameworks were welcomed as positive steps, though the panel acknowledged that significant work remains to be done.

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