Intro

I'm honoured & excited to be giving a Beesley lecture, not least because it seems that you rarely feature elected politicians in your heavyweight & impressive line-up of speakers. In fact my team have checked the last several years of speakers & we couldn't find a single one.

I fear it may be that members of my profession aren't particularly known for careful thoughtfulness, or – more positively – it could be a by-product of the excellent and important political independence of our regulatory culture that when you sup with elected officials, you do so with the longest possible spoon.

But either way I'm delighted to be here, and will try my best not to let the side down.

Summary of CMA / other reforms

I won't insult the intelligence of everybody here by spending too much time repeating and recapping the proposals in my report. We can cover them in our questions later if and as needed but, in summary, the headlines are:

- CMA to become a new Competition & Consumer Champion
- CMA gets upgraded consumer powers
- CMA/CAT process redesign

- Stronger Better Regulation process in Whitehall
- Refocused economic regulators & the DMU

Forward Look

I want to spend most of my time with you today looking forward at some of the emerging challenges which competition policy needs to address.

We live in a time of rapid, digitally-driven change which is transforming our lives, and mostly for the better. But competition policy needs to stay abreast of these changes, otherwise it will be left behind and quickly lose credibility; most of its democratic political support comes from the notion that 'the system' is on the side of consumers, rather than of businesses, monopolists or politicians. So if that ever ceases to be true, or starts to fray and erode over time, that supportive consensus will weaken too.

In other words, stasis is not the same as stability, as it says somewhere in my report, and so I want to spend 20 or 30 minutes looking upwind, to try and spot approaching squalls.

Energy Price Cap

The first issue is Price Discrimination: the idea that you and I might be charged different prices for exactly the same product. And the most current and economically-important example is the ***energy price cap***.

The energy price cap was originally supposed to fix the loyalty premium – the difference in prices paid by default tariff customers compared to those who switch.

But the graph shows that it has pretty much failed to do this. The loyalty premium after the cap is largely similar to what it was before.

But in recent months – beyond the right-hand side of this graph – the cap has succeeded in doing something it wasn't intended for; to protect default tariff customers from the recent sudden spike in the wholesale price of gas.

So we have a situation where the cap fails to do what it was supposed to for 99 months out of a hundred, when the market is normal, but succeeds in doing what it wasn't intended for, for 1 month out of a hundred when the need is very great.

I would like to propose that when the price cap legislation comes up for renewal next year, we amend it so it achieves both things together, and therefore works effectively 100% of the time, rather than just 1%.

If we switch the cap to match what the FCA is already introducing in insurance, so firms have to offer the same – or very similar – prices to new customers as to loyal ones, the graph behind me will become obsolete

because we will have solved the loyalty penalty as the cap was originally supposed to do.

But if we also maintain an emergency circuit-breaker as well, rather like the ones which suspend trading in some stock markets for a period after they have fallen by more than X% in Y minutes, then Ofgem could retain the power to set a temporary absolute cap if wholesale prices moved by a certain amount within a preset time. Then the cap would work for the 1 -in-100 emergency as well as in normal times, and energy firms would know what the trigger for their hedging strategy would be.

Transactional Fairness

The second issue is broader than any specific example of price discrimination, and has to do with what counts as 'fair' in modern, digital commerce.

The problem with 'fairness' is that it is simultaneously a very big and important idea, which matters tremendously and moves sentiment and opinion in politics and in business alike. A brand that does something which its customers think is 'unfair' can quickly become seriously damaged and tarnished.

But it is a slippery concept too. It changes as society changes over time. So what seemed perfectly, routinely normal and acceptable yesterday can land a firm on the

front pages of the tabloids tomorrow, for all the wrong reasons.

We need an intuitive decision rule which will guide most business leaders & investors to know when they are getting near the line.

- *transactional fairness* has been formulated by the University of East Anglia Centre for Competition Policy (no deception, no hindrance, public explanation).

I'm not sure if their formulation will be the last word or not (for example the duty for public explanation creates opportunities for political campaigns which are less predictable or objective then many other parts of our competition regime) but it is a welcome & important foray into territory which certainly needs to be explored properly, and soon.

Information assymetries

The next issue is Information Asymmetries, particularly where sellers know more than buyers, and where the unscrupulous minority can bury rip-offs and gotchas in the small print of contracts which might trap the unwary or ill-informed.

But digitisation is creating an entirely new approach:

– digital comparison tools.

This is a fascinating area where future advances in artificial intelligence could mean that today's price comparison sites, digital concierges and switching services could graduate to providing higher-level guidance so sellers can't hide things from buyers on anything from energy prices and insurance to loans, mortgages and pensions too.

They aren't there yet but, if they are, then the need for entire areas of conduct regulation could reduce very dramatically indeed.

Digital Monopolies

But as the need for one area of regulation might fade away, another could increase. ***Digital monopolies*** can be either local (eg in hotels, trains, sports events & festivals) or created by big global network effects (search engines, social networks etc).

Here there has been real progress with the ideas suggested in the Furman Review (for example data portability; switching simplification; pro-competitive conduct codes) plus others such as: accessibility standards or mutual ownership to prevent blocking by vertically-integrated network owners; interoperability of different technical standards.

The basic idea that no monopoly should be forever, and that erosion of monopoly barriers and rents is a

desirable policy outcome in its own right, is extremely powerful.

And we are making progress in a few of these areas already; for example the Open Banking project is probably world-leading at the moment, but could quickly be overtaken if we allow its' governance to be altered so in future it is directed by the industry it is trying to reform. Or if we fail to push forward from Open Banking into, firstly, Open Finance and then swiftly afterwards into Open Everything, covering things like utilities and online retailing as well.

'Free' Digital Services

But we are still stuck without answers to 2 crucial Qs: the first is how do consumers make price decisions for something which has a cash price of zero. They aren't free, of course – we still pay for them through our data. But if we don't know the price we're paying, how can we possibly know which of two or more competing firms is offering the best deal? If consumers haven't got the basic information about the price of something, competition will be weaker and consumers themselves will be more vulnerable to being ripped off in poorly-informed decisions which aren't really right for them.

So how can we help customers understand the cost of something, when its price is zero? And what happens if, to put it delicately, the value of your data is bigger or

smaller than mine? Does that mean that, if we both part with the same amount of data, one of us is being charged more or less than the other for the same goods or services? And if so, how much more or less, and is that fair?

Local monopolies

The second question is how to deal with those local monopolies I mentioned earlier, where there's no choice of wifi at a football match, a music festival, in a hotel or on a train.

Should we simply wait to see whether technology solves the problem by, for example, making portable hotspots as cheap and ubiquitous as the camera on your smartphone? In which case, how long should we wait?

Or should we require the monopolist to offer an alternative wifi provider instead? In which case, how many alternatives, and who?

Or should we regulate them so their offer meets minimum standards of price, amount and types of data captured and other contract terms, rather than a take-it-or-leave it offer instead? In which case, how big a regulatory burden of red tape are we willing to impose on, ultimately, their customers?

The new Digital Monopolies Unit (or the Data & Network Monopolies Unit, as I believe it should be

called) will certainly have its hands full, and I hope it will address all of these issues promptly to build and maintain public confidence that it is genuinely on the side of consumers rather than of bosses, bureaucrats or, worst of all, bloody politicians!

State Aid & Mergers

And finally, **state aid & mergers**. Many of you will have noticed that this final chapter of my report is both shorter and less detailed than the others, and this is for 2 reasons:

- National Security & Investment Act;
- genuine uncertainty in Government & outside how to preserve FDI without allowing asset-stripping or jewel-raiding.

Today, I want to propose some starter-ideas to address this uncertainty, and to begin to colour in at least some of these gaps in our current thinking. I doubt they are the final version, but I hope they will begin the debate at least.

The basic thrust of my report is that a key reason for UK being attractive for FDI is because of our rules-based, independent, reasonably-predictable & pro-competition regulatory environment.

Eroding it by allowing political interventions (I had many people mentioning France's designation of Danone, a

yoghurt firm, as a strategic industry that therefore justified protection) will create a feeding-frenzy for lobbyists and vested interests, make us less attractive for FDI & reduce our productivity & competitiveness of UK exporters.

But still, what about the jewel-raiders? People and firms who buy fast-growing British companies in the industries of the future & then ship the jobs & know-how off to places like California or Shenzen, so the industry cluster takes root there rather than here?

I would like to propose some possible answers, to stop this happening without undermining Britain's basic attractiveness as a destination for foreign direct investment:

- The first is that we will need objective, predictable triggers for what counts as a 'jewel' (eg speed of growth of firm or sector; rarity of product or service) and that these should be assessed and applied by politically-independent regulators (ie CMA) not politicians.
- The second is that any remedies should focus on conditions for approving the deal, with a presumption that it should go through if they are delivered, rather than on stopping deals from happening at all. Examples of the kinds of conditions

might be to require an investor to base or relocate the management & HQ of the acquiring unit in the UK; &/or to invest and grow jobs, design and production here rather than abroad.

- The third is that these conditions should be enforceable rather than voluntary, which will probably require us to develop modern versions of the old golden shares which were more common in the 1980s, because unpicking decisions afterwards through the courts is often impractical. These conditions would be enforced and managed commercially & independently of political control via UK Government Investments (the Shareholder Executive)

This new approach wouldn't alter the CMA's basic duty to block any deals which are fundamentally anti-competitive in the first place. That would be unchanged. But the advantages of this new approach would be:

- Firstly, an objective and predictable definition of what counts as a 'jewel', assessed by politically-independent regulators rather than politicians, will prevent what I will loosely call the 'Danone problem' where vested interests lobby Ministers to intervene and block what ought to be commercial decisions. This should reassure foreign investors that the vast

majority of UK acquisitions won't be affected. And, for those that are, our rules-based system will continue to make it (reasonably!) easy to predict which ones, and in what ways, so investors can have confidence that goalposts won't be moved unexpectedly either.

- Secondly, every entrepreneur starting their business in the UK will know that they will still be able to sell it for an excellent price later, and that foreign buyers who comply with our laws and standards will continue to be welcome as they have always been.
- Thirdly, making the conditions enforceable, to prevent and pre-empt breaches, will prevent a repetition of the Kraft Foods problem where promises were made before a deal was approved, and then not delivered once the contract had been signed.

Whether these proposals are the perfectly-chiselled, final word in this area I doubt. I suspect a great deal of detailed work, including expert input from many of you here today, would be needed to turn my initial thoughts into something that's workably robust.

But the work is worth doing, because the prize is most certainly worth winning. Because solving this problem will also solve one of the biggest, most longstanding

criticisms of the UK's economic performance since the second world war; that we are excellent at inventing exciting new products but dreadful at commercialising them and bringing them successfully to market.

If we can solve this problem, clusters of fast-growing firms and their suppliers, and entire industries of the future using technologies none of us have heard of yet, will be born, grow and take root here, in the UK, creating high-tech, high-skill British jobs, exports and wealth, rather than being poached away to bloom and flourish abroad.

That's what good competition policy does. It stops British consumers being ripped off and delivers world-class value in the things they buy at home. And it makes British businesses more competitive so they can succeed globally, winning export orders around the world, safeguarding jobs, and creating the wealth that pays for our public services in the process.

Post-Brexit, post-pandemic Britain is at a moment of change. An inflection point. A window which may only open once in each of our lifetimes. The iron is hot. The plaster is wet. Before they harden and set, let's set ourselves up with a system which will make our country a world-beater rather than an also-ran.

Thank you for your patience and forbearance, and I look forward to your questions and comments to come!