HOW SHOULD COMPETITION POLICY REACT TO CORONAVIRUS?

DISCUSSION PAPER

The Rt Hon. Lord Tyrie

July 2020

Institute for Public Policy Research

ABOUT THE AUTHOR

Andrew Tyrie has been chairman of the Competition and Markets Authority since June 2018. He was a member of parliament from 1997 to 2017. He was chairman of the Treasury Select Committee, and chairman of the Parliamentary Commission on Banking Standards.

AUTHOR'S ACKNOWLEDGEMENTS

I am grateful to Gavin Thompson and Mike Walker for assistance in drafting this paper, and to Bill Kovacic and the CMA's senior executive team for their advice and comments.

Competition & Markets Authority

Download
This document is available to download as a free PDF and in other formats at: http://www.ippr.org/research/publications/how-should-competition-policy-react-to-coronavirus

Citation
If you are using this document in your own writing, our preferred citation is:
Tyrie A (2020) *How should competition policy react to coronavirus?*, IPPR. http://www.ippr.org/research/publications/how-should-competition-policy-react-to-coronavirus

FOREWORD

The coronavirus pandemic has upturned the global economy and societies around the world. The enormous health impacts and loss of life are matched only by the scale and depth of the economic crisis. To address both, UK government has had to act urgently and with little time for policy design.

To inform the policy debate, IPPR has published a series of discussion papers, providing a platform for different viewpoints and expertise in the spirit of informed public debate. Previous papers have called for state equity stakes to be placed in a sovereign wealth fund, and demonstrated how even with significantly increased public spending, the public finances will remain manageable. This paper forms a contribution to this series.

In it, Lord Tyrie makes the case that coronavirus is likely to make the UK economy less competitive. He draws attention to the potential for market concentration, and highlights that the dominance of large tech firms – with large cash reserves and business models that benefit from lockdown – is likely to rise. He makes the case that the Competition and Markets Authority (CMA) has an important role to play in mitigating many of the problems that are arising.

Many of the issues Lord Tyrie raises were core to the work of the IPPR Commission on Economic Justice, which reported in 2018.[1] The commission identified rising concentration in a number of sectors across developed economies, and in particular in the digital and data economy. It argued that as market power continues to rise, a tipping point is reached where rates of both investment and innovation begin to fall across the sector and economy. Covid-19 presents the conditions for such a tipping point, making reform of the UK's competition regime more urgent. The commission called for reform of the UK's competition regime, with a stronger focus on open markets that better promote investment, innovation and entrepreneurship; and a broadening of the CMA's remit to include a focus on market power that damages the public interest, alongside existing commitments to promote consumer welfare and economic efficiency.

A recovery that rebuilds a stronger, more resilient and fairer economy will require effective and responsive policymaking, not just from central government but from wider policymakers and regulators. I hope you enjoy this important contribution on the role of the CMA and competition policy in achieving that aim.

Carys Roberts
Executive director, IPPR

1 Commission on Economic Justice [CEJ] (2018) Prosperity and justice: A plan for a new economy, IPPR. https://www.ippr.org/research/publications/prosperity-and-justice

SUMMARY

In addition to causing loss of life on a tragic scale, coronavirus, and the lockdown policies to suppress and reverse its spread, are causing great short-term economic disruption. They will also have lasting economic consequences. Competition and consumer protection authorities can and should play an important role in addressing the short-term harm to consumers and markets and, at least as important, can and should contribute to a robust and sustainable post-crisis recovery over the longer term.

In the short-term, the UK economy, like most others, has entered a sharp recession. Fiscal and monetary policy form the core of the short-term response. But competition policy continues to have a significant role to play: in deterring the minority of businesses that are seeking to exploit consumers during the crisis; in ensuring the approach to enforcement does not stand in the way of businesses co-operating for legitimate reasons; in advising government on how to minimise enduring distortions to competition being caused by a number of emergency policy measures. Performing these functions with the necessary speed has required the Competition and Markets Authority (CMA) to operate in a new way, through the creation of an emergency 'Coronavirus taskforce'.

The longer-term economic consequences of the response to the pandemic are highly uncertain. There are likely to be enduring changes to consumer behaviour, businesses, supply chains and the regulatory environment. The effects will differ greatly between sectors, which will in turn change the structure and shape of the economy. Many of these changes may well aggravate pre-existing problems: rising market concentration; the growing power of digital platforms; protectionism; consumer vulnerability; and a deepening – and often justified – distrust of markets among the public.

Competition authorities have a huge task ahead of them. They will need to adapt and refocus their work in response to the reshaping of the economy that will occur as it recovers from the coronavirus recession. The crisis has further highlighted pre-existing deficiencies in the legal framework for competition and consumer protection law; unless these are addressed, the task of adaptation will be all the greater.

Among the most important competition policy challenge over the longer term is to ensure that the temporary subordination of competition to other policy objectives in the context of the coronavirus crisis – public health, security of supply, the protection of jobs – does not become entrenched. Taxpayer support to business, and special exclusions from competition law, are liable to create a new group of vested interests, which would stand to benefit from continuing to be insulated from normal competitive forces after the crisis has receded. These will be added to the existing vested interests who have often made it difficult for competition authorities, before the crisis, to intervene in a timely and effective way. It will often be the largest businesses that have most at stake, and the greatest capacity to press their case, at the expense of smaller competitors and consumers. Competition authorities like the CMA can and should be a bulwark against these vested interests, by providing robust and authoritative advice to government on when and how crisis measures should be unwound, and on any opportunities that may arise from the crisis to address a number of pre-crisis distortions.

The rest of this paper is split in to two parts. The first outlines briefly the work that the CMA is currently undertaking to respond rapidly and robustly to the immediate threats to competitive outcomes for consumers (for example, concerns over price gouging, firms not honouring the right to a refund on cancellation of services). The second part looks at the longer-term contribution of competition policy to the recovery.

1.
THE IMMEDIATE RESPONSE:
THE CMA'S CORONAVIRUS TASKFORCE

Competition authorities, on the whole, and by statutory design, are not institutions built for a crisis response. They work over time horizons of many months and years, to predictable, and often legally-mandated, deadlines, with many checks and balances. But coronavirus, and the measures to suppress its spread, have led to market disruption and consumer detriment that require a far faster and more flexible approach than the CMA's legislative base, and its operational processes and structures, were designed to achieve.[1]

Notwithstanding this, in March, the CMA created an emergency taskforce in the space of a fortnight, intended to provide a rapid and robust response to the immediate effects of the crisis on consumers and competition, and to anticipate some of those on the horizon.

1 Unlike some competition authorities, the CMA's statutory base has no provision for changing its approach during times of emergency. Furthermore, unlike its counterparts in some other jurisdictions, the legislative base was designed with rigorous legal protections and processes that make quick responses, not merely to crises such as this, but also may other risks to competition and consumer protection, particularly difficult.

The taskforce marks a fundamentally different way of working for the CMA that reflects the need for a swifter and more flexible approach during times of crisis. At least three features of its approach are worth highlighting.

First, the CMA has invited businesses and consumers to report unfair practices they are seeing and experiencing. The result has been an unprecedented level of contact from the public: over 80,000 complaints have been made at the time of writing. Initially these predominantly concerned price gouging of essential items such as medicines, hand sanitiser and food.[2] More recently, complaints about childcare and nurseries, weddings and events, and travel and tourism (particularly in respect of cancellations and refunds) have formed the large majority.[3]

Second, the taskforce is publishing regular analyses of the complaints and how it is responding to them.[4]

---

2 At the time of writing, price gouging complaints had fallen back from their very high levels. The CMA judges that this problem is now less widespread; but it remains vigilant to the risks of unjustifiable price rises, particularly if new restrictions are introduced – locally or nationally – to contain further outbreaks.

3 The restrictions on travel resulting from the coronavirus outbreak have meant consumers have been obliged to cancel holidays, travel, and other plans. Complaints typically concern businesses refusing refunds in these circumstances; introducing unnecessary complexity into the process of obtaining refunds; charging high administration or cancellation fees; and pressuring consumers into accepting vouchers instead of cash refunds.

4 See: https://www.gov.uk/government/publications/cma-coronavirus-taskforce-update-21-may-2020

Third, the taskforce has acted in new and different ways to address the detriment being brought to its attention. This innovative approach has been necessary partly because of the limitations of the CMA's powers in addressing certain types of harmful practices, such as price gouging; and partly because normal enforcement timescales do not allow detriment to be addressed with the required speed. In particular, the taskforce has done the following.

- Issued an unprecedented number of warning letters – nearly 300 at the time of writing – to traders about unjustifiable price rises. The rationale for the CMA's robust response to price gouging is set out in the annex.
- Launched wide-ranging consumer enforcement investigations, at speed, in sectors where complaints indicate a high level of detriment.[5]
- Issued public guidance aimed at helping businesses to do the right thing.[6] This has included guidance on what is – and isn't – acceptable cooperation with competitors in this uniquely difficult economic environment and guidance on the operation of consumer law on cancellations and refunds.

---

5 There are live investigations into package holidays, weddings and private events, nurseries and childcare providers, and holiday lettings.

6 Many businesses need to cooperate to ensure security of supply of essential products and services, whether for personal protective equipment for NHS staff and care workers, ventilators for hospitals, or groceries for those confined to their homes. Competition law should not stand in the way of certain types of cooperation between businesses during the current crisis.

2. BEYOND THE IMMEDIATE CRISIS: THE ROLE OF COMPETITION POLICY IN THE ECONOMIC RECOVERY

The remainder of this paper considers the overall economic outlook, its implications for competition and markets, and the role that the CMA should have in supporting the post-crisis recovery.

Monetary and fiscal policy will continue to be the principal tools to secure a strong and sustainable recovery. A robust supply side policy will also be needed. On the latter, the CMA has two clearly-defined, but important, roles. First, it needs to promote the role of competitive markets – in the face of probable political and structural headwinds – in securing a dynamic and resilient economy. Second, it must sustain trust and confidence in markets, by protecting consumers from rip-offs and other unfair practices. Both these roles will require it to use its existing statutory powers to their fullest extent, and, where these are insufficient, to provide robust advice to government on how policy or legislation could address weak competition and consumer detriment.

THE ECONOMIC OUTLOOK

The post-crisis equilibrium – and the path towards it – are highly uncertain. It is not known how rapidly restrictions on business and social activity can be safely lifted; whether they may subsequently have to be re-imposed; how successful research into vaccines will be; or whether effective treatments will soon become available. Likewise, any assessment about the extent and depth of the scarring effects that might arise from unemployment and the failure of viable businesses is speculative, as is how far behavioural changes necessitated by the lockdown will become permanent.

But some things are clear. We know the economic cost will be huge: forecasters expect that output will be anything from 7 per cent to 14 per cent lower in 2020 than in 2019.[7]

The public finances will be severely hit. Bearing the costs of putting large sectors of the economy into 'hibernation' is expensive enough: the cost of coronavirus policy interventions up to 26 June has been estimated by the OBR to be £142 billion.[8] But as the economy emerges from lockdown, further borrowing is likely. As a consequence, public sector borrowing as a share of GDP in 2020/21 is expected to exceed levels seen during the financial crisis, and approach those seen during the second world war.[9]

---

7 HMT, Comparison of independent forecasts, June 2020.

8 OBR Press Notice, Fiscal Sustainability Report - July 2020, 14 July 2020

9 Ibid

International trade is expected to fall,[10] for a number of reasons. First, the shock to both demand and supply across the world can be expected mechanically to reduce the volume of traded goods.[11] Second, businesses built on global supply chains and 'just in time' production methods may become less commercially sustainable. And third, the failure of international supply chains during the crisis to provide key goods, such as personal protective equipment, quickly and in sufficient quantities, in some countries may strengthen the political imperative for resilience and self-sufficiency.[12]

There may be an acceleration of other structural trends that were in evidence before crisis. The share of retail sales online will rise, placing yet more pressure on bricks-and-mortar shops.[13] Debt, especially in the government and corporate sector, was high before the crisis and it will be higher still afterwards. Remote working might rise, leading to a

---

10 The WTO's forecasts, published at the end of April, have the volume of international trade in 2020 falling by 12.9 per cent in the optimistic scenario, and by 32 per cent in the pessimistic scenario.

11 Standard gravity models of trade imply that the level of trade between two countries depends on the level of demand in the importing country, the level of supply in the exporting country and the distance between the two countries. Since coronavirus creates both a demand shock and a supply shock, there will be a 'double whammy' on trade flows in the short run.

12 See, for instance, *New York Times*, 'The world needs masks. China makes them, but has been hoarding them', 13 March 2020; and *RFI*, 'Face masks from China intended for France 'hijacked' by US at the last minute', 2 April 2020.

13 See, for instance, ONS, 'Internet sales as a percentage of retail sales', Series J4MC.

surplus of office space to complement the surplus of retail space from changing shopping habits.

The economic shock caused by coronavirus is highly asymmetric.[14] It is damaging some sectors, such as hospitality and transport, while leaving others untouched. Some – such as online retail, video conferencing and streaming services – are benefiting.

A number of implications – for competition, markets and the CMA's work – flow from the economic outlook. These are considered below.

INCREASING CONCENTRATION

Before the crisis, concentration was already rising in the UK in a number of sectors,[15] often to the detriment of consumers and the wider economy.[16] It was these concerns that motivated the work

14 See, for instance, OBR, 'Coronavirus reference scenario', 14 April 2020, Table 1.2.

15 See, for instance: Resolution Foundation, *Is everybody concentrating? Recent trends in product and labour market concentration in the UK*, July 2018; and *Economist*, 'More money, more problems', 26 July 2018.

16 It is well-established, both empirically and in economic theory, that highly concentrated markets often lead to poor outcomes for consumers. At its simplest level, fewer competitors in a market implies less competition and hence tends to lead to higher prices, lower quality products, or both. Concentration also harms productivity because incentives on firms to become more efficient and to innovate is weaker. (See, for instance: CMA, *Productivity and competition – a summary of the evidence*, July 2015.)

begun by the CMA prior to the crisis to understand the state of competition across the economy.[17]

These concerns are now likely to grow because – despite the best efforts of government – many businesses will fail as the economy enters a sharp recession and adjusts to a new normal.

Rising concentration in these circumstances need not always be a cause for concern. The process of productive assets being reallocated to more efficient firms can accelerate the economic recovery.[18]

More problematic would be a rise in concentration driven by anti-competitive mergers, or otherwise viable firms leaving the market in response to a short-term demand shock.

In at least three ways, set out below, competition policy can help to prevent 'bad' increases in concentration, and to foster 'good' increases. These are strong merger control; robust advice to government to help it avoid inefficient bailouts of troubled firms and industries; and close oversight

---

17 This project was paused in March so that resources could be reallocated to the most urgent and critical work, in line with advice from central government. The project is planned to restart shortly, building on the work done by the taskforce in the interim to assess the financial health of various sectors and to analyse the medium-term implications of coronavirus on consumers and competition (see below).

18 The survival of so-called 'zombie firms' – thanks largely to exceptionally low interest rates – is often cited as an explanation for the very slow recovery in output and productivity in a number of countries following the financial crisis.

and monitoring of how markets and consumer outcomes are changing across the economy.

Strong merger control

The CMA is already focussed on appropriate merger control reviews.[19] This needs to continue, not in spite of the crisis, but because of it. This is for two reasons.

First, the crisis may prompt an increasing number of mergers in which the parties argue that one of them is a failing firm, which would otherwise leave the market. They will argue that these mergers should be allowed to proceed because they cause no loss of competition beyond what would otherwise have taken place.

Whether this so-called 'failing firm defence' is justifiable in any particular case depends on three things.[20] First, would the firm really exit the market, absent the merger; or might it survive? Second, would there be an alternative purchaser for the firm or its assets that is not such a close competitor? Third, would allowing the merger to proceed really be no worse for competition than blocking it; or might it be better for a failing firm to be allowed to exit the market and for its assets

---

19 See, for instance: Global Competition Review, 'Rating Enforcement 2019 – Competition and Markets Authority', September 2019: https://globalcompetitionreview.com/benchmarking/rating-enforcement-2019/1197080/united-kingdoms-competition-and-markets-authority

20 CMA, *Merger assessments during the COVID-19 pandemic*, 'Annex A: Summary of the CMA's position on mergers involving 'failing firms'', 22 April 2020.

to be redistributed than for an incumbent to increase its market power?

In expectation of such cases, the CMA is monitoring data and media reports to help identify sectors that are under stress or undergoing restructuring. This will put it in a better position to make quicker decisions on mergers if circumstances require them.

Second, the crisis may well lead to a rise in so-called 'killer acquisitions', whereby a large incumbent firm nullifies potential future competition from small start-ups by acquiring them (for instance, Facebook's 2012 purchase of Instagram).[21] In a world in which small firms may be in particular danger of going bankrupt due to a lack of funds, the opportunities for killer acquisitions are greater. The damage from the coronavirus shock would be much more prolonged if incumbents were allowed to throttle the competitive threat of smaller rivals by purchasing them at fire-sale prices.

21 *The New York Times* recently reported on what looks suspiciously like a 'killer acquisition'. According to the report, in 2010 Newport Medical Instruments was awarded a US government contract to design and manufacture a low-cost ventilator that could be mass produced. In May 2012, Covidien, a large medical device manufacturer that sold, amongst other products, ventilators, bought Newport. This merger was allowed by the relevant merger control authority in the US (the Federal Trade Commission). In 2014, the contract was cancelled, allegedly at Covidien's request. It is noteworthy that commissioner Slaughter, one of the five FTC commissioners, has publicly stated that the agency should go back and look again at the facts of this case. (Nicholas Kulish, Sarah Kliff and Jessica Silver-Greenberg, 'The US tried to build a new fleet of ventilators. The mission failed', *New York Times*, 29 March 2020, updated 20 April 2020.)

Advice on inefficient bailouts

The overwhelming share of public sector support to industry in the UK has so far been economy wide. These measures are largely non-discriminatory and therefore, from a competition perspective, less distortive than firm-specific bailouts.

However, there have already been a number of calls for the government to bail out firms and sectors.[22] These look set to continue, even after lockdown restrictions are eased, as structural changes affect the medium- and long-term prospects of some industries.

A pro-competitive approach to bailouts requires a distinction to be made between firms and sectors that are facing liquidity problems, and those that are fundamentally insolvent.[23] That in turn requires careful scrutiny not only of the health of

---

22 Public requests for assistance have been made – and in some cases agreed to – by firms or trade bodies in the airlines (https://www.ft.com/content/e2636703-acec-49ad-97b8-b944e032db1f), higher education (https://www.gov.uk/government/news/government-support-package-for-universities-and-students), steel (https://news.sky.com/story/coronavirus-port-talbot-owner-tata-steel-seeks-500m-state-bailout-11978645), bus transport (https://www.theguardian.com/uk-news/2020/apr/02/bus-firms-get-400m-bailout-to-maintain-services), and trade credit insurance sectors (https://www.ft.com/content/89e25e8b-7817-465f-931e-6e16709b160e).

23 Aid granted to insolvent firms is likely to be economically harmful: it can lead to inefficient use of scarce government funding; it may crowd out more efficient firms (particularly entrants); it limits the reallocation of resources to more efficient firms and to more efficient sectors. However, a bail out may not need to be pro-competitive, or even ‘efficient’, to be justified on public policy grounds.

the business or sector in the pre-Covid period, but also an assessment of how it will fare in the post-crisis equilibrium (where in a number of sectors, demand may be permanently lower, or consumer preferences very different). This latter assessment will be extremely difficult to make.

An efficient approach to bailouts also needs to minimise the moral hazard that comes when the state insures against risk by stepping in to provide financial assistance. Such 'insurance' – whether explicit or implicit – can leave risk under-priced by the market, contributing to economic fragility. It can also weaken competition because the insurance provided by taxpayers tends to benefit the largest firms.

The last decade has seen a shift to more highly leveraged capital structures, which have produced strong returns for shareholders, and higher executive remuneration, but have left many companies highly vulnerable to the shock that has now occurred. In some cases, it may not be deemed acceptable to allow such firms to fail; there is merit in making any specific financial assistance provided to them conditional on a transition to more resilient business and financial structures.[24]

24 Minimising moral hazard may require bailouts to be conditional on new ownership, new executive management, or shareholder or creditor losses.

STRONGER DIGITAL PLATFORMS

The Economist recently noted that: “the pandemic will have many losers, but it already has one clear winner: big tech”.[25] This seems right.

Big tech firms[26] have been able to weather the crisis, not only because they are largely unaffected by (or even benefit from) lockdown restrictions, but also because they have large cash reserves.[27] Meanwhile, many of their competitors and potential competitors are going to the wall: their strategies of growing quickly to reach minimum viable scale undermined by a drying up of risk capital.[28] One of two things is likely to happen to these firms: either they will leave the market, or they will be bought up by big tech. Either way, the dominance of the largest tech firms will rise, and competition will decline, in the short term.

It may well decline over the longer term too, if – as seems plausible – the crisis accelerates the long-term trend to more online shopping. This strengthens the position of retail platforms such

---

25 ‘Don’t waste a good crisis’, *Economist*, 4 April 2020.

26 Alphabet, Amazon, Apple, Facebook, and Microsoft.

27 The US investment data company, Factset, estimated that, at the end of 2019, Microsoft had $137 billion in cash and short-term investments, Alphabet $121 billion, Apple $101 billion, Facebook $52 billion, and Amazon $44 billion.

28 See, for instance, Startup Genome, *The impact of COVID-19 on Global Startup Ecosystems* (https://startupgenome.com/reports/impact-covid19-global-startup-ecosystems-startup-survey), which found that 41 per cent of startups have less than three months of cash, and that three out of four fundraising processes that began before the crisis have since been derailed.

as Amazon, on both sides of their market. On the consumer side, such platforms may capture a greater share of the market for online retail. On the supplier side, their retail marketplaces may become an even more important gateway to consumer demand, again strengthening their position. An increase in online retail may also benefit Google and Facebook, owing to their strength in the digital advertising market.

Since the publication of the Furman Review on Digital Competition, a consensus has grown in the UK,[29] backed by the government,[30] that digital platforms, or some subset of them, should be subject to a framework of pro-competitive regulation. And in March, the CMA was asked to lead a cross-regulator taskforce to advise the government on the design of such a framework.

The crisis is likely to strengthen the already existing consensus about the need for pro-competitive regulation. Coronavirus may well lead to reduced competition; increased product market competition; increased gatekeeper power over suppliers; and a stronger position in digital advertising. This all suggests that at least as much regulatory scrutiny will be required, in future.

But from a broader political economy perspective, the answer may be less straightforward. Big tech has, so far, been having had a ‘good crisis’, proving

29 See, for instance, Walker, M. 2020. ‘Competition policy and digital platforms: six entirely uncontroversial propositions’, *European Competition Journal.*

30 In his March 2020 budget, the chancellor accepted all six of the Furman review’s strategic recommendations for unlocking competition in digital markets.

its usefulness, doing good work, and building important links with government in the process. What looks like increased strength to a competition authority may appear to be growing indispensability to others. The CMA's role in this context should be to make dispassionate assessments of the extent of their dominance, and any effects this may have for consumer welfare. Policymakers and public authorities should not dismiss the work of the tech giants in these difficult times; but nor should they allow tech giants' usefulness during the crisis to cloud their judgement about the risks – to consumers, other businesses, and the wider economy – of big tech's growing strength.

INCREASING VULNERABILITY

Coronavirus has led to a rise in the number of vulnerable consumers, and the extent of their vulnerability. For instance, self-isolation in itself makes individuals potentially more vulnerable. In many cases, it will also result in a sharp reduction in income, for example through job losses and business failures. The crisis also opens up new means and opportunities for unfair practices and anticompetitive conduct: price gouging; misleading claims (for instance about the efficacy of personal protective equipment); or failure to refund cancelled bookings.

Over the longer term, if more economic activity takes place online, it will add to the vulnerability already faced by those who do not have internet access, or who are unable easily to shop around on the internet. This is not just people who are vulnerable on well-understood indicators: those who might be old, or on low incomes. It includes perhaps tens of millions of people in the UK, many of them simply 'time poor' or less familiar with the technology required for an increasing number of transactions. This new vulnerable group deserve greater attention from public policy.

In recent years, the CMA has been developing its strategy to address these new types of vulnerability. It can help address the new vulnerabilities caused by the current crisis with robust enforcement of competition and consumer law. Much of its consumer enforcement has been directed against online harms,[31] and this will continue to develop, alongside action against firms that fail to respect customers' legal rights.

The other channel through which the CMA can address the growth in vulnerability is in providing recommendations and advice to the government and other public authorities. As was reported recently, the taskforce has been advising government on emergency legislation to enable price gouging to be tackled faster and more effectively.[32]

31 For instance, work on fake and misleading online reviews (https://www.gov.uk/cma-cases/fake-and-misleading-online-reviews), online hotel booking (https://www.gov.uk/cma-cases/online-hotel-booking), secondary ticketing websites (https://www.gov.uk/cma-cases/secondary-ticketing-websites), and social media endorsements (https://www.gov.uk/cma-cases/social-media-endorsements).

32 *Financial Times*, 'UK watchdog seeks powers to tackle coronavirus profiteering', 17 May 2020.

REDUCED TRADE

Even before the crisis, the consensus about the benefits of economic globalisation, strongly held little more than a decade ago, was fracturing. Over the last 10 years, tariffs have stopped falling,[33] and trade and investment as a share of global output has stagnated.[34] The leaders of several major countries talk the language of protectionism.

As set out in section 2, coronavirus negatively affects both the politics and the mechanics of international trade. Problems faced in securing vital supplies, such as ventilators and PPE, will strengthen the political case for greater economic self-reliance (possibly through selective industrial strategy). It will also strengthen the commercial case for repatriating supply chains closer to home: continued restrictions on movement and economic activity will raise barriers to trade and the cost of doing business abroad. As governments lift restrictions on economic activity and movement at different rates, and in ways that treat some countries differently from others,[35] a complex 'spaghetti bowl'[36] of new non-tariff barriers to trade may emerge. The principle

---

33 World Bank Databank (tariff rate, applied, weighted mean, all products), accessed 28 June 2020.

34 World Bank Databank (trade, % GDP), accessed 28 June 2020; UNCTAD, World Investment Report 2019.

35 See, for instance, the World Economic Forum, *These countries are making 'travel bubbles' for post-lockdown travel*, 14 May 2020.

36 The term was coined by the economist Jagdish Bhagwati to describe the damaging effect on free trade of the proliferation of bilateral and regional free trade agreements, each with their own rules, tariffs, and institutional arrangements.

underpinning free trade – that goods and services should be treated equally, wherever they come from – will be further undermined.

The effect may endure long after the crisis recedes, and it is something competition authorities should be concerned about. If trade barriers rise and trade flows fall, domestic firms will face less competitive pressure. Other things equal, market power will become more widespread, consumers will lose out and total factor productivity will fall.

The challenge for competition policy will be to replace, as far as possible, lost international competitive pressure with domestic competitive pressure. Continued strong merger control – with possibly more domestic mergers being judged to be anti-competitive – will need to be buttressed by cross-economy market monitoring, and closer scrutiny through market studies and investigations. Where competition in a market is structurally weak, the CMA has often made recommendations or imposed market-wide remedies to strengthen competitive pressure and protect consumers from market power. This may become a more frequent feature of its work. Closer examination of regulatory impediments to domestic competition – such as barriers to entry or innovation created by rules, or the approach of regulators – may also be necessary.

INDUSTRIAL STRATEGY

When the short-term pressures of the crisis recede, attention is likely to turn to the economic policies required to restore long-term growth and productivity, including the UK's future industrial strategy.

Competition policy and industrial strategy are often seen as antithetical at worst, and mutually exclusive at best. But a robust competition policy is also a high-quality industrial strategy. In the UK, selective state intervention to promote favoured firms and sectors (so-called winner-picking) has largely been avoided by successive governments in recent decades. Strong competition policy has formed the core of industrial strategy for over 40 years.

The benefits of this approach are clear from extensive empirical evidence[37]. But retaining and bolstering competition policy at the heart of industrial strategy over the coming years will require political commitment. As a former MP, I am well aware of the pressures that might come on ministers to do otherwise.

Furthermore, public distrust of market competition is widespread and growing. The loyalty premium, fake reviews, online privacy concerns, high energy prices and the perceived unfairness of many market outcomes had all served to undermine confidence in competition as a source of public good. Added to this, the crisis has prompted massive state intervention to save the economy, and government-sanctioned cooperation between firms to protect supply chains and assist the

37 A summary can be found in Owen, G. (2012) 'Industrial policy in Europe since the Second World War: what has been learnt?', ECIPE Occasional paper No. 1/2012

crisis response.[38] In this context, the CMA can and should make the government's choice to take a pro-competitive approach an easier one, by demonstrating that it is in touch with public and consumer concerns, and responding wherever it can.[39]

An alternative is for the UK to follow the path of others in Europe, in adopting an industrial policy that promotes – through subsidies, special treatment, relaxation of regulation (including merger control) and other forms of selective assistance – sectors or firms identified by the government as strategically or economically important. Such an approach has regained popularity in parts of the EU, where a drive to create European and national 'champions' has led to pressure to allow anti-competitive mergers to proceed,[40] the development of state-backed funds to foil foreign takeovers,[41] and proposals to bring extraterritorial effect to the EU

---

38 See, for instance, the cooperation between Apple and Google over contact tracing apps.

39 The CMA's plan to become demonstrably closer to consumers was set out in a set of speeches made in February – before the crisis – by Andrea Coscelli, Bill Kovacic and me. https://www.gov.uk/government/speeches/andrew-tyrie-closer-to-consumers-competition-and-consumer-protection-for-the-2020s.

40 For instance, the European Commission's decision to block the proposed Siemens-Alstom rail merger led to criticism from the French and German governments: https://www.bmwi.de/Redaktion/DE/Downloads/F/franco-german-manifesto-for-a-european-industrial-policy.pdf?__blob=publicationFile&v=2

41 See, for instance, Federal Ministry for Economic Affairs and Energy, *Made in Germany: Industrial Strategy 2030* (esp proposals for a National Shareholding Instrument).

state aid framework.[42] This approach to industrial strategy may well have the same broad strategic objective as trade protectionism in the US: namely to defend and promote domestic industry in the face of competition from state-backed Chinese firms.[43] And it is likely to gain momentum as a result of the crisis.[44]

Ultimately, it is for ministers in the UK to decide whether such an approach is consistent with the public interest or the government's objectives. But the CMA can help to clarify the economic trade-

---

42 Government of The Netherlands, Non-paper on strengthening the level playing field on the internal market, December 2019.

43 The objective was made plain in the announcement by vice president Vestager of a forthcoming white paper on new powers that would allow the Commission to "deal with [...] the harm that foreign subsidies and state ownership can do to competition in Europe".

44 In recent months, a number of EU countries have announced new plans, and accelerated pre-existing plans, to screen and prevent foreign takeovers. France has announced a €20 billion fund to protect the 70 listed companies in which the government has a stake, and the economic minister has said that money would be available to assist "vulnerable companies through either direct aid, increased state participation or temporary nationalisations". In Italy, the prime minister has announced an expansion of the government's 'golden power' to screen and block foreign takeovers, expanding the power to include takeovers by entities in EU member states, and in additional sectors, such as finance and insurance. Germany and Spain have taken similar steps, while vice president Vestager has made clear that the commission would not have "any issues of states acting as market participants if need be – if they provide shares in a company, if they want to prevent a takeover of this kind". These steps are being justified with reference to the exceptional circumstances created by coronavirus; but coming as they do on a wave of growing hostility to foreign investment and the free movement of capital, they may be difficult to unwind when crisis conditions recede.

offs involved in protecting domestic industry from competition.[45] It can play a role in explaining the strong link between a pro-competitive industrial strategy and higher levels of economic welfare. And it can show how a more pro-competitive approach can contribute to other public policy objectives, such as reducing inequality[46] and promoting innovation.[47]

---

45 The central trade-off is that, while measures to protect selected industries from domestic or international competition may preserve market structures and jobs, they generally result in higher prices and lower quality for consumers.

46 See, for instance, OECD (2017), *Inequality: a hidden cost of market power*. The model used in this paper suggests that market power increases the wealth of the richest 10% by between 12 per cent and 21 per cent, and reduces the income of the poorest 20 per cent by between 14 per cent and 19 per cent. This is largely because the beneficiaries of market power – shareholders and managers – are far more likely to be towards the top of the income and wealth distributions.

47 Arrow KJ. (1962) *Economic welfare and the allocation of resources for invention. The Rate and Direction of Inventive Activity: Economic and Social Factors,* ed. Univ.-Natl. Bur. Comm. Econ. Res., Comm. Econ. Growth Soc. Sci. Res. Counc., pp. 609–26. Cambridge, MA: NBER

3. CONCLUSIONS

Coronavirus is likely to make the economy less competitive and consumers more vulnerable. The problems which may require attention will greatly exceed the CMA's capacity and may challenge its legal framework. Nonetheless, the CMA can make an important contribution in mitigating a substantial number of them.

The CMA has already acted on short-term threats such as price gouging and breaches of consumer law through its newly established CMA Coronavirus Taskforce.

But bigger longer-term challenges lie ahead as the economy adapts and recovers.

First, markets are likely to become more concentrated. Part of the response is for the CMA to stop this happening in the first place through robust merger control; reviewing 'failing firm' mergers with the right level of scepticism, and looking out for 'killer acquisitions'.

Second, government intervention in the economy at large, and in specific sectors and markets, will be much greater than before.

Third, the shift to online retail will strengthen still further the dominance of the major digital platforms, in both the business- and consumer-facing markets. The case for subjecting digital platforms to regulatory oversight is all the stronger as a result.

Fourth, external competitive pressure on domestic industry will be likely to decline. Levels of trade may remain subdued. Even before the crisis, trade has faltered as a proportion of global output.[48] This increases the importance of removing barriers to the scope for domestic competition within markets, such as entry barriers created by incumbent firms or by government regulations. It may also alter the CMA's analysis and approach, among other things, in merger control and the monitoring of markets.

Fifth, coronavirus is likely to make consumers more vulnerable: to scams, to bad deals, to high prices and to poor service. Confident and well-informed consumers are a necessary condition of well-functioning markets. Through its markets work, and advocacy to government and regulators, the CMA will continue to explain to government how best to protect and empower consumers.

Sixth, with public distrust of markets likely to develop, industrial policy could become more interventionist and protectionist and less infused with pro-competitive instincts. By demonstrating that it is in touch with public concern, and responding where it can, the CMA can make a more pro-competitive approach an easier choice for the government to make.

48 As a proportion of global output, international trade was at the same level in 2018 as it was in 2008 (World Bank Databank (trade, % GDP), accessed 28 June 2020).

ANNEX:
PRICE GOUGING AND COMPETITION POLICY

The creation of the CMA Coronavirus Taskforce followed reports that a number of traders were charging unjustifiably high prices for essential goods. For a number of weeks thereafter, 'price gouging' was the chief cause of complaint to the taskforce.

There is a line of economic argument that price gouging is an efficient and desirable market response that brings demand into line with supply. State intervention to address it – whether by competition authorities or anyone else – disrupts normal market functioning, and inevitably does more harm than good.

On the demand side, the argument goes, price gouging means that those who value the product most highly are the ones who buy it. On the supply side, so the argument goes, the high prices signal scarcity and so encourage suppliers to increase supply.

Both parts of the argument are flawed.[49]

49 Flawed, but surprisingly attractive even within the economics community. For instance, Professor Harald Uhlig, an economist at the University of Chicago, tweeted (15 March) that British supermarkets needed to raise their prices in order to stop supplies running out. No doubt this would have reduced demand and, depending on the extent of the price rise, perhaps kept shelves stocked. But it would have been deeply regressive and, as temporary rationing of essential items has since suggested, unnecessarily so.

First, in respect of essential goods such as food, there is unlikely to be a large variation in the value that different consumers put on the products. Differences in the willingness to pay for a product will be driven almost entirely by income differentials. This means that when prices rise as a result of gouging, the outcome is not a socially optimal allocation of food, but simply an inability of the less well-off to afford it. If there is genuine scarcity, then, in the short-term, rationing may well be a more efficient way of allocating essential products.

Second, high prices due to gouging are likely to be transitory. They will have little effect on the quantity supplied. To the extent that they reflect stocking up or hoarding, they may signal to suppliers that demand will decline subsequently.

Third, the levels of price increase that occur from gouging are likely to be far greater than what would be needed to bring about higher supply. Unless firms' variable costs increase very rapidly as they increase output, only a small increase in price is required to make it profitable to increase output.

It is with this economic case in mind that the taskforce has responded robustly, within the limitations of the CMA's legal framework, to reports of unjustifiable price rises.

IPPR, ECONOMIC JUSTICE AND THE PANDEMIC

IPPR's current work on the pandemic begins with the observation that policy measures taken today, and as we move into the medium term, will also shape the recovery and the economy that emerges on the other side. There are serious risks from failing to act, from increased long-term unemployment to widespread business failure. But as well as the immediate problems, policymakers must address long-standing and future challenges.

The recovery must generate a stronger and more resilient economy. Covid-19 has exposed a weakened social protection system as well as weaknesses in our economic model – including many in insecure work and with little protection, and too many businesses overleveraged and unable to independently weather the storm. The coming decades promise further disruption, including the climate crisis and environmental breakdown, that make more urgent the task of building a resilient and sustainable economy. We were not prepared for Covid-19, but must be prepared for the next crisis if we are to avoid going headlong from the frying pan into the fire.

A strong recovery must address broad and structural weaknesses that were deeply ingrained in the UK economy prior to the pandemic, including low investment, weak productivity growth, and regional imbalances. Many have called, too, for a recovery that addresses the longstanding inequalities in our society that have left too many vulnerable: to ‘build back better’.[50]

A recovery that meets these objectives is not easy to achieve, and it will be vital to understand the nature of changes in the economy as they unfold. To inform both the emergency and longer-term measures that policymakers should take, IPPR has published its own analyses and recommendations,[51] among them the case for public investment in green jobs including in health and care; measures for a stronger public banking system to more easily channel investment in small and medium-sized enterprises (SMEs); and the case for a comprehensive education and work offer to young people. At the heart of our proposals has been an institutional approach, to ensure that the public interest is maintained as the economy recovers, and beyond emergency measures.

Find out more: https://www.ippr.org/coronavirus-response

50 See: www.buildbackbetter.org.uk

51 See: https://www.ippr.org/coronavirus-response

Institute for Public Policy Research

GET IN TOUCH

For more information about the Institute for Public Policy Research, please go to www.ippr.org

You can also call us on +44 (0)20 7470 6100, e-mail info@ippr.org or tweet us @ippr

Institute for Public Policy Research

Registered Charity no. 800065 (England & Wales), SC046557 (Scotland), Company no, 2292601 (England & Wales)

ABOUT IPPR

IPPR, the Institute for Public Policy Research, is the UK's leading progressive think tank. We are an independent charitable organisation with our main office in London. IPPR North, IPPR's dedicated think tank for the north of England, operates out of offices in Manchester and Newcastle, and IPPR Scotland, our dedicated think tank for Scotland, is based in Edinburgh.

Our primary purpose is to conduct and promote research into, and the education of the public in, the economic, social and political sciences, science and technology, the voluntary sector and social enterprise, public services, and industry and commerce. Other purposes include to advance physical and mental health, the efficiency of public services and environmental protection or improvement; and to relieve poverty, unemployment, or those in need by reason of youth, age, ill-health, disability, financial hardship, or other disadvantage.

IPPR
14 Buckingham Street
London
WC2N 6DF
T: +44 (0)20 7470 6100
E: info@ippr.org
www.ippr.org
Registered charity no: 800065 (England and Wales),
SC046557 (Scotland)

The progressive policy think tank