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Online Platforms and the Digital Single Market

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SUMMARY

Online platforms, which comprise a wide range of software-based technologies, from search engines and social networks to price comparison websites and collaborative economy platforms, are drivers of growth, innovation and competition. They enable businesses and consumers to make the most of the opportunities created by the digital economy. Supported by the emergence of mobile devices and pervasive wireless connectivity, online platforms have transformed how we live, interact and transact. In doing so they have disrupted existing sectors of the economy and challenged regulatory frameworks.

As part of its Digital Single Market Strategy the EU Commission announced its plans to launch a consultation to investigate how the largest online platforms use their market power and whether the current regulatory environment remains 'fit for purpose'. This report responds to that consultation.

Our assessment of the features of these markets suggests that online platforms that succeed in harnessing strong network effects can become the main provider in a sector, gateways through which markets and information are accessed, and an unavoidable trading partner for dependent businesses. Such platforms are likely to possess substantial market power. However, the possibility of disruptive innovation is higher in these markets than in other networked industries and this may create competitive pressures even where firms have high market shares. We conclude that determining whether a firm possesses substantial market power, or is abusing that power, requires meticulous case-by-case analysis.

On this basis we advise against the creation of a platform-specific regulatory regime. Instead, to protect consumers and to ensure that market power is not abused, we recommend that existing regulators should be vigilant in these markets. We also considered three areas of existing regulation and suggested a number of adaptations to each.

Despite the challenges competition authorities face when dealing with online platforms, we find that the flexibility of competition law means that it should be well-suited to addressing the subtle and complex abuses of dominance that may arise. We suggest that the merger control regime should be modified, to prevent the acquisition of smaller digital tech firms by large online platforms from escaping scrutiny. The slowness of competition enforcement, as exemplified by the ponderous Google case, is cause for concern in such fast-moving markets: we recommend that the Commission make greater use of 'interim measures' and impose time limits on commitment negotiations, to make enforcement more responsive. There are also sector-specific issues. For example, some allege that online travel agents exploit their bargaining power relative to their trading partners by engaging in a variety of aggressive and misleading practices. To address these concerns, we urge the Competition and Markets Authority to investigate the sector. In markets where online platforms have been found to impose unfair terms and conditions on their trading partners, we suggest that competition authorities could usefully develop codes of practice.

The collection and use of consumer data are integral to the provision of online platforms' services. We are therefore concerned to find that consumer trust in how online platforms manage personal data is worryingly low. Consumers seem to be unaware that they trade their personal data in exchange for access to many of the so-called 'free services' that online platforms provide and that

their data are used to generate advertising revenues or are sometimes sold on and shared with third parties. The opaque and legalistic privacy notices used by online platforms are one reason for this lack of trust. We also identify a lack of competition between platforms on privacy standards, and suggest that online platforms could potentially abuse a dominant position by downgrading their privacy standards. To address this, we recommend that the Government work with the Commission to develop a privacy seal that incorporates a graded scale, and that platforms found to have repeatedly or egregiously breached data protection laws should be required to communicate this directly to their users. We also urge Government to press for the proper implementation of the recently agreed General Data Protection Regulation, and invite the Commission to clarify some of its more ambiguous provisions.

While some online platforms have gone beyond the requirements of existing consumer protection law, bad practices also persist. There is a widespread lack of transparency in how platforms rank and present information to their users. We recommend that existing regulation be altered to require online platforms clearly to communicate the basis on which they rank results, and also to inform consumers when 'personalised pricing' is taking place.

Underlying the Digital Single Market Strategy is Europe's conspicuous failure to produce any truly global online platforms. Yet Europe is getting better at producing $1bn-valued tech firms ('unicorns'), and within Europe the UK leads the field, having produced half of the unicorns in Europe. The UK thus stands to gain more from the creation of a Digital Single Market than any other EU Member State. We suggest that the fundamental aim of the Strategy—to create a scale market of 500 million consumers—is the right one: if it is achieved Europe has the potential to play a leading role in the next phase of the digital revolution. We urge a sharp focus on this fundamental aim.

We support the ambitions of the Digital Single Market Strategy, but we note that the sensitive concerns raised by online platforms have created pressure on regulators and legislators to act at Member State level. This has increased regulatory fragmentation and threatens to undermine the possibility of making the Digital Single Market a reality.

We believe that it is necessary to put in place an ongoing process that can act as an outlet for the concerns of regulators and legislators, as well as businesses, consumers and indeed citizens. To this end, we recommend the appointment of an independent expert panel that would seek to gather concerns, subject them to rigorous analysis, and make policy recommendations to enable the sustained growth of Europe's digital economy. The nature and role of this panel are outlined in the concluding section of our report.

Online Platforms and the Digital Single Market

CHAPTER 1: INTRODUCTION

1. The term 'online platforms' describes a broad category of digital businesses that provide a meeting place for two or more different groups of users over the Internet. Examples include search engines, online marketplaces, the collaborative or sharing economy, and social networks.

2. In May 2015 the European Commission published its 'Digital Single Market Strategy for Europe', outlining 16 legislative and non-legislative initiatives designed to create a single market in digital goods and services across the European Union.[1] As part of this Strategy, the Commission drew attention to online platforms as "playing an ever more central role in social and economic life: they enable consumers to find online information and businesses to exploit the advantages of e-commerce."

3. The Commission also noted that: "Some online platforms have evolved to become players competing in many sectors of the economy and the way they use their market power raises a number of issues that warrant further analysis beyond the application of competition law in specific cases."[2] In order to explore these concerns, the Commission proposed:

> "A comprehensive assessment of the role of platforms … which will cover issues such as (i) transparency e.g. in search results (involving paid for links and/or advertisement), (ii) platforms' usage of the information they collect, (iii) relations between platforms and suppliers, (iv) constraints on the ability of individuals and businesses to move from one platform to another and will analyse, (v) how best to tackle illegal content on the Internet."[3]

4. On 24 September 2015 the Commission launched its consultation, entitled 'A fit for purpose regulatory environment for platforms and intermediaries', to gather evidence on these concerns.[4] A key part of the Commission's investigation centred on the question of whether, beyond the existing regulatory framework, new regulation for online platforms should be introduced.

5. While we recognise that a single report cannot comprehensively cover such a broad and complex policy area, our inquiry has sought to provide clarity by separating out the distinct policy questions that relate to online platforms. We have considered the merits of defining such a diverse range of businesses

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1 Communication from the Commission, A Digital Single Market Strategy for Europe, COM(2015) 192

2 Communication from the Commission, A Digital Single Market Strategy for Europe, COM(2015) 192, p 11

3 Communication from the Commission, A Digital Single Market Strategy for Europe, COM(2015) 192, p 12

4 European Commission, 'Public Consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy' (September 2015): https://ec.europa.eu/digital-agenda/en/news/public-consultation-regulatory-environment-platforms-online-intermediaries-data-and-cloud [accessed 23 February 2016]

as 'online platforms' for the purposes of regulation. We have considered how the economics of multi-sided platforms affect the competitive dynamics of these markets. We have evaluated the extent to which existing regulation, including competition, data protection and consumer protection law, can address the Commission's concerns, and whether these regimes need to be updated. We have taken evidence from a wide range of businesses, academics and national and European regulators working in these fields.

6. To avoid over-extending the inquiry we excluded questions of copyright, illegal content and corporate tax payments from the outset. Early on in our inquiry the Commission announced that it would be clarifying how existing law applied to collaborative economy platforms as part of its Single Market Strategy—a sensible first step, in our view—so we have not sought to address this question.

7. Our Call for Evidence did not seek to address the implications of a vote to leave the EU for the UK's involvement in the Digital Single Market. What is clear is that the Digital Single Market could bring huge benefits to the UK economy in particular, and that securing continued access to that single market in the event of a vote to leave would require a lengthy and complex negotiation between the UK and the other 27 Member States. We have decided not to speculate on what are at this stage hypothetical risks and opportunities.

8. In line with the ambition to create a Digital Single Market, we have also investigated what measures are needed to enable European online platforms to maximise their growth potential and compete at a global level. Our visit to the Digital Catapult Centre, where we met a number of start-ups and businesses seeking to scale-up their operations, demonstrated the enormous potential for growth in this sector as well as the many challenges businesses face in making that transition.

9. We received 85 written responses to our Call for Evidence and held 20 oral evidence sessions. We would like to thank all those witnesses who appeared before us, or who submitted written evidence, for their significant contribution to this report. We are also grateful to Richard Feasey and Derek McAuley who acted as Specialist Advisors to this inquiry.

10. **We make this report to the House for debate.**

CHAPTER 2: THE IMPORTANCE OF ONLINE PLATFORMS

The benefits of online platforms

11. The inclusion of an initiative on online platforms in the European Commission's Digital Single Market Strategy reflects their growing centrality to social and economic life. Martin Bailey, of DG Connect, said: "Platforms are constantly raised in the context of almost every discussion about digital … there is hardly an area of economic and, arguably, social interaction these days that is left untouched by platforms in some way."[5]

12. Mr Bailey also noted that "platforms are a key driver of growth".[6] TechUK agreed, saying that the platform model was "so fundamental … to the functioning of the digital economy that it is difficult to separate out the benefits of platforms from the benefits of the digital economy as a whole"; they estimated that "platforms contributed an estimated €430bn to the EU economy in 2012."[7] To give one example, Google said that "British businesses using Search and AdWords generated at least £11 billion in economic activity" in 2014.[8]

Benefits for businesses

13. Witnesses agreed that online platforms provided businesses with efficient access to global markets. The British Hospitality Association said: "there is consensus that on-line platforms, including on-line travel agents (OTAs) and search engines, have been instrumental in enabling the industry to reach customers globally, resulting in an increase in business and exposure to a wider audience in Europe and the rest of the world."[9] Richard French, Legal Director at Digital Catapult, said that platforms provided "low-cost access to big supply chains":

> "If start-ups are writing an app—a fitness, health or well-being app, for example—they can put it into the iTunes App Store or on Google Play and they can get access to hundreds of millions of consumers."[10]

14. We heard that small businesses particularly benefited from these opportunities. Professor Eric Clemons, from the Wharton School at the University of Pennsylvania, told us that platforms had 'empowered' smaller businesses, which "might be unable to reach a larger market if they had to pay for advertising."[11] Experian said: "Platforms provide SMEs as well as large companies [with] a distribution channel, and in many ways can help level the competitive playing field between the two, ensuring small companies can get the same exposure to potential customers as the larger companies."[12] Etsy, a collaborative economy platform for craft goods, said: "For 43% of UK

5 Q 96 (Martin Bailey)
6 Q 96 (Martin Bailey)
7 Written evidence from TechUK (OPL0056) citing Copenhagen Economics, 'The impact of online intermediaries on the EU economy' (April 2013): http://www.copenhageneconomics.com/dyn/resources/Publication/publicationPDF/6/226/0/The%20impact%20of%20online%20intermediaries%20-%20April%202013.pdf [accessed 16 March 2016]
8 Written evidence from Google Inc. (OPL0017)
9 Written evidence from the British Hospitality Association (OPL0023)
10 Q 37 (Richard French)
11 Written evidence from Professor Eric Clemons (OPL0071)
12 Written evidence from Experian (OPL0024)

sellers, Etsy was the first place they sold their goods, while 36% said they would not have been able to start were it not for a platform like Etsy."[13]

15. A number of witnesses emphasised that online platforms had facilitated the growth of cross-border trade in the single market. TechUK told us that the wider customer base offered by online platforms had "led to a surge in SME exports: intra-EU cross-border trade by online SMEs grew four times that of traditional firms in the period 2010 to 2014."[14] Amazon provided figures bearing out this assessment:

> "In 2014, small and medium-sized businesses … generated intra-EU exports of €2.8bn through Amazon's websites. In the same period, UK-based SMEs who sell on Amazon's various websites in the UK and around the world sold more than 400 million units in total, and generated more than £1 billion of exports ."[15]

16. Witnesses said that, in addition to facilitating e-commerce, platforms had provided a range of productivity-enhancing applications that benefited all businesses. Antony Walker, Deputy CEO of TechUK, explained: "Services like PayPal are very low-cost ways of processing payments. There are back-office functions, with things like QuickBooks, which provide simple accounting software for very small companies. If you want to run an event, you can use something like Eventbrite." Mr Walker said that all businesses used multiple platforms in this way, because "it drives efficiency and it drives productivity."[16]

17. Online platforms enable the more efficient allocation of resources. Sharing Economy UK said that collaborative economy platforms allowed people "to share property, resources, time and skills across online platforms", which could "unlock previously unused, or under-used assets—helping people make money from their empty spare room and the tools in their sheds they use once a year." They continued: "PwC has calculated that on a global basis, the sharing economy is currently worth £9bn—with this set to rise to a massive £230bn by 2025."[17]

18. Online platforms were also credited with creating employment. Orange Group, the European telecom company, said: "In France alone, it is estimated that 500 SMEs and 10,000 jobs have been created over the last decade through the development of mobile apps sold on online platforms".[18] Google told us that it supported "200,000 jobs in 2014."[19] Etsy described how its business supported women entrepreneurs:

> "The vast majority (91%) of UK-based Etsy sellers are women, and 61% are under 45. This is in spite of the typical entrepreneur in the UK being male and in his late forties. Most (95%) run their creative businesses out of their home and very few (less than 1%) required a bank loan. A substantial minority of Etsy sellers are low-income—roughly a

13 Written evidence from Etsy Inc. (OPL0063)
14 Written evidence from TechUK (OPL0056)
15 Written evidence from Amazon (OPL0064)
16 Q 37 (Antony Walker)
17 Written evidence from Sharing Economy UK (OPL0052)
18 Written evidence from Orange (OPL0092)
19 Written evidence from Google Inc. (OPL0017)

third have annual household incomes that are less that the £23,000 UK median average."[20]

Benefits for consumers

19. BEUC, the European consumer protection organisation, told us that "From a consumer perspective, platforms play a fundamental role in the digital economy as they work as entry points for consumers to access goods, services and digital content."[21] Google cited the work of the Boston Consulting Group, showing that "the consumer surplus (value of free services) of online media is about €1,100 per individual. In nine European countries, this is 40–60% of the perceived value that consumers get from all media, including offline."[22]

20. According to the German Monopolies Commission, online marketplace platforms offered "a large number of advantages for consumers, such as greater market transparency, a broader selection of products, overcoming confidence problems when shopping on the Internet, a reduction of transaction costs, as well as the ability to engage in cross-border transactions."[23] Amazon agreed: "The presence of many competing sellers on the same e-commerce site strengthens competition to provide the best offers and prices. It also enables customers to easily compare competing offers by brand, quality, price, speed of delivery or other attributes and select the offers that best meet their needs."[24]

21. Several witnesses highlighted the role of online platforms in promoting political activism and empowering citizens. The think-tank Demos and polling organisation Ipsos MORI suggested that social network and communication platforms had "become an integral part of daily life, enabling new forms of communication, political activism and self-expression".[25] Joe McNamee, Executive Director of European Digital Rights (EDRi), said: "A service like Facebook creates a new public space, a new way of communicating and campaigning".[26] Sally Broughton Micova, from the University of East Anglia, and Damian Tambini, from the London School of Economics, said that online platforms had "provided a voice to those previously without".[27]

22. We also heard of the benefits of the sharing economy. Agustín Reyna, Senior Legal Officer at BEUC, said that sharing economy platforms benefited consumers by addressing market failures: "The whole discussion about the sharing economy is around its emergence as a response to failures in the traditional markets. People were not happy about how traditional markets in financial services, transportation and accommodation were working."[28]

23. *Which*? felt that there were significant benefits to consumers: "We believe that the rise of new, innovative business models such as online platforms increases competition and therefore choice for consumers."[29] The Competition and Markets Authority (CMA) wrote that "Vast numbers of consumers are

20 Written evidence from Etsy Inc. (OPL0063)
21 Written evidence from BEUC (OPL0068)
22 Written evidence from Google Inc. (OPL0017)
23 Written evidence from Monopolkommission (OPL0046)
24 Written evidence from Amazon (OPL0064)
25 Written evidence from Centre for the Analysis of Social Media at Demos and Ipsos MORI (OPL0065)
26 Q 2 (Joe McNamee)
27 Written evidence from Sally Broughton Micova and Damian Tambini (OPL0053)
28 Q 6 (Agustín Reyna)
29 Written evidence from *Which?* (OPL0090)

embracing the digital economy: the sheer mass of users responding to novel, creative online offerings reflects strong consumer preferences."[30]

24. **Online platforms are drivers of growth, innovation and competition, which enable businesses and consumers to make the most of the opportunities provided by the digital economy.**

25. **E-commerce platforms allow SMEs to access global markets without having to invest in costly digital infrastructure, and provide consumers with increased choice. Search engines enable their users to navigate the web efficiently, and enable businesses to engage in more targeted advertising. Social media and communication platforms provide citizens with new opportunities for interaction, self-expression and activism.**

26. **Policymakers should take care when examining the challenges these rapidly developing markets present not to lose sight of the very considerable benefits that online platforms provide.**

Wider concerns

27. Despite these acknowledged benefits, United States-based platforms operating in Europe have recently been subjected to increasing media coverage and public scrutiny.

28. There are various reasons for this development. Concerns about privacy have assumed an increasingly high profile in the wake of the revelations from Edward Snowden that US security services were scrutinising non-US citizens' personal data held in the US, and that such data were being provided by Apple, Facebook and Google, among others.[31] On 6 October 2015, shortly after the launch of this inquiry, the Court of Justice of the European Union ruled against the EU-US 'Safe Harbour' agreement, which provided the basis upon which personal data could be transferred between the EU and the US, on the grounds that the agreement did not protect EU citizens' fundamental rights.[32] In the aftermath of this decision an article in the *Financial Times* noted that: "The scrapping of this so-called 'Safe Harbour' clause fits a recent pattern of European resistance to the global march of Silicon Valley."[33]

29. Concerns about a number of online platforms' tax contributions have also flared up in the UK and other Member States. Professor Annabelle Gawer, Professor of Digital Economy at the University of Surrey, said: "firms such as Google and other dominant platforms have been found to try to pay as little tax as possible in Europe, using Luxemburg or Ireland as fiscal domiciliation

30 Written evidence from the Competition and Markets Authority (OPL0055)

31 'NSA Prism program taps into user data of Apple, Google and others; *The Guardian* (7 June 2013): http://www.theguardian.com/world/2013/jun/06/us-tech-giants-nsa-data [accessed 3 March 2016]

32 CJEU, Case C-362/14, *Maximillan Schrems v Data Protection Commissioner;* BBC, *EU and US clinch data-transfer deal to replace Safe Harbour* (2 February 2016): http://www.bbc.co.uk/news/technology-35471851 [accessed on 3 March 2016]

The EU Commission subsequently published the legal text of an EU-U.S. 'Privacy Shield' designed to replace the Safe Harbour agreement. For more information, please see: Communication from the Commission, Transatlantic Data Flows: Restoring Trust through Strong Safeguards COM(2016) 117 (29 February 2016)

33 'Data Protection: No Safe Harbour', *The Financial Times*, (9 October 2015): available at http://www.ft.com/cms/s/0/f2ecc7ca-6e65-11e5-aca9-d87542bf8673.html#axzz40GgbFmcU [accessed 3 March 2016]

to pay tax that does not reflect the income generated in European countries."[34] When, during the course of this inquiry, it was announced that Google had reached a tax agreement with the UK Government that saw it pay £130 million in back taxes, the deal was widely criticised, and Margrethe Vestager, the European Commissioner for Competition, said that she would be willing to investigate Google's tax arrangements in the UK if someone filed a complaint.[35]

30. The on-demand transport platform Uber has also been the subject of protests across Europe. On 11 June 2014 taxi drivers in London, Madrid, Milan and Paris protested against what they considered to be Uber's unfair competition.[36] On 26 June 2015, Uber was the subject of a public protest in France in which key highways around Paris were blocked and tyres were burnt; this led to France's interior Minister ordering a ban on the low-cost service UberPop. Shortly after, French police arrested two Uber executives charged with commercial deception and running an illegal taxi operation.[37]

31. While these events illustrate the broad climate in which this inquiry was proposed, other developments more directly influenced the Commission's decision to launch an initiative looking into platforms. According to Vicky Ford MEP, Chair of the Internal Market Committee of the European Parliament: "the initiative to investigate and look into this was partly driven by competition issues."[38] Ms Ford referred to a non-binding resolution passed by the European Parliament in November 2014, which called on the Commission to consider 'unbundling' Google: "The Parliament wanted to throw a rocket across their bows to say, 'If you can't act in a competitive way then the Commission should consider forcing an unbundling of certain parts of your package'".[39]

32. Shortly before the publication of the Digital Single Market Strategy, it was widely reported that the French and German economic ministers, Emmanuel Macron and Sigmar Gabriel, had written to Vice President of the European Commission Andrus Ansip, stating that the growing market power of online platforms "warrants a policy consultation with the aim of establishing an appropriate general regulatory framework for 'essential digital platforms'".[40] An article in *The Economist* suggested that "aides to Günther Oettinger, another commissioner with digital responsibilities, are said to have already started drafting plans for a powerful new platform regulator."[41] The Computer and Communications Industry Association (CCIA) said:

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34 Written evidence from Professor Annabelle Gawer (OPL0050)

35 BBC, *UK Google tax deal: EU's Margrethe Vestager will investigate 'if asked'* (26 January 2016): http://www.bbc.co.uk/news/business-35426896 [accessed 3 March 2016]

36 'Thousands of European Cab Drivers Protest Uber, Taxi Apps', *Wall Street Journal* (11 June 2014): http://www.wsj.com/articles/londons-black-cab-drivers-protest-against-taxi-apps-1402499319 [accessed 3 March 2016]

37 BBC, *Uber managers arrested in France over 'illicit' taxi service* (29 June 2015): http://www.bbc.co.uk/news/world-europe-33313145 [accessed 24 March 2016]

38 Q 90 (Vicky Ford MEP)

39 Q 90 (Vicky Ford MEP)

40 'EU to probe popular US sites over data use and search', The Financial Times (30 April 2015): available at http://www.ft.com/cms/s/0/9ff2c0b4-ef13-11e4-a6d2-00144feab7de.html#axzz40GgbFmcU [accessed 3 March 2016]

41 'Disconnected Continent', *The Economist* (9 May 2015): available at http://www.economist.com/news/business/21650558-eus-digital-master-plan-all-right-far-it-goes-disconnected-continent [accessed 3 March 2016]

"the European Commission is conducting this enquiry following political pressure."[42]

33. Professor Gawer suggested that such concerns had led to allegations of protectionism: "The United States is looking at Europe and saying, 'All this talk about regulating platforms is just a covert industrial policy by European countries that are lagging behind in the competition for the digital space. They are trying to slam on Google and on Facebook because they are American companies'".[43]

34. The Commission defended the integrity of its consultation against such allegations. Vice President Ansip said that concerns about how to deal with the challenges posed by platforms were not unique to Europe, arguing that "the approach in the European Union is exactly the same as in the United States of America", where collaborative economy platforms were also "a new phenomenon", on which the US Government "does not have clear ideas." Vice President Ansip continued: "Will it [the US] regulate or deregulate? It would like to collect information to understand whether it has problems and, if so, how to react."[44]

35. Other witnesses also supported the Commission's actions. Ofcom, the UK communications regulator, said: "The scale and impact on the European economy of some of the largest operators mentioned—such as Google, Facebook, eBay, or Amazon—is clearly significant. It is appropriate and timely to consider whether the current competition rules and general regulatory frameworks are adequate, and whether additional or different regulation may be needed."[45] The CMA agreed:

> "As online platforms play a significant role in today's economy, the Commission's [Digital Single Market] strategy should serve to increase the evidence base concerning the application of existing regulatory frameworks to online platforms. This will assist in helping legislators, policymakers and enforcement agencies to identify any concerns and how such concerns might be addressed."[46]

36. Microsoft told us that the Commission's analysis could help to improve understanding of platforms, but stressed that it should be informed by neutral economic analysis:

> "We hope that this inquiry, combined with the Commission's work in this area, produces a thorough, thoughtful, economically-grounded analysis of the complex and multi-sided platform ecosystem. We believe this would be very valuable and improve current understanding of how the platform market functions."[47]

37. **The Commission's decision to conduct a comprehensive assessment of online platforms should not be seen as inherently protectionist. Given the impact these businesses have had on people's lives and the economy, and concerns about whether existing regulatory regimes are still fit for purpose, a thorough analysis of online platforms is**

42 Written evidence from the Computer and Communications Industry Association (CCIA) (OPL0040)
43 Q 7 (Professor Annabelle Gawer)
44 Q 152 (Vice President Ansip)
45 Written evidence from Ofcom (OPL0047)
46 Written evidence from the Competition and Markets Authority (OPL0055)
47 Written evidence from Microsoft (OPL0059)

timely. If the growth of Europe's digital economy is to be maximised, it is important that such concerns are investigated and, where appropriate, addressed.

CHAPTER 3: DEFINING 'ONLINE PLATFORMS'

38. Before assessing whether specific regulation is required for online platforms, it is important to understand what online platforms are, their common features and their differences. Vice President Andrus Ansip told the Committee: "we do not even have a single definition of platforms accepted by everyone. We have hundreds of good definitions … But when different people are talking about platforms, they have a totally different understanding."[48]

The Commission's definition and description of online platforms

39. As part of its consultation on the subject of platforms, the Commission asked respondents if they agreed with the definition of an online platform that is provided in Box 1.

Box 1: The Commission's definition of online platforms

> "'Online platform' refers to an undertaking operating in two (or multi)-sided markets, which uses the Internet to enable interactions between two or more distinct but interdependent groups of users so as to generate value for at least one of the groups".

Source: European Commission, 'Public Consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy' (September 2015) p 5: https://ec.europa.eu/digital-agenda/en/news/public-consultation-regulatory-environment-platforms-online-intermediaries-data-and-cloud *[accessed 23 February 2016]*

40. Alongside this definition, the Commission provided a taxonomy of different types of online platforms, as shown in Table 1.

Table 1: The taxonomy of online platforms used in the Commission's consultation

Type of Online Platform	Example
General search engines	Google, Bing
Specialised search tools	Google shopping, Kelkoo, Twenga, Google Local, TripAdvisor, Yelp
Location-based business directories or maps	Google or Bing maps
News aggregators	Google News
Online market places	Amazon, eBay, Allegro, Booking.com
Audio-visual and music platforms	Deezer, Spotify, Netflix, Canalplay, Apple TV
Video sharing platforms	YouTube
Payment systems	Paypal, Apple Pay
Social networks	Facebook, LinkedIn, Twitter
App stores	Apple App Store, Google Play
Collaborative economy platforms	Airbnb, Uber, Taskrabbit, BlaBlaCar

Source: European Commission, 'Public Consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy' (September 2015) p 5: https://ec.europa.eu/digital-agenda/en/news/public-consultation-regulatory-environment-platforms-online-intermediaries-data-and-cloud *[accessed 23 February 2016]*

48 Q 150 (Vice President Ansip)

41. Before launching its consultation, the Commission provided a more wide-ranging description of the roles played by online platforms in its Digital Single Market Strategy. This suggested that online platforms created value by organising and presenting information found on the Internet: "With more than one trillion webpages on the Internet and more appearing every day, platforms are an important means by which consumers find information online and online information finds consumers"[49]. It said that online platforms did this by collecting data from their customers and using algorithms to "filter, classify and present information to their users."[50] In this way, the Commission suggested, the "relationship between the different sides of the market meeting through the platform is organised by the platform provider."[51] It concluded that:

> "This intermediary role gives platforms economic power but also, in some cases, power to shape the online experience of its customers on a personalised basis and to filter what the customer sees."[52]

42. The Commission also noted that "the value of these platforms to consumers increases with their size" and explained that this economic phenomenon was known as a "network effect". The Commission said that, as a consequence, online platforms "may in some cases become very large and act as key players for the wider Internet." To illustrate this point the Commission provided a diagram which showed that "nearly half of Internet traffic goes to the only 1% of websites that are actively trading in all Member States.[53]

Strengths of the Commission's definition and description

Economics of two- or multi-sided businesses

43. The Commission's definition of online platforms is based on the economic theory of multi-sided firms or platforms. In 2007, David Evans, Lecturer in Law at Chicago Law School, and Richard Schmalensee, Howard W. Johnson Professor of Economics and Management at the Massachusetts Institute of Technology, defined a multi-sided platform as having:

> "a) two or more groups of customers, b) who need each other in some way, c) but who cannot capture the value from their mutual attraction on their own; and d) rely on the catalyst (platform) to facilitate value creating transactions between them."[54]

44. Dr Evans argued that the core function of a multi-sided platform is to provide a "common (real or virtual) meeting place and to facilitate interactions

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49 Commission Staff Working Document, A Digital Single Market for Europe: Analysis and Evidence, SWD(2015) 100 p 53

50 Commission Staff Working Document, A Digital Single Market for Europe: Analysis and Evidence, SWD(2015) 100 p 53

51 Commission Staff Working Document, A Digital Single Market for Europe: Analysis and Evidence, SWD(2015) 100 p 52

52 Commission Staff Working Document, A Digital Single Market for Europe: Analysis and Evidence, SWD(2015) 100 p 53

53 Commission Staff Working Document, A Digital Single Market for Europe: Analysis and Evidence, SWD(2015) 100 p 53

54 David Evans and Richard Schmalensee, The Antitrust Analysis of Multi-sided Platform Businesses, *National Bureau of Economic Research,* Working Paper number 18783, (December 2012) p 7: http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1482&context=law_and_economics [accessed 13 April2016]

between members of the two distinct customer groups."[55] In this way, multi-sided platforms play an important role in reducing the transaction costs between groups of users who benefit from meeting. Transaction costs are the costs associated with participating in a market place and can include the search or information costs incurred in identifying relevant opportunities, the cost of negotiating agreements, and the cost of transferring a good or service.

45. Evans and Schmalenese suggested that the common element linking multi-sided platforms which act as intermediaries, was an interdependency between the distinct user groups, such that the " greater involvement by agents of at least one type increases the value of the platform to agents of other types "—a phenomenon known in economics as an 'indirect network effect'.[56] They observed that, in order to be successful, multi-sided platforms have to entice user groups on both sides of the platform to join them, and that to do so they often charge both sides of the multi-sided market different prices. In this Evans and Schmalenese built on the work of Jean Tirole, the Nobel Prize-winning French economist, who first defined a two or multi-sided market as one in which a business could "affect the volume of transactions by charging more to one side of the market and reducing the price paid by the other side by an equal amount; in other words the price structure matters and platforms must design it so as to bring both sides on board."[57]

Support for the theory of multi-sided platforms

46. Witnesses accepted that online platforms played an intermediary role between different user groups. The German Monopolies Commission described online platforms as "intermediaries bringing together various groups of users so that they can interact economically or socially", and emphasised that "this intermediary function is a key common feature of online platforms".[58] Professor Gawer said that online platforms facilitate transactions and exchanges between groups that "would otherwise have difficulty finding each other", thereby reducing search costs for both groups of users.[59]

47. A number of platforms described how this intermediary role worked in practice. First Tutors explained that: "Prior to FirstTutors.com, finding a tutor was a very expensive, opaque affair for consumers and for tutors a closed job market unless they met the arbitrary, discretionary requirements of the agency with which they were seeking to register."[60] As intermediaries, many online platforms emphasised that they did not own many of the assets being traded. Etsy described itself as an "intermediary" that "helps buyers and sellers find each other and facilitates transactions, but … does not make

55 David Evans, *Platform Economics: Essays on Multi-sided Businesses*, Competition Policy International, (2011) p 2: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1974020 [accessed 3 March 2016]

56 David Evans and Richard Schmalenese, The Antitrust Analysis of Multi-sided Platform Businesses, National Bureau of Economic Research, Working Paper number 18783 (December 2012) p 2: http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1482&context=law_and_economics [accessed 13 April2016]

57 David Evans and Richard Schmalenese, The Antitrust Analysis of Multi-sided Platform Businesses, *National Bureau of Economic Research,* Working Paper number 18783 (December 2012) p 6: http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1482&context=law_and_economics [accessed 13 April2016]

58 Written evidence from Monopolkommission (OPL0046)

59 Q 1 (Professor Annabelle Gawer)

60 Written evidence from First Tutors EduNation Ltd (OPL0020)

any products, hold any inventory, or ship any goods to consumers."[61] Airbnb said it provided "hosts and guests with the tools they need for a safer and more trusted environment where they connect with one another"; it did not "control, manage or rent these properties: hosts do."[62]

48. Witnesses including Ofcom, the Competition and Markets Authority (CMA) and Professors Clemons, Ezrachi, Strowel, Stucke and Vergoute recognised that platforms were intermediaries in multi-sided markets.[63] Professor Daniel Zimmer, Chairman of the German Monopolies Commission said that, although search engines and social networks appeared to be one-sided platforms because they have "users of the same kind—people who like to communicate over a social network", they were in fact "a two-sided market" because they were "financed by advertisements" "[64] Professor Zimmer explained that Google's search engine brought together multiple user groups, namely "the people who are searching, the people who are advertising and the people who want their websites to be found" and therefore "appears to be at least a three-sided market".[65]

49. Witnesses agreed that multi-sided businesses displayed network effects. Alex Chisholm, Chief Executive of the CMA, noted that these were multi-sided markets, and said that: "As such, they exhibit network effects, meaning that the more users use them, the more valuable they become."[66] Witnesses also commented on the asymmetric pricing structures identified by Evans, Schmalenese, Tirole and Rochet as characteristic of multi-sided platforms. These price structures were most frequently observed in platforms that relied on advertising revenue from one side of the platform to subsidise the user side and make the service commercially viable. Professor Rodden, Director of the Horizon Digital Economy Research Institute, said: "For many online platforms the default business model has become the 'freemium' / free to use model that is supported by advertising revenue."[67]

Gateways to the Internet

50. Many witnesses shared the Commission's view that online platforms were an essential means of organising the expanding amount of information found on the Internet. Google described itself as an Internet search engine "that organises the world's information and makes it universally accessible".[68] Yahoo described itself as "an indispensable guide to digital information", noting that it was "founded 20 years ago, with the goal of being a guide to everything on the World Wide Web."[69] Skyscanner considered online platforms to be valuable tools to manage "information overload" on the Internet, by reducing "the time the consumer would have otherwise spent searching for such products and services from various different sources."[70] Professor Gawer agreed that the role of online platforms on the Internet

61 Written evidence from Etsy Inc. (OPL0063)
62 Written evidence from Airbnb (OPL0061)
63 Written evidence from Ofcom (OPL0047), the Competition and Markets Authority (OPL0055), Professor Eric Clemons (OPL0071), Professor Aerial Ezrachi and Professor Maurice Stucke (OPL0043) and from Professor Alain Strowel and Professor Wouter Vergote (OPL0087).
64 Q 81 (Monopolkommission)
65 Q 81 (Monopolkommission)
66 Q43 (Alex Chisholm)
67 Written evidence from Professor Tom Rodden (OPL0074)
68 Written evidence from Google Inc. (OPL0017)
69 Written evidence from Yahoo (OPL0042)
70 Written evidence from Skyscanner Limited (OPL0006)

was of "huge strategic importance": she suggested that they were a key part of the digital infrastructure which "has as much importance as electricity, water, highways."[71]

The role of data

51. Witnesses also agreed with the Commission's view that data were central to the operation of online platforms. The amount of personal data collected by online platforms was described by Nesta, the British Hospitality Association, BEUC, and e-Conomics as being "significant", "huge", and "massive".[72] The Information Commissioner's Office said: "it is fairly safe to deduce that very large amounts of data are being collected by the major online technology companies."[73]

52. We heard that collecting data was vital to enable online platforms to mediate between different user groups. The CMA wrote: "Data is often central to the activities of platforms, since so many of them are involved in matching disparate parties: if the platform does not know anything about the parties they are matching, they often cannot add value."[74] Skyscape described data as "the lifeblood of online platforms",[75] while Yahoo and TechUK both said the importance of data to online platforms could not be overstated.[76] Arial Ezrachi, Professor of Competition law at the University of Oxford, and Maurice Stucke, Professor of Law at the University of Tennessee, said: "the engine, the fire at the heart of this market, is definitely data."[77]

Limitations of the Commission's definition

Breadth of the Commission's definition

53. While many witnesses, including the Computer and Communications Industry Association (CCIA), the British Hospitality Association (BHA), the British Academy of Songwriters, Composers and Authors (BASCA), and Professors Broughton and Tambini, agreed that the Commission's definition was generally accurate, many also expressed concern at its breadth. Getty Images said: "We do not disagree with the Commission's definition of online platforms but note that this is an extremely wide definition spanning many different industry sectors."[78] Digital Policy Alliance described the definition as "far too vague and wide ranging."[79] Google said there were "arguably more differences between platforms than there are similarities",[80] while Amazon argued that "there are few common threads to link such diverse businesses models"[81] as those listed by the Commission. Yahoo told us:

> "The specific business models described in the Commission's questionnaire are extremely diverse. While they share some common characteristics (e.g.: they are all digitally native businesses), they are also very different in terms of their audience (B2B, C2C, B2C, or all

71 Supplementary written evidence from Professor Annabelle Gawer (OPL0050)
72 Written evidence from Nesta (OPL0027), British Hospitality Association (OPL0023), BEUC (OPL0068) and e-Conomics (OPL0066).
73 Supplementary written evidence from the Information Commissioner's Office (OPL0069)
74 Written evidence from the Competition and Markets Authority (OPL0055)
75 Written evidence from Skyscape Cloud Services Ltd (OPL0030)
76 Written evidence from Yahoo (OPL0042) and TechUK (OPL0056)
77 Written evidence from Professor Aerial Ezrachi and Professor Maurice Stucke (OPL0043)
78 Written evidence from Getty Images (OPL0045)
79 Written evidence from Digital Policy Alliance (OPL0051)
80 Written evidence from Google Inc. (OPL0017)
81 Written evidence from Amazon (OPL0064)

> three), their purpose (some allow users to connect with each other, others connect buyers with sellers of goods or services) and the sector concerned (e.g.: hospitality, travel, consumer goods, entertainment)."[82]

54. TechUK said that the problem with such a broad definition was that it was "not instructive in identifying specific problems that may occur in relation to specific platform functions and businesses. A more specific articulation of potential concerns, underpinned by evidence of harm, is needed to address potential problems in relation to platforms."[83] Airbnb said that while the Commission's definition described a range of services enabled by the Internet, "it does not necessarily illuminate any cross-cutting regulatory issues that may need to be addressed."[84] Ofcom concluded that

> "Such broad definitions may not be helpful either in defining the scope of a regulatory regime, the relevant concerns or the obligations applied to service providers. From Ofcom's experience, effective regulation requires a clear definition of the services that are to be regulated, a specific account of the potential harm to be addressed, and hence a clear rationale for the specific regulation."[85]

The inclusion of Netflix

55. Ofcom objected to the Commission's inclusion of Netflix as an example of an audio-visual and music platform. They said that Netflix was a "service provider, which commissions programmes or buys them wholesale to create a retail service."[86] CCIA agreed, arguing that Netflix was not multi-sided because it did "not connect buyers and sellers on either side of the platform".[87] Google said that: "If Netflix fits this definition, then any digital company that provides consumers access to a good or service would qualify".[88]

56. e-Conomics agreed that "Netflix is currently acting as a reseller of content" and that it was not therefore multi-sided, but noted that it might become multi-sided in future by permitting advertising on its platform. In this way, they suggested, "business models may change over time and so does the way in which a platform is operated."[89]

57. In addition to concerns about the inclusion of Netflix, CCIA observed that it was problematic that the Commission's list of examples "only includes companies that were born-digital" and excluded multi-sided businesses such as "commercial television companies, newspapers and magazines" that traditionally operated offline but had recently developed an online presence.[90]

58. Commission officials acknowledged that the use of examples such as Spotify and Netflix in their consultation had been questioned. Nevertheless, they felt

82 Written evidence from Yahoo (OPL0042). B2B refers to 'business-to-business' transactions, where one business makes a commercial transaction with another; C2C refers to 'consumer-to-consumer' transactions, and B2C to 'business-to-consumer' transactions.
83 Written evidence from TechUK (OPL0056)
84 Written evidence from Airbnb (OPL0061)
85 Written evidence from Ofcom (OPL0047)
86 Written evidence from Ofcom (OPL0047)
87 Written evidence from Computer and Communications Industry Association (OPL0040)
88 Written evidence from Google Inc. (OPL0017)
89 Written evidence from e-Conomics (OPL0066). e-Conomics is an independent consultancy and research network that focusses on digital and telecom related policy studies. Olga Batura, Nicolai van Gorp and Professor Pierre Larouche co-produced their submission, with guidance from Lapo Filistrucchi. Hereafter they will collectively be referred to as e-Conomics.
90 Written evidence from the Computer and Communications Industry Association (OPL0040)

that the inclusion of these examples alongside their proposed definition was justified in order to encourage debate. Mr Bailey, DG Connect, said that, as the Commission was yet to decide on a definition for online platforms, "we have deliberately invited comment where we might have got it wrong or where we want to nuance it … There are arguments that go either way on platforms, whether they are within or without. We will consider all the comments on those. Even Netflix has commented that it is not a platform. Others say it is a platform, so we are still to decide on that."[91]

Conclusions

59. **The Commission's primarily economic definition of multi-sided online platforms offers insight into central aspects of these businesses including their intermediary role, the interdependencies that arise between their distinct user groups, and the role that data plays in intermediating between these groups. This provides a helpful way of thinking about online platforms that can usefully inform the work of policymakers and regulators.**

60. **The boundaries of the definition are, however, unclear. This is illustrated by the Commission's own list, which excludes traditional platform businesses that now operate online, yet includes some digital platforms that are not multi-sided. Broadly interpreted, the proposed definition could encompass 'all of the Internet'; strictly applied, it would only capture specific elements of the businesses with which it is concerned.**

61. **We recommend that further consideration of the need for regulation of online platforms should start by attempting to more precisely define the most pressing harms to businesses and consumers, and then consider the extent to which these concerns are common to all online platforms, sector-specific, or specific to individual firms.**

91 Q 98 (Martin Bailey)

CHAPTER 4: MARKET POWER AND ONLINE PLATFORMS

62. In setting out its concerns about online platforms the European Commission focused on their market power and the implications of this for businesses and consumers: "The market power of some online platforms potentially raises concerns, particularly in relation to the most powerful platforms whose importance for other market participants is becoming increasingly critical". It noted that as a result of their market power "some platforms can control access to online markets and can exercise significant influence over how various players in the market are remunerated."[92] The Commission suggested that its specific concerns—about data use, transparency, terms and conditions, and switching—were all different aspects of the largest platforms' market power. This chapter considers whether the nature of online platforms, and the markets they operate in, is likely to lead to them acquiring substantial market power.

63. Market power is measured by competition authorities in order to determine whether a firm has a dominant position in a particular market, in which case it could potentially abuse that dominant position. Mr Chisholm, Chief Executive of the Competition and Markets Authority, described dominance as: "one's ability to act without reference to one's competitors or customers; to be able to dictate terms."[93]

64. Competition authorities assess market power through a complex process that involves considering a firm's share of the relevant market, the costs consumers and businesses incur when trying to switch to alternative firms in the market, and the challenges new firms face when attempting to the enter the market. Guillaume Loriot, of DG Competition, told us: "The assessment of whether this platform—or company, indeed—has market power, whether it can be considered dominant, is an analysis that is performed on a case-by-case basis in light of the legal, economic and technical evidence that we have to gather … That depends on specific market features."[94]

Network effects

65. Many witnesses suggested that 'network effects' were key to understanding how firms could become dominant in these markets. Mr French, Legal Director at the Digital Catapult, noted that platforms were "by their very nature … networked businesses"[95] and that, as such, they displayed 'network effects'. Professors Alain Strowel and Wouter Vergote, from the universities of Louvain and Saint-Louis, noted that, according to economic theory, strong network or external effects were essential "to explain the rapid expansion and dominance of some digital platforms."[96] Professor Ezrachi said that "network effects illustrate the way in which online platforms may acquire market power" and potentially "become truly dominant".[97]

92 Communication from the Commission, A Digital Single Market Strategy for Europe, COM(2015) 192, p 11
93 Q 43 (Alex Chisholm)
94 Q 101 (Guilame Loriot)
95 Q 36 (Richard French)
96 Written evidence from Professor Alain Strowel and Professor Wouter Vergote (OPL0087)
97 Written evidence from Professor Aerial Ezrachi and Professor Maurice Stucke (OPL0043), Q 26 (Professor Aerial Ezrachi)

Box 2: Network Effects

In economics, a network effect refers to the effect that one user of a good or service has on the value of that product to other users. Positive network effects occur when increasing the number of users increases the value or utility of the network to other users. Negative network effects occur when an increase in the number of users decreases the value of the network to its users (for instance through network congestion). In multi-sided markets, in which there are always at least two distinct user groups, two basic types of network effect can be discerned:

- Direct network effects occur when a change in the number of users on one side of the platform changes the value of the product or service to other users on the same side of the platform. For instance, the more people who connect to a telephone network, the more valuable it is to its users.
- Indirect network effects occur when a change in the number of users on one side of the platform changes the value of a product or service to a group of users on other side of the platform. For example, a marketplace is more valuable to sellers if it attracts more buyers and a marketplace is more useful to buyers if it attracts more sellers.

66. Professor Gawer said that network effects were the "accelerating mechanism" that fuelled online platforms' rapid growth. She explained that as successful platforms became larger they attracted more users, resulting in a "self-sustaining momentum of growth".[98] Describing this dynamic, Professor Eric Clemons explained that these effects did not arise in non-networked industries ("I do not get greater value out of a Big Mac because other people are eating them"), whereas with online platforms, "customers flock to the most successful car platforms and apartment rental platforms, which brings them more drivers and more apartments to rent, which brings them more customers."[99] Professors Ezrachi and Stucke described this as a "positive feedback loop".[100]

67. Direct network effects were most clearly associated with social networks. Professor Annabelle Gawer said: "We can see that with Facebook: every new member of Facebook brings in 200 friends on average."[101] Professors Stucke and Ezrachi explained that: "As more people join Facebook, the utility of the platform to users increases as it becomes easier to connect with others. The value of the network increases with its growth."[102] Indirect network effects, according to e-Conomics, were observable in multi-sided e-commerce platforms: "eBay becomes interesting for retailers if more consumers shop on the platform, and it becomes more interesting for consumers to shop on the platform if more retailers offer their products on eBay."[103]

68. We heard that the use of data-driven algorithms resulted in new types of network effect specific to online platforms. Professors Ezrachi and Stucke said that search engines' use of data allowed them to harness new types

98 Q 1 (Professor Annabelle Gawer)
99 Written evidence from Professor Eric Clemons (OPL0071)
100 Written evidence from Professor Aerial Ezrachi and Professor Maurice Stucke (OPL0043)
101 Q 1 (Professor Annabelle Gawer)
102 Written evidence from Professor Aerial Ezrachi and Professor Maurice Stucke (OPL0043)
103 Written evidence from e-Conomics (OPL0066). e-Conomics is an independent consultancy and research network that focusses on digital and telecom related policy studies. Olga Batura, Nicolai van Gorp and Prof. Pierre Larouche co-produced their submission, with guidance from Lapo Filistrucchi. Hereafter they will collectively be referred to as e-Conomics.

of direct network effect: "the more consumers who use the search engine and the more searches they run, the more trials the search engine has in predicting consumer preferences, the more feedback the search engine receives of any errors, and the quicker the search engine can respond with recalibrating its offerings. Naturally, the quality improvement attracts additional consumers to that search engine compared to competitor sites."[104] They also suggested that the "scope of data" collected about individual users' preferences through the variety of "e-mail, geo-location data, social network and browser history" allowed them to better harness indirect network effects through the "targeting of users with specific sponsored ads".[105]

69. Professors Ezrachi and Stucke described how these different positive feedback loops often 'spilled over' from one side of the platform to the other and had a cumulative effect: "As more users are drawn to the platform, and as the company amasses a greater variety of data to effectively target consumers with relevant online ads … the more advertisers will use the platform, the more relevant and targeted the advertisements, the likelier that users will click the ads, and the more profits the search engine has".[106]

How network effects may lead to market power

Network effects and the Internet

70. Various features of the Internet and the digital economy mean that network effects are particularly pronounced for online platforms. Professor Gawer noted that the "7 billion mobile phones in the hands of users" had resulted in "pervasive connectivity" to the Internet, which had "accelerated the network effects." In the case of online platforms, she said, such network effects could lead to "exponential growth."[107]

71. We heard that a number of features of the digital economy facilitated the rapid growth of these networks of users. Professor Zimmer observed that, once a platform had invested in developing a service, the subsequent cost of "rolling out this service to more and more consumers" was low, because it drew on existing Internet infrastructure. Economists referred to this as "zero marginal cost".[108] The Digital Policy Alliance explained that cloud services "offer the great advantage of being quickly scalable to deal with demand peaks and troughs, enabling new entrants to grow sustainable businesses very quickly."[109]

72. Mr French agreed that the reliance on the pre-existing infrastructure of the Internet, and on users to provide content, meant that the growth of platforms was "unconstrained by what might be called the usual barriers", including access to capital, access to new markets, geographical borders, trade tariffs and quotas. Mr French said this dynamic "explains why some online platforms have emerged very quickly and grown to dominate the digital economy."[110] Mr Chisholm cited the rapid growth of the WhatsApp communications platform as an example: "In the space of only a few months

104 Written evidence from Professor Aerial Ezrachi and Professor Maurice Stucke (OPL0043)
105 Written evidence from Professor Aerial Ezrachi and Professor Maurice Stucke (OPL0043)
106 Written evidence from Professor Aerial Ezrachi and Professor Maurice Stucke (OPL0043)
107 Q 1 (Professor Annabelle Gawer)
108 Q 81 (Professor Daniel Zimmer)
109 Written evidence from the Digital Policy Alliance Eurim (OPL0051)
110 Written evidence from Richard French (OPL0084)

it has been able to acquire 200 employees, and build a business valued at €17 billion. It is quite unlike the physical world that came before it."[111]

Market shares

73. Network effects can also lead to markets becoming highly concentrated, with firms acquiring large market shares. Mr Chisholm explained that network effects could lead to 'tipping', "whereby more and more people use [a platform] until it seems almost pointless to use any other platform … If, for example, your ability as a seller to be able to reach very large numbers of potential purchasers is so great on one platform … why would you consider other platforms?" He continued: "There is that risk of the markets concentrating excessively in that way".[112]

74. There are many examples of high market shares. Tim Godfray, Chief Executive of the Booksellers Association said that Amazon was responsible for "90 per cent of all e-book sales in the UK and an estimated 80 per cent of online physical book sales."[113] EU VAT Action said: "Audible (owned by Amazon) has an effective 90% of the digital audiobook market", while 92% of small businesses used PayPal's transaction platform. [114] A hotel chain, that wished to remain anonymous, said that Booking.com's market share of the online travel agents sector was "believed to be between 60 and 70 per cent", with Expedia holding much of the rest, and that the combined market share of these two platforms was forecast to rise to 94%.[115]

75. Search engines and social networks were cited as examples of the most concentrated markets. Professor Rodden said that it was "now common for a single provider to dominate a service sector (Facebook for social networks, Google for search)".[116] Professors Dutton and Jeitschko highlighted "evidence of concentration in such areas as search and social networking."[117] Kostas Rossoglou, from Yelp drew attention to the fact that Google had "over 90% market share in Search alone in Europe," while the Bed and Breakfast Association put the figure for the UK at 89%.[118] From a global perspective, Professor Zimmer noted that a similar degree of market concentration existed in other regions of the world "where Google is not present, in China and Russia, where you also have one main search engine".[119]

76. Mr French said that some online platforms' market shares across multiple markets meant that they represented a high share of all online activity: "When some Google services went offline in August 2013 for between 1 and 5 minutes, global Internet traffic shrunk by 40%."

Switching costs

Switching costs for consumers

77. 'Switching costs' are the barriers that platforms' users may face when seeking to switch to another platform. Baroness Neville-Rolfe DBE CMG,

111 Q 46 (Alex Chisholm)
112 Q 43 (Alex Chisholm)
113 Q 123 (Tim Godfray)
114 Written evidence from EU VAT Action Campaign (OPL0015)
115 Written evidence from anonymous witness (OPL0086)
116 Written evidence from Professor Rodden (OPL0074)
117 Written evidence from Professor Dutton and Professor Jeitschko (OPL0057)
118 Q 123 (Kostas Rossoglou) and written evidence from the Bed and Breakfast Association (OPL0080)
119 Q 81 (Professor Daniel Zimmer)

Parliamentary Under Secretary of State and Minister for Intellectual Property, referred the Committee to an OECD report, *The Digital Economy,*[120] which "found that consumer switching has a low cost" in these markets; the report also noted, though, that network effects could increase switching costs and "result in lock-in to a particular platform" and have "detrimental effects on competition".[121]

78. Consumers face particularly high switching costs with social networks, because they display strong direct network effects. Professor Zimmer said: "With a social network you have huge switching costs, particularly if you cannot take your friends with you—you are locked in." He said that the switching cost of leaving Facebook was "that you may not have any more friends in the digital sphere."[122] Dr Ansgar Koene, Senior Research Fellow at the Horizon Digital Economy Research Institute, described the same phenomenon: "Anecdotally, many people who would like to quit Facebook and move to a different platform ultimately continue to use Facebook because that is where their peers are."[123]

79. Mr Chisholm said that switching costs were lower for the users of search engines: "if you decide, even for a moment, that you have had enough and want to use another one, it is very easy to do that with just one click".[124] However, Professors Ezrachi and Stucke said research found that: "most users, when asked how they react if the search results are not exactly what they expected, say that they will then try to change the search query—not the search engine" which meant that "most users actually perceive the switching costs to be much higher than we perceive them to be".[125]

80. Professor Gawer emphasised that "it is not the network effect *per se* that may harm consumers", but that consumers were harmed when switching costs were very high and they became "stuck with one provider and a lack of choice".[126]

Switching costs for businesses

81. Traders can also experience difficulties switching platform, particularly when network effects lead to one platform becoming favoured by consumers. IMPALA, the Independent Music Companies Association, said that traders were likely to become reliant on a platform "when the number of visitors accessing the platform greatly surpasses that of its competitors", adding that in such cases "the online platforms' business model places them in a position of indispensable trading partner, 'essential facility' or 'gatekeeper'."[127]

82. Many large businesses said that they were reliant on Google Search in precisely this way. Getty Images said: "We agree with the EU Commission assessment that Google is dominant in general search and in online advertising services. We believe that Google is an unavoidable trading partner as a result."[128] Carolyn Jameson, Chief Legal Officer at Skyscanner, agreed:

120 OECD, *The Digital Economy* (2012): http://www.oecd.org/daf/competition/The-Digital-Economy-2012.pdf [Accessed 23 March 2016]
121 Q 182 (Baroness Neville-Rolfe)
122 Q 82 (Professor Daniel Zimmer)
123 Written evidence from Dr Ansgar Koene (OPL0079)
124 Q46 (Alex Chisholm)
125 Q 26 (Professor Aerial Ezrachi)
126 Supplementary written evidence from Professor Annabelle Gawer (OPL0050)
127 Written evidence from IMPALA the Independent Music Companies Association (OPL0035)
128 Written evidence from Getty Images (OPL0045)

> "We are certainly dependent upon Google in the same way as any other company operating on the Internet is. Google is so dominant in general search now that inevitably any company operating online is dependent on visitors finding their site through Google."[129]

83. Smaller firms are similarly reliant on platforms. The British Hospitality Association said that, if its members did not trade with the two main online travel agents, they would become "pretty invisible" online. [130] Mr Godfray said that if booksellers wished "to reach a large number of consumers, many booksellers find that they have little option other than to use Amazon's Marketplace." Amazon's position in this market "pivots upon control of access to customers, something which is unique."[131] First Tutors told us that switching costs varied and depended on the degree of market concentration: "In markets such as [tutoring] the supplier can always go and sign up on another platform (so actually our power is effectively checked by competition), but for example, I'm not sure an eBay trader would have such an easy time making a living elsewhere".[132]

84. We also heard that online platforms could deliberately increase switching costs. David Viros, Head of International and European affairs at the French Competition Authority, said that an EU Commission investigation had found that Google's strength in the online advertising market was, in part, "a by-product of the fact that most market players are unable to switch to an alternative online search advertising provider". Google had consolidated its position in this market "by imposing certain contractual restrictions that further increase barriers to switching."[133]

Entry barriers

85. While platforms undoubtedly lower entry barriers for start-ups and SMEs seeking to access global markets, we also heard that network effects could create entry barriers for potential rival platforms. Dr Evans told us that a key challenge for emerging online platforms was getting a critical mass of users on both sides, so that 'ignition' could occur.[134] Professors Ezrachi and Stucke said that network effects meant that "there are economies of scale that make you much stronger and may create a barrier to entry for newcomers", by making it more difficult for new entrants "to obtain the necessary scale to meaningfully compete".[135] e-Conomics said that switching costs "may strengthen the market power of the platform by raising entry barriers for competitors ".[136]

86. A number of witnesses suggested that the manner in which network effects facilitated rapid growth and increased entry barriers created a 'first mover advantage'. Professor Clemons said: "there is a strong first mover advantage in network industries, and it will be difficult for a new company to compete with an existing firm."[137] Dr Anna Plodowski agreed that online platforms transformed "first-mover advantage into network-effect business models

129 Q 123 (Carolyn Jameson)
130 Q 123 (Ufi Ibrahim)
131 Written evidence from The Booksellers Association (OPL0039)
132 Written evidence from First Tutors EduNation Ltd (OPL0020)
133 Q 66 (David Viros)
134 Q26 (David Evans)
135 Written evidence from Professor Maurice Stucke and Professor Aerial Ezrachi (OPL0043)
136 Written evidence from e-Conomics (OPL0066)
137 Written evidence from Professor Eric Clemons (OPL0071)

that lock-out the entrance of later competitors."[138] Mr French said that the Internet "amplifies hugely the advantage of the first mover".[139]

Entrenched market power

87. The Association of Authors' Agents suggested that these tendencies could result in the most successful online platforms' market power becoming entrenched: "the rapid development and business models of early entrants into the market has led to monopolistic situations, creating an inherent danger whereby an individual marketplace becomes the main market stall, jeopardising healthy competition and controlling access to the consumer."[140] Getty Images agreed: "the adoption of one platform or technology may make switching to another more difficult … increasing barriers to entry for later players … This may mean that one player captures a market and then entrenches itself, with customers being denied the benefits of innovation over time."[141] Professors Ezrachi and Stucke concluded that "network effects, absence of outside options, high switching costs and locked-in customers, may all give rise to market power at lower levels than in traditional markets."[142]

88. However, Dr Christopher Pleatsikas, Lecturer at the University of California, reminded us that "there is significant variation in the strength of scale and network effects across different dynamically competitive markets", and emphasised the need for individual analysis.[143] The OECD report, *The Digital Economy,* also concluded that "network effects have to be assessed on a case-by-case basis to determine their competitive implications."[144]

Regulating the market power of online platforms

89. The various factors we have outlined can give rise to monopolistic outcomes. Dr Richard Hill, of the Association for Proper Internet Governance, told us that "because of the economies of scale and network effects … online platforms have a tendency to be natural monopolies".[145] Clare Moody MEP agreed: "Currently, we are seeing a tendency to monopolies in this area. I do not think any of us would think that is necessarily a healthy outcome."[146] Dr Koene and Professor Rodden called them: "virtual monopolies".[147] Professor Zimmer called them "quasi-monopolists".[148]

90. This gives rise to the possibility that online platforms should be regulated as if they were public utilities. Professor Richard N. Langlois, from the University of Connecticut, said that "Platform services have many of the characteristics of old-fashioned public utilities", adding that some people found it "tempting to regulate platforms as if they were public utilities, controlling rates and terms of access".[149] Dr Jerry Ellig, Senior Research Fellow at George Mason University, noted that "Various commentators have

138 Written evidence from Dr Plodowski (OPL0088)
139 Written evidence from Richard French (OPL0084)
140 Written evidence from the Association of Authors' Agents (OPL0008)
141 Written evidence from Getty Images (OPL0045)
142 Written evidence from Professor Ezrachi and Professor Stucke (OPL0043)
143 Written evidence from Dr Christopher Pleatsikas (OPL0078)
144 OECD, *The Digital Economy* (2012): http://www.oecd.org/daf/competition/The-Digital-Economy-2012.pdf [accessed 23 March 2016]
145 Written evidence from Dr Richard Hill (OPL0002)
146 Q 78 (Clare Moody MEP)
147 Written evidence from Dr Ansgar Koene (OPL0079) and from Professor Tom Rodden (OPL0074)
148 Q81 (Professor Daniel Zimmer)
149 Written evidence from Professor Richard Langlois (OPL0073)

argued that some type of sharing or openness regulation is appropriate for Facebook, Google, eBay, Twitter, and Amazon because network externalities make them natural monopolies or close to it."[150]

91. Mr Chisholm, on the other hand, argued that online platforms were different from other networked industries commonly thought of as natural monopolies:

> "Many of us think about natural monopolies based on typical analogue-type situations. Take, for example, a gas distribution network, for which the idea of a rival set of pipes being built over the same ground would be inherently implausible, or similarly a port, providing access to a small island. I think that when one speaks about online platforms, a natural monopoly is not quite as complete as that."[151]

92. Professor Zimmer said that the German Monopolies Commission's report on the subject of online platforms had likewise "expressed a reluctance to say that there is a natural monopoly".[152] Dr Weck said that instead they considered online platforms to have "a monopoly arising out of innovation."[153]

93. Professor Zimmer told us that, for this reason, regulators should ask themselves whether "it makes sense to intervene in the sense of break-up or divestiture". He said they should take into account "whether there will be a benefit for consumers or, on the contrary, whether there may be disadvantage for consumers." He urged caution, noting that there was a risk that intervention might "give the people stones instead of bread … If you imagine the hypothetical situation of having three different [social] networks, the users would have to look for their friends on three different platforms, which would be less efficient and attractive."[154]

The role of innovation

94. The pace of innovation in these markets means that market power can be transient. The CMA said this was because online platforms were still subject to disruptive cycles of innovation "where last year's 'winner' can quickly become this year's 'nobody'."[155] Dr Evans reminded us that:

> "Sitting here in 2015, it looks a lot different from the way it did in 2010. In 2010, Apple was kind of getting off the ground with the iPhone, it was two years before Facebook's IPO, and only two years before that MySpace was the dominant social network; it was not Facebook at all."[156]

95. While the tendency for one online platform to become the main player could reduce competition *within* a particular market, such monopolistic outcomes can also incentivise rival firms to replace incumbent businesses by changing the market structure in innovative ways. Professor Langlois explained that firms did not compete "just, or even primarily, within existing market structures but also to change markets' structures". This meant "completely redefining products and relationships with customers:

150 Written evidence from Dr Jerry Ellig (OPL0081)
151 Q 46 (Alex Chisholm)
152 Q 83 (Professor Daniel Zimmer)
153 Q 83 (Dr Thomas Weck)
154 Q 81 (Professor Daniel Zimmer)
155 Written evidence from the Competition and Markets Authority (OPL0055)
156 Q 24 (Professor David Evans)

in short … innovation."[157] Daniel Gordon, Senior Director of Markets at the CMA argued that it was "the competition to replace that is the dynamic incentive." He referred to this as the "competition for the market" as opposed to "competition within the market".[158]

96. Professors Ezrachi and Stucke highlighted the risk that "new technology and innovation … could undermine the growth of the large players". This could "generate sufficient competitive pressure which would 'police' the activities of the large players",[159] even if it did not lead to a new firm entering the market. e-Conomics agreed:

> "The threat of innovators disrupting existing markets is greater in digital markets … This threat drives all digital companies, small and large, to prepare for the unexpected through constant innovation … By doing so, digital companies embrace former Intel CEO Andrew Grove's management motto 'Only the paranoid survive'."[160]

97. Witnesses acknowledged, though, that competitive pressures varied in intensity and that, as the threat of being disrupted by an innovative competitor receded, the likelihood of a dominant firm being able to abuse its position increased. Dr Weck said: "The problem arises only if that concentration becomes permanent because the market tilts, for example, and the dominant company finds out, 'Okay, I can protect my dominant position. I do not need to innovate any more'."[161] Dr Pleatsikas observed that the perceived pressure from the threat of innovation by a competitor was "generally not sufficient to constrain the exercise of market power by a dominant firm as incumbents have a poor record of anticipating paradigm shifts (they also generally have a poor record of adapting to them)."[162]

98. Despite their reservations about the need for general regulation of platforms, TechUK, the CMA, and Dr Evans all emphasised the need for competition authorities to be vigilant regarding the activities of the most powerful online platforms. Mr Chisholm said competition authorities should be alert to whether firms were gaining and maintaining market power through "innovation", or by "putting in place artificial restrictions"[163] on businesses and consumers. Professor Zimmer told us that competition authorities should seek to ensure that market positions were kept "as vulnerable as possible, in order to have a risk of competition and potential competition."[164]

99. Dr Weck said that the concentrating tendencies in these markets meant that, alongside effective competition enforcement, "you also have to look at the other side and to strengthen the users of platforms, because if the market concentrates towards a platform, protecting consumers and so on gets more and more important … you have to make sure that consumer rights, content rights and data protection rights are respected."[165]

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157 Written evidence from Professor Richard Langlois (OPL0073)
158 Q 45 (Daniel Gordon)
159 Written evidence from Professor Aerial Ezrachi and Professor Maurice Stucke (OPL0043)
160 Written evidence from e-Conomics (OPL0066)
161 Q 83 (Dr Thomas Weck)
162 Written evidence from Dr Christopher Pleatsikas (OPL0078)
163 Q 44 (Alex Chisholm)
164 Q 81 (Professor Daniel Zimmer)
165 Q82 (Dr Thomas Weck)

Conclusions

100. **The markets in which online platforms operate are characterised by accelerated network effects. These may fuel exponential growth, increase switching costs, increase entry barriers for potential competitors and lead to monopolistic outcomes. Firms that succeed in harnessing these network effects may become the main platform in a sector, gateways through which markets and information are accessed. This can reduce choice for users and mean that they become an almost unavoidable trading partner for businesses. Such platforms are likely to possess a significant degree of market power.**

101. **However, in contrast to some networked industries, the market power of the most successful online platforms is secured through innovation that has succeeded in harnessing network effects. The risk of disruptive innovation is also greater in these markets because the up- front investment in infrastructure required for market entry is often lower. Therefore, 'competition for the market' may create competitive pressure even when one firm has a high market share.**

102. **Furthermore, we note that competitive pressures vary in type and intensity from sector to sector, and many online platforms are unlikely to possess significant market power. Case by case analysis is therefore necessary.**

103. **On this basis, while competition authorities reserve the power to break up firms and limit their market shares, we do not believe that ex ante regulation of platforms that sought to substantially restrict their activities on the basis of their market share alone, is necessary. Nonetheless, the potential for dominant positions to emerge means that competition authorities must be vigilant in these markets, to ensure that market power is not abused. Protecting users in these markets also requires that consumer rights and data protection rights are effectively enforced.**

CHAPTER 5: COMPETITION LAW AND ONLINE PLATFORMS

104. The Commission, in its Digital Single Market Strategy, raised concerns that online platforms might abuse their market power in a number of ways. This chapter considers whether competition agencies are able to address the following concerns: the use of price restrictions by online platforms; asymmetries of bargaining power; vertical integration and leveraging; mergers and acquisitions; the role of data in these markets and its impact on competition enforcement, and the adequacy of competition law.

105. Box 3 provides an outline of competition law in the EU and UK.

Box 3: Competition law in the EU and UK

Article 102 of the Treaty of the Functioning of the EU (TFEU) prohibits the abuse of a dominant position by one or more undertakings within a particular market in the EU insofar as it may restrict trade between Member States within the EU's internal market. As noted in Chapter 4, a dominant position in EU and UK competition law refers to a position of economic strength which enables an economic undertaking to behave to an appreciable extent independently of its competitors, its customers and ultimately of consumers.[166]

Dominance itself is not unlawful. However, dominant businesses, because of their enhanced market power, have a special responsibility not to impair genuine competition. Where a business enjoys a strong market share, aggressive commercial behaviour which would have been perfectly legitimate if undertaken by a business with a smaller market share may constitute an 'abuse' of the dominant business' market power. Abuse of a dominant position can be divided into two broad categories:

- Exclusionary abuses, which have the object or effect of consolidating or reinforcing a dominant business position in the market place; and
- Exploitative abuses, where the dominant business takes advantage of the fact that neither customers nor competitors are able to restrain its commercial behaviour.

Examples of practices deemed to be abuse include charging excessively high prices, exclusive or long term arrangements, refusal of a dominant business to supply goods or services, 'tying' goods or services (which forces customers to buy unrelated goods) and predatory behaviour towards new entrants.

The Commission is the primary enforcer of EU competition law, while in the UK the Competition and Markets Authority (CMA) has the jurisdiction to enforce both EU and UK competition law.[167] The CMA replaced the Office of Fair Trading in April 2014.

166 Written evidence from the Competition and Markets Authority (OPL0055)

167 The relationship between the different jurisdictions is set out by in the following 'Practice note': Practical Law, 'Co-operation between the European Commission and national competition authorities': http://uk.practicallaw.com/5-422-5178?source=relatedcontent [accessed 17 March 2016]

After investigating a firm or firms on the basis of the complaint, the Commission or the CMA can issue a Statement of Objections or take "commitment decisions" (see Box 7). A Statement of Objections lists the Commission's objections and gives the accused firm the opportunity to exercise their right of defence. Once the firm and the complainants have presented their arguments, the Commission may decide to close the case or to draft a decision prohibiting the identified infringement. This goes through a Committee of National Competition Authorities before being agreed to by the College of Commissioners.

Both the EU and UK authorities have powers to impose fines on businesses found to be in breach of competition rules (up to 10% of worldwide aggregate group turnover). The Commission policy is aimed at punishment and deterrence.

As well as investigating specific complaints of abuse, where competition across a particular market does not appear to be functioning effectively, both the CMA and the Commission have the power to review the whole market and investigate how competitive conditions might be improved, even if no specific infringements are suspected or subsequently identified.

Source: Ashurst LLP, 'Overview of EU and UK Competition Law' (March 2014): https://www.ashurst.com/publication-techguide.aspx?id_Content=5974#Competition *[accessed 16 March 2016]*

Restrictions on pricing

106. The Commission has raised particular concerns about online platforms' imposition of restrictive terms and conditions on their trading partners. In particular, the Digital Single Market Strategy expressed concerns that some online platforms used their market power to "forbid companies from selling more cheaply elsewhere (including the seller's own website, other platforms, and all offline distribution channels)."[168] We received evidence on the price restrictions employed by a wide range of platforms, including Amazon, YouTube and the motor insurance industry, but the area that attracted most comment was the use of price restrictions by online travel agents.

Price Parity Clauses and online travel agents

107. Online travel agents (OTAs) are price comparison websites that display room rates in different hotels and also facilitate bookings between hotels and consumers, typically in exchange for a commission on the booking fee. Witnesses told us that OTAs had used so-called 'price parity clauses'—sometimes referred to as retail-Most Favoured Nation (MFN) clauses or 'across platform parity agreements' (APPAs)—to ensure that hotels provided them with their best room rate.

Box 4: Wide and narrow price parity clauses used by OTAs

'Wide price parity clauses' require hotels to match or offer a better room price to an OTA than the hotel offers on all online and offline sales channels. Wide price parity agreements prevent hotels from offering a lower room rate to rival OTAs.

'Narrow price parity clauses' only require hotels to offer an OTA the same or better room rates to that offered on their own web-sites, meaning that they are free to offer a lower room rate on alternative OTA.

168 Commission Staff Working Document, A Digital Single Market for Europe: Analysis and Evidence, SWD(2015) 100 p 55

108. A major hotel chain, which asked to remain anonymous, explained that the insistence of OTAs on including price parity clauses in their contracts (see Box 4) meant that "hotels cannot offer a lower price direct to the consumer, even though when selling direct they don't have to pay a significant commission to the OTA."[169] This concern applied to both wide and narrow price parity clauses. Ufi Ibrahim, Chief Executive of the British Hospitality Association, said these clauses forced "the actual establishment—in this case the hotel itself—not to be able to offer a customer a better or special deal."[170]

109. We heard that the use of wide price parity clauses in particular prevented the emergence of competing OTAs in the hotel sector. David Viros, Head of International and European affairs at the French Competition Authority, said that such clauses meant that new OTAs could not attract hotels through lower commissions, which would in turn generate lower prices for consumers, because hotels "would in any event be forced to apply the same price on its platform as on the platform imposing the price parity clause."[171] Nelson Jung, Director of Mergers for the Competition and Markets Authority, agreed that wide price parity clauses could "restrict entry by potentially more innovative online platforms that cannot compete on price".[172] Professor Zimmer said that these clauses could have "the same effect as a cartel" because "If one major firm says, 'We employ a price parity clause', the price is more or less fixed in the market."[173]

110. On the other hand, Mr Viros told us that "there was a valid argument on the part of the online travel agencies to the effect that there would be a risk of free-riding on the part of hotels in the sense that all of the investment made by the platform is made before the sale." The nature of OTAs meant that it was "very simple for the consumer to see the name of the hotel and then to check the hotel's website to see whether the prices being offered are lower, so the risk of free-riding was clear."[174] Professor Zimmer also noted that price parity clauses could "be a good thing for consumers, if a firm says, 'If you find my service cheaper somewhere else or find that a different provider is cheaper, I will meet their price'".[175]

Competition enforcement against parity clauses in the hotel industry

111. The use of price parity clauses by online travel agents has given rise to a large number of cases launched by competition agencies. In 2013 the European Commission co-ordinated investigations by French, Swedish and Italian competition authorities into the use of price parity agreements by Booking.com and Expedia, the two largest OTAs. In August 2015 this resulted in voluntary commitments by both companies to eliminate wide price parity clauses across all European markets (including the UK), but which allowed them to retain narrow clauses.[176]

169 Written evidence from anonymous witness (OPL0086)
170 Q 129 (Ufi Ibrahim)
171 Q 66 (David Viros)
172 Q 48 (Nelson Jung)
173 Q 85 (Professor Daniel Zimmer)
174 Q 66 (David Viros)
175 Q 85 (Professor Daniel Zimmer)
176 European Competition Network, *The French, Italian and Swedish Competition Authorities Accept the Commitments Offered by Booking.com* (1 July 2015): https://webgate.ec.europa.eu/multisite/ecn-brief/en/content/french-italian-and-swedish-competition-authorities-accept-commitments-offered-bookingcom [accessed 13 April 2016]

112. Mr Viros, who worked for the French Competition Authority on this case, described the retention of a 'narrow' clause as a compromise, which permitted a hotel "to apply lower prices on competing platforms, lower prices in all its offline environments, lower prices in all bilateral dealings with consumers … as well as loyalty groups. The only single restriction was that it was not allowed to apply low prices on its publicly accessible website."[177]

113. A number of Member States and regulatory authorities have gone further, banning even narrow parity clauses. The French Parliament did so as part of the legislative bill known as the *Loi Macron*.[178] In Italy, the Chamber of Deputies has approved a draft law that would have a similar effect, which has yet to be approved by the Senate. The German competition authority, the *Bundeskartellamt*, has prohibited the use of narrow parity clauses in cases involving the OTAs HRS (Hotel Reservation Service) and Booking.com.[179] In September 2015 the CMA closed its investigation into price parity clauses on grounds of administrative priority and said that it would consider whether further steps were necessary after 12 months of monitoring market developments.[180]

114. These divergent actions raised concerns about regulatory fragmentation and consequent regulatory arbitrage. Skyscanner said that competition authorities in France and Germany had "taken a rather different approach to the questions of MFNs", creating "confusion for businesses and consumers alike", and raising the possibility of "some sort of intervention by the Commission" in order to ensure uniform application of EU law.[181] Professor Zimmer said the German Monopolies Commission opposed the actions of the *Bundeskartellamt* "because in a single market it will be difficult if you have very different rules on price setting, particularly if you have cross-border dealing."[182]

Regulating price parity clauses

115. The Commission's online platforms initiative asked whether regulatory change was needed to address restrictive pricing by online platforms. Mr Jung, from the CMA, told us that restrictions of this kind were "increasingly prevalent in online settings." The CMA said that it received "a large volume of complaints relating to online distribution practices, including allegations of resale price maintenance (RPM), the use of … online sales bans and price parity and price relativity agreements."

116. However, most of the economists and competition experts we spoke to agreed that generalised regulation of parity clauses would be impractical, and that case-by-case analysis of specific markets was necessary. Professor Ezrachi said that: "in vertical relations there will always be some justification for some limitations, the question—and we have to review this on a case-by-case

177 Q 66 (David Viros)
178 Eversheds, 'France—Macron Law: A Focus on Online Hotel Reservation Platforms' (20 October 2016): http://www.eversheds.com/global/en/what/articles/index.page?ArticleID=en/Competition_EU_and_Regulatory/MACRON_LAW_FRANCE [accessed 16 March 2016]
179 Hotrec Hospitality Europe, 'Parity clauses in OTA contracts turned into a phase-out model in 2015' (5 January 2016): http://www.hotrec.eu/newsroom/press-releases-1714/parity-clauses-in-ota-contracts-turned-into-a-phase-out-model-in-2015.aspx [accessed 16 March 2016]
180 Competition and Markets Authority, 'CMA closes hotel online booking investigation' (16 September 2015): https://www.gov.uk/government/news/cma-closes-hotel-online-booking-investigation [accessed 16 March 2016]
181 Written evidence from Skyscanner Limited (OPL0006)
182 Q 85 (Professor Daniel Zimmer)

basis—is whether that limitation is adequate and does not go beyond what is necessary in order to facilitate the competitive process and the welfare-enhancing features that we, as customers, benefit from."[183] Professors Julian Wright and Benjamin Edelman suggested that, at the very least, "Competition regulators should look critically at platforms which impose price coherence rules, be they called 'most favored nation,' 'price parity,' 'guaranteed lowest price,' or otherwise."[184]

Discrepancy in bargaining power between hotels and OTAs

117. Ms Ibrahim explained that the increasing prevalence of price parity clauses used by OTAs reflected the discrepancies in bargaining power within the hotel sector. She described the negotiation of contracts "between the hotels and the OTA" as "extremely difficult because hotels have absolutely no bargaining power".[185] She continued: "a report a couple of years ago … found that Priceline at the time owned about 40 per cent of the industry and Expedia about 21 per cent … Priceline has now acquired Booking.com and others, and represents over half the online market for our industry, and Expedia has a considerable share of the remaining half of the sector."[186] In contrast: "over 86 per cent of our industry are small and medium sized operators … The majority of our members—80 per cent of the industry—employ fewer than five to 10 people".[187]

118. As a result of this discrepancy in bargaining power, witnesses questioned whether banning price restrictions such as wide parity clauses would address the problem. Uwe Frers, owner of Berlin-based OTA Escapio, said: "Sometimes Escapio gets a rate for a hotel that is lower than what is available on Booking.com. When that happens, within about six hours, Booking.com calls the hotel demanding parity. Given that Booking.com has 50% market share in Germany, hotels listen and match the rate."[188] The hotel chain that gave anonymous evidence agreed that "the powerful OTAs can take unilateral action to punish hotels (such as by suppressing them from appearing on their websites)" if they attempted to offer consumers a lower price, even though they were now legally permitted to do so through some channels.[189] The British Hospitality Association told us that, in practice, "the combination of this 'narrow rate parity' and the hotel's 'Best Price Guarantee' means that hotels cannot discount prices through rival OTAs."[190]

Other practices adopted by OTAs

119. We also heard evidence that OTAs used their market power to engage in practices which mislead their customers. Ms Ibrahim told us that OTA websites sometimes advertised that there were "No more rooms available at this hotel", when in fact it was "just that their own quota is filled".[191] The Eastbourne Hospitality Association added that OTA websites used "flash messages encouraging the customer to purchase 'now' before it's too late or 'room just booked for this hotel'—when in fact it has not." This encouraged

183 Q 30 (Professor Aerial Ezrachi)
184 Written evidence from Julian Wright and Benjamin Edelman (OPL0062)
185 Q 126 (Ufi Ibrahim)
186 Q 123 (Ufi Ibrahim)
187 Q 126 (Ufi Ibrahim)
188 Written evidence from the Bed and Breakfast Association (OPL0080)
189 Written evidence (OPL0086)
190 Written evidence from the British Hospitality Association (OPL0023)
191 Q 126 (Ufi Ibrahim)

consumers to rush their bookings and led to "high cancellation rates", which is a factor that determine hotels rankings on OTA websites.[192]

120. The British Hospitality Association also told us that some OTAs created 'shell websites': "Customers who search by the name of the hotel are often drawn to an OTA or search engine webpage which is confusingly similar to the hotel website, leading some customers to believe that they are booking on the hotel website." A member of the Association had had a "particularly bad experience", whereby an OTA "had set up a website, which appeared to be our official website … using our photos … and which took quite a few bookings from people, who thought they were booking with us direct, on which they were charging us 23% commission."[193] Chapter 7 of this report also examines concerns about the lack of transparency regarding how OTAs rank different suppliers on their web-sites.

Conclusions

121. **The increasing use of restrictive pricing practices by online platforms requires critical scrutiny by competition agencies. While some restraints may be justified to enable price comparison websites to operate, these clauses may also, especially when broadly designed, enable firms to exploit suppliers and exclude competitors. A case by case analysis by competition authorities is therefore necessary.**

122. **While we commend the commitments secured by National Competition Authorities from Booking.com and Expedia to drop the use of wide price parity clauses, we note that the asymmetries of bargaining power that characterise the online travel agent sector may mean that the effects of wide parity clauses persist in practice, even after the prohibition of these clauses.**

123. **We recommend that the Competition and Markets Authority urgently order a market investigation into the online travel agent sector. This investigation should consider the extent to which banning wide parity clauses has been effective, claims that online travel agents continue to prevent suppliers from offering other online travel agents a lower price, and other misleading practices alleged against online travel agents, including the creation of 'shell websites'. As this is a Europe-wide issue, we recommend that the Commission support this investigation and co-ordinate any related activity by other National Competition Authorities.**

124. **We believe the findings of this investigation may be of wider application and could provide helpful insights about how to address similar practices in other sectors. While the evidence we received applied to travel accommodation, the findings of this investigation may be useful in considering the relationship between Online Travel Agents and other supplier businesses, which also affects fares and travel costs for consumers.**

125. **We note the growing regulatory fragmentation in the online travel agent sector that has arisen as a result of unilateral action by Member States. This undermines ambitions to create a Digital Single Market.**

192 Written evidence from the Eastbourne Hospitality Association (OPL0009)
193 Written evidence from the British Hospitality Association (OPL0023)

We urge DG Competition to publish guidance in due course clarifying the use of wide and narrow parity clauses by online travel agents.

Asymmetries in bargaining power in other industries

126. Similar concerns are prevalent in other sectors, and in the creative industries in particular. IMPALA, the Independent Music Companies Association, claimed that YouTube had threatened to remove content and block access to its services "unless non-negotiable licensing conditions were accepted", and had tried to impose a "'least-favoured nation' clause ensuring the royalty rate of all independents could be aligned with the lowest rate agreed with any label worldwide."[194] The Association of Authors' Agents said that Amazon asked "suppliers and customers to agree to terms and conditions that are liable to change without notice".[195] The British Booksellers Association agreed that Amazon's contracts enabled it "to change the terms whenever it liked", and added that many publishers "had been asked by Amazon to ring fence stock … without receiving a guaranteed order".[196]

127. There was some debate about how unique unfair terms and conditions were to online platforms. First Tutors noted that concerns about "large companies being able to dictate to small suppliers are common in plenty of other industries (e.g. supermarkets)".[197] On the other hand, IMPALA argued that these asymmetries were particularly pronounced in online marketplaces: "A considerable 'power gap' exists between certain online platforms and their suppliers, especially SMEs".[198] Skyscanner agreed: "There are definite imbalances of power in all sorts of industries, but it is particularly problematic in an online environment."[199] The Rt. Hon. Ed Vaizey MP, Minister of State for Culture and the Digital Economy, concluded that "the Googles and Amazons of the world are clearly now major players in our economy … so my earlier analogy with supermarkets is valid in the sense that their working practices should come into play and be debated".[200]

128. This prompted us to consider whether solutions used to address concerns about asymmetries in bargaining power in more traditional sectors of the economy could be applied to online platforms.

Codes of practice

129. IMPALA and PRS for Music recommended that the Commission facilitate a regulatory framework to ensure that all parts of the supply chain were "treated equally", and to prevent online platforms from engaging in "unfair trading practices in their dealings with SME suppliers."[201]

130. The Minister, Ed Vaizey MP, suggested that codes of practice could be developed outlining how large companies "treat their suppliers", and that such codes could be developed specifically for different sectors: "When you are talking about TripAdvisor, you are talking about hotels; when you are

194 Written evidence from IMPALA the Independent Music Companies Association (OPL0035)
195 Written evidence from the Association of Authors' Agents (OPL0008)
196 Written evidence from The Booksellers Association (OPL0039)
197 Written evidence from First Tutors Edunation Ltd (OPL0020)
198 Written evidence from IMPALA the Independent Music Companies Association (OPL0035)
199 Q 129 (Carolyn Jameson)
200 Q 193 (Ed Vaizey MP)
201 Written evidence from IMPALA the Independent Music Companies Association (OPL0035) and PRS for Music (OPL0036)

talking about Amazon, you are talking about publishers".[202] As an example, he drew our attention to the Groceries Supply Code of Practice (GSCP), which sets out rules for the way designated retailers should fairly manage their relationships with suppliers.[203]

Market investigations

131. The Groceries Code was developed as a result of a sector-wide 'market investigation' by the Competition Commission, whose powers have now transferred to the CMA.[204] The CMA explained that market investigations "involve an assessment of whether there is a feature or combination of features of a particular market in the UK that gives rise to an adverse effect on competition". They allowed the CMA to "put in place legally-binding remedies to [address] … the adverse effect or any associated customer detriment" that applied across the sector. The CMA said that it had used this power to prohibit the use of wide parity clauses by Price Comparison Websites in the private motor insurance market.[205]

132. The European Commission also has a market-wide investigation instrument known as a 'sector inquiry', which permits DG Competition to investigate concerns about how markets are functioning. However, the British Hospitality Association told us that the effectiveness of sector inquiries was "limited by the European Commission's inability to impose binding remedies", and that the Commission would have to open formal competition proceedings if it desired to take action. The Association felt that tackling its concerns through a sector inquiry would therefore be "a lengthy process".[206]

133. **We support the Government's view that developing codes of practice, most likely on a sectoral basis, could help to discourage unfair trading practices in these markets. Such codes of practice should be based on rigorous analysis. We therefore recommend that the Competition and Markets Authority use its market investigation tool to examine markets where concerns about unfair trading practices are most widespread, with a view to determining whether codes of practice are needed.**

134. **We note with concern that DG Competition's 'sector inquiry' power does not enable it to impose legally binding sector-wide remedies. This limits the ability of the EU competition regime to address market-wide problems efficiently. We recommend that DG Competition be granted powers to impose legally binding sector-wide remedies as a result of a sector inquiry, subject to conditions to be agreed with National Competition Authorities.**

Business-to-business dispute resolution mechanism

135. Ms Ibrahim called for "an arbitrator or regulator with the ability to arbitrate" disputes between platforms and their trading partners. She recommended that an adjudicator could compliment a code of practice and work "in a

202 Q 186 (Ed Vaizey MP)
203 HM Government, *Guidance: Groceries Supply Code of Practice (4 August 2009):* https://www.gov.uk/government/publications/groceries-supply-code-of-practice [accessed 13 April 2016]
204 Competition Commission, *The Groceries (Supply Chain Practices) Market Investigation Order 2009* (2009): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/461114/GSCOP-Order_v2.pdf [accessed 14 April 2016]
205 Written evidence from the Competition and Markets Authority (OPL0055)
206 Written evidence from the British Hospitality Association (OPL0023)

rapid and effective manner".[207] Mr Bailey said the possibility of introducing a new dispute resolution mechanism for businesses had been included in the Commission's consultation because it "could be a way to address a multiplicity of disputes in an efficient manner"; it could also "allow for maximum flexibility for corporate policies, things like codes of conduct and ethics of companies". He described such mechanisms as "a more lenient form of intervention than any other more heavy-handed possible regulation."[208]

136. The Commission recently launched a 'dispute resolution' platform to enable consumers and traders to settle disputes over both domestic and cross-border online purchases. Disputes registered through the platform are channelled to one of the 117 Alternative Dispute Resolution bodies, which include arbitration, mediation, ombudsmen and complaints boards connected to the platform.[209] Kostas Rossoglou, Head of Public Policy at Yelp, recommended that this mechanism be "extended to business-to-business disputes."[210]

137. However, concerns have emerged that the online dispute resolution platform has not yet been properly implemented. News website Politico.eu wrote that, whereas the Commission had originally hailed the launch of the platform as an "easy, fast and inexpensive way" for online shoppers to settle disputes with retailers, "almost three years later, a large swath of European consumers are still waiting for the quick fix and most don't even know it exists." The article suggested that a majority of the dispute resolution centres had "not yet received a single complaint".[211]

138. **Extending the EU's online dispute resolution platform to cover business-to-business disputes could help to address concerns about unfair trading practices by online platforms. Such a mechanism could complement codes of practice described above. However, we note that the business-to-consumer online dispute resolution tool appears not to have been well-implemented. We recommend that the Commission's first priority should be to ensure the effective implementation of the online dispute resolution mechanism in its current form.**

Protecting complainants

139. Ms Jameson of Skyscanner told us that many companies had a "fear of coming forward" and "raising these issues" with competition agencies.[212] When it was suggested that an arbitrator or dispute resolution mechanism might address these concerns, she said: "it would still put the party suffering as a result of the abuse in a difficult position. Commercial retaliation is always a problem in any of these cases, so it would need to be supplemented by some sort of penalty when a dominant company retaliated in some way, otherwise it would risk not being used".[213]

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207 Q130 (Ufi Ibrahim)
208 Q 102 (Martin Bailey)
209 The legal basis for the establishment of the platform is Regulation 524/2013 on Online Dispute Resolution for Consumer Disputes, (OJ L 165, 18 June 2013, p 1)
210 Q 136 (Kostas Rossoglou)
211 Politico.eu, 'The online shopping quick fix that never came' (15 March 2016): http://www.politico.eu/article/european-shoppers-still-wait-online-dispute-tool-merchants-consumers/ [accessed 6 April 2016]
212 Q 134 (Carolyn Jameson)
213 Q 130 (Carolyn Jameson)

140. Mr Chisholm said that the CMA was aware of this issue: "in the large ecosystems, many of the people participating in the market, and who might themselves suffer competition abuse, are so dependent on one of the platforms that they might not want to come to us with that complaint for fear of retaliation." He continued: "So we need to give some thought as to whether there is a need for wholesale protections for complainants in that situation."[214] Baroness Neville-Rolfe noted that "the need to protect complainants needs to be balanced with proper evidence and giving people the right to defend themselves".[215]

141. **Fear of commercial retaliation by the online platforms on which they depend may prevent complainants from approaching competition authorities. We recommend that the Competition and Markets Authority introduce new measures to protect complainants in these markets. These should include imposing substantial penalties upon online platforms that are found to have engaged in commercial retaliation.**

Vertical integration and leveraging

142. The Commission's Digital Single Market Strategy expressed concern that online platforms could use their market power to engage in "vertical integration/leverage", whereby a platform which serves as a marketplace also acts a retailer. The Commission was concerned that an online platform could use the information gathered through facilitating the marketplace to advantage the retail part of its business.[216]

143. Mr Chisholm observed that the integration of different lines of business was increasingly common and that there was a tendency for platforms to "start in a core area, such as search, social media, book and music sales, and then look to extend their offer to other potential customers and suppliers through wider e-commerce opportunities".[217] Professor Clemons noted that firms being integrated in this way sometimes offered consumers benefits in terms of service quality: "Platforms also offer a range of integrated services. … The iPad is more valuable because I can synch it with my laptop, I can buy music and apps for it through iTunes and the App Store."[218]

144. Dr Evans noted that vertical integration was "pretty common" in conventional businesses: "Tesco, like American supermarkets, has store brands, so in that sense it is competing with brands on the shelf." As a result, vertical integration was "a problem that we are attuned to in competition law".[219] Professors Ezrachi and Stucke agreed that "competition authorities are sensitive to vertical integration by a dominant platform operator", but added that it could be a problem with online platforms in particular, because a platform was able to "inhibit rivals on its platform or give preference to its own programs or services … to the detriment of rival sellers (and contrary to consumers' wishes)."[220] Charly Berthet, from the French Digital Council,

214 Q 50 (Alex Chisholm)
215 Q 43 (Alex Chisholm)
Q 185 (Baroness Neville-Rolfe)
216 Commission Staff Working Document, A Digital Single Market for Europe: Analysis and Evidence, SWD(2015) 100 p 55
217 Q44 (Alex Chisholm)
218 Written evidence from Professor Eric Clemons (OPL0077)
219 Q 28 (Professor David Evans)
220 Written evidence from Professor Aerial Ezrachi and Professor Maurice Stucke (OPL0043)

agreed: "When an online platform is vertically integrated, it might restrain competition by decreasing the feasibility of the offers of its competitors to the benefit of its own offers."[221]

145. Various concerns were raised about vertically integrated online platforms. The Booksellers Association told us that Amazon used data gathered from its Marketplace sellers to give itself a competitive advantage on its e-commerce website.[222] The Booksellers Association also alleged that Amazon had inhibited the interoperability between the Amazon Kindle and non-Amazon e-book formats, thus vertically leveraging its dominance in e-readers into an adjacent market by requiring publishers to use its proprietary Kindle e-book publishing format. DG Competition is currently investigating these claims.[223] The bulk of evidence that we received on vertical integration and leveraging concerned DG Competition's antitrust investigation into Google Search, which is described in Box 5.

Box 5: The Google Search Case

On 30 November 2010 the European Commission opened an antitrust investigation into allegations that that Google had abused a dominant position in online search, by "allegedly lowering the ranking of unpaid search results of competing services which are specialised in providing users with specific online content such as price comparisons (so-called vertical search services) and by according preferential placement to the results of its own vertical search services in order to shut out competing services."[224]

Over the following four years Google offered binding 'commitments' (see Box 7) in an effort to resolve the Commission's concerns. The first set of commitments Google proposed were rejected following public comments. When Google proposed revised commitments the Commission was initially minded to accept, but complainants in the case subsequently provided new information which led the Commission to reject them.

On 15 April 2015 Commissioner Vestager announced that the Commission had sent a Statement of Objections to Google outlining its preliminary conclusion that "Google gives systematic favourable treatment to its comparison shopping product (currently called Google Shopping) in its general search results pages". The Commission said that it had chosen to publish a Statement of Objections because "overall, previous commitment proposals from Google were insufficient to address its competition concerns." [225]

221 Q67 (Charly Berthet)
222 Written evidence from the Booksellers Association (OPL0039)
223 Written evidence from the Booksellers Association (OPL0039)
224 European Commission, 'Antitrust: Commission probes allegations of antitrust violations by Google' (30 November 2010): http://europa.eu/rapid/press-release_IP-10-1624_en.htm?locale=en [accessed 15 March 2016]
225 European Commission, 'Antitrust: Commission sends statement of objections to Google on comparison shopping service; opens separate formal investigation on Android' (15 April 2015): http://europa.eu/rapid/press-release_IP-15-4780_en.htm [accessed 3 March 2016]

The Commission said that Google's alleged actions were anti-competitive, in that they could "artificially divert traffic from rival comparison shopping services and hinder their ability to compete on the market." It also stated that this practice harmed consumers because they did "not necessarily see the most relevant results in response to queries" and stifled competition. The Commission proposed, as a preliminary remedy, that "Google should treat its own comparison shopping service and those of rivals in the same way."[226] The case is ongoing.

Commissioner Vestager said in her Statement of Objections that: "a case focusing on comparison shopping could potentially establish a broader precedent for enforcing EU competition rules in other instances".[227] The case is therefore of wider application.

Source: European Commission, 'Competition: 39740 Google Search': http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39740 *[accessed 15 March 2016]*

146. We heard that the dominance of Google's search engine meant that Google had a special responsibility not to abuse its position. Mr Viros, from the French Competition Authority, said: "Google, in the light of its super-dominance, probably has extra responsibilities consistent with established case law, for instance with regard to actors such as Tetra Pak, vis-à-vis which competition law applies with extra strength as they hold a position of 'super-dominance'."[228] Ms Jameson, from Skyscanner, said: "Google is so dominant that it is effectively the infrastructure of the market that we all operate in."[229]

147. Mr Rossoglou, from Yelp, said that vertical integration by Google had a major impact on innovation, because it reduced the incentive for start-ups to develop alternative services: "They will have no access to the market. They will not be visible and therefore consumers will not use them."[230] Professors Ezrachi and Stucke said: "given the importance of search engines as a gateway to the Internet, intentional search degradation can also chill the marketplace of ideas."[231]

148. Mr Rossoglou provided an example of how Google's prioritisation of its own services could harm consumers, by degrading the quality of search results:

> "There is no harm done if I get a bad slice of pizza because I ended up in a bad pizza place, but imagine that you are in a new city and you have a problem with your tooth; you look for a dentist on Google because you are on a business trip and do not know anyone in the city. You go on Google and you type 'Dentist Manchester' and you get bad results and end up with a bad dentist, or maybe you end up with a bad doctor or cardiologist. The stakes are quite high when it comes to a local search."[232]

226 European Commission, 'Antitrust: Commission sends statement of objections to Google on comparison shopping service; opens separate formal investigation on Android' (15 April 2015): http://europa.eu/rapid/press-release_IP-15-4780_en.htm [accessed 3 March 2016]
227 European Commission, 'Statement by Commissioner Vestager on antitrust decisions concerning Google' (15 April 2015): http://europa.eu/rapid/press-release_STATEMENT-15-4785_en.htm [accessed 3 March 2016]
228 Q 64 (David Viros)
229 Q 123 (Carolyn Jameson)
230 Q 126 (Kostas Rossoglou)
231 Written evidence from Professor Aerial Ezrachi and Professor Maurice Stucke (OPL0043)
232 Q 125 (Kostas Rossoglou)

149. Regarding the Commission's antitrust case, Adam Cohen, Google's Head of Competition and Economic Policy in Europe, told the Committee:

> "What I would say to that very clearly is that we have defined which parts of the page will be advertising and which parts will not. We have also defined strict criteria for ourselves and other sites about relevance. So we do not rank organic search results in the same way as we rank advertising, but we hold all the elements on the page to very high and equitable standards of relevance."[233]

Effective remedy

150. Professor Clemons told us that, to address such abuses, he would "prohibit vertical integration by a search engine operator" because "search that is biased to promote the search engine's own products and services, will always harm consumers over the long term".[234]

151. Other witnesses highlighted the risk of the wrong intervention stifling innovation. Mr Viros said that 'unbundling' was normally only used in the context of former state monopolies, in which it could be shown that a competitive advantage was not acquired on merit, but inherited: "if you were to unbundle Google, it would beg the question of how you maintain the incentive to innovate".[235]

152. Complainants in the case, Yelp and Tripadvisor, supported the Commission's proposed remedy: that Google should treat its own comparison service shopping service and those of rivals in the same way. Skyscanner said: "in the case of Google specifically, it should not be able to give its own vertical search products preferential treatment and it should be subject to the same manner of displaying and ranking them as everybody else."[236]

153. **Google's search engine shows how the tendencies to concentration in these markets may result in a successful innovator becoming the main provider of a particular service. Google Search has become a gateway through which a large proportion of the world accesses information on the Internet, which many businesses consequently depend on in order to be visible and to compete online.**

154. **The Google case illustrates the way in which a platform may use a strong position in one sector (in this case, general search) to integrate a range of other services into its core offering, thereby entering into direct competition with trading partners on its platform. Such integration can offer consumers benefits, such as increased convenience; it can also exclude competitors and harm consumers, if they are not directed to the best service or if innovation is reduced.**

155. **The evidence we have received indicates that it is not possible to formulate useful general rules about vertical integration in relation to online platforms, because each case is substantially different. Whether individual examples should be deemed an abuse must be ascertained through rigorous case by case analysis. Competition**

233 Q 112 (Adam Cohen)
234 Written evidence from Professor Eric Clemons (OPL0077)
235 Q 64 (David Viros)
236 Q 126 (Carolyn Jameson)

enforcement is the most appropriate instrument to deal with such concerns where they arise.

Mergers and Acquisitions

156. Several witnesses commented on the high number of mergers and acquisitions within the sector. e-Conomics referred us to a list of 187 Google acquisitions, noting that "in certain circumstances such a purchase may be interpreted as the elimination of a competitor. In this way, a powerful platform can foreclose future markets and throttle innovation".[237] They said that Google's acquisition of DoubleClick, a leading provider of ad-serving technologies for third parties, might have lessened competition on the ad-serving market, and referred to the dissenting statement of one of the Commissioners of the US Fair Trade Commission, who objected to this merger.[238]

157. The existing EU Merger Control Regime is outlined in Box 6 below.

Box 6: Mergers and Acquisitions under EU and UK Law

The EU Merger Regulation (EC) No 139/2004 prohibits mergers and acquisitions which would significantly reduce competition in the Single Market, for example if they created dominant companies that are likely to raise prices for consumers. The Commission only examines larger mergers with an EU dimension, which means that they reach certain turnover thresholds. Smaller mergers which do not meet these thresholds may fall under the remit of Member States' competition authorities. There is a referral mechanism, which allows Member States and the Commission to transfer cases among themselves.

The Enterprise Act 2002 regulates merger activity in the UK that does not have a European dimension. The Act applies to mergers where:

- Two or more enterprises cease to be distinct (i.e. brought under common control or ownership); and
- Either one of the two following criteria apply:
  - The UK turnover associated with the enterprise that is being acquired exceeds £70 million (the turnover test); or
  - As a result of the merger, a share of 25 per cent or more in the supply or consumption of goods is created or enhanced (the share of supply test).

Source: Ashurst LLP, 'UK Merger Control' (November 2015): https://www.ashurst.com/publication-techguide.aspx?id_Content=5974#Competition *[accessed 16 March 2016]*

158. Professor Zimmer expressed concern that "mergers in the field of the digital economy, particularly with regard to young companies, are often not subject to merger control, at the European level." In his view, this was because the merger regime at EU level and in many Member States relied on "historical turnovers" to trigger an investigation, whereas in the digital economy "you often have very young companies that are bought away from the market at a very early stage." This lack of oversight was "a particular concern if those acquirers are somehow in the same or neighbouring markets to that of the target, because then they may buy their competition or potential competition

237 Written evidence from e-Conomics (OPL0066)

238 Federal Trade Commission, *Dissenting Statement of Commissioner Harbour In the Matter of Google/DoubleClick* (20 December 2007): https://www.ftc.gov/public-statements/2007/12/dissenting-statement-commissioner-harbour-matter-googledoubleclick [accessed on 13 April]

from the market."[239] Mr Viros agreed: "transactions, which involve an actor whose potential has yet to be monetised, go under the radar."[240]

159. Mr Loriot, of DG Competition, said that although the "current turnover thresholds and the rules for jurisdiction for the Commission [did] not allow the Commission to catch directly companies that have a low revenue", the "referral mechanism" between individual Member States and the Commission enabled the Commission to investigate if needed. He said that this referral mechanism had worked in the case of the merger between Facebook and WhatsApp.[241]

160. In addition to a turnover threshold, the UK merger regime includes a "share of supply test". This considers whether, as a result of the merger, a share of 25% or more in the supply or consumption of goods is created for one firm. Mr Jung, Head of Mergers at the Competition and Markets Authority, said this was "particularly helpful", because it enabled the Authority "to look at those mergers and assess whether there is harm that goes above and beyond pricing and also looks at quality and innovation." For example, the test enabled the CMA to investigate the merger between Google and Waze, a map application. At the time of the merger, Mr Jung said Waze did "not generate a lot of revenue but might still impact on the marketplace overall as a result of innovative business models that they bring to the table." The CMA considered the "extent to which that merger would result in reducing Google's incentives to innovate in that space". Eventually, based on "how important Waze was from Google's perspective … in terms of developing its own products' enhanced features for consumers", the Authority "felt comfortable clearing" the merger.[242]

161. **Large online platforms frequently acquire innovative firms, often at a significant premium, in order gain a competitive advantage over rivals; it is important that competition authorities are vigilant to ensure that, in doing so, they are not also buying up the competition.**

162. **We are concerned that mergers and acquisitions between large online platforms and less established digital businesses may escape scrutiny by competition authorities, because the target company generates little or no revenue and so falls below the turnover threshold adopted by the European Commission's Merger Regulation.**

163. **We recommend that the Commission amend the Merger Regulation to include additional thresholds that better reflect this dynamic, examples of which might include the price paid for the target or a version of the 'share of supply' test used in the UK.**

Data and competition law

164. Data and data analytics are integral to online platforms and the benefits they provide. They also play an important role in the competitive dynamics of these markets. The CMA said that "to the extent that such data is of central importance to the offering but inaccessible to competitors, it may confer a form of 'unmatchable advantage', making it hard for those competitors to

239 Q 81 (Professor Daniel Zimmer)
240 Q 69 (David Viros)
241 Q 102 (Guillaume Loriot)
242 Q 44 (Nelson Jung)

compete."[243] Professors Ezrachi and Stucke highlighted the OECD's finding that 'big data' was a "core economic asset", which could create a "significant competitive advantage". They also said that firms were increasingly turning to mergers to acquire a "data advantage" over rivals, noting that "according to one estimate, the number of Big Data-related mergers doubled between 2008 and 2013—from 55 to 134."[244]

165. Professors Ezrachi and Stucke cautioned against the assumption that Big Data was necessarily problematic or anti-competitive, noting that: "data-driven business models can be pro-competitive"; they added that data analysis could provide firms "with insights on how to use resources more efficiently and to outmanoeuvre dominant incumbents." However, they also said that businesses had "strong incentives to limit their competitors' access to these datasets, prevent others from sharing the datasets, and be adverse to data-portability policies that threaten their data-related competitive advantage." They concluded that "Companies will battle over who gets the valuable consumer data." [245]

166. Mr Cohen, from Google, downplayed the economic importance of data, noting that "there are vastly diminishing marginal returns from data, so the first few data points that you get can inform the way you build your products and services. After that, having a lot more data does not necessarily make your services that much better or more useful."[246] TechUK said that "data is fairly freely available, it is non-rivalrous and its value tends to degrade rapidly."[247]

Data-driven abuses

167. The intensity of data collection and processing characteristic of online platforms can pose problems for competition authorities. Dr Weck said that data-driven insights could potentially blur the line between innovative and anti-competitive behaviour:

> "The company may find out, 'The markets I am in will develop in a certain direction. If I want to block arising competition, I have to expand into this or that market', just based on the data the company has access to … Is this just innovative behaviour, because the company is following market developments and creating new products, or is it not really foreclosure, based on data access?"[248]

e-Conomics suggested that collusive agreements might arise between firms "for exclusive data collection or to prevent competitors [from] access[ing] certain data"[249]

168. Professor Rodden suggested that the opaqueness of decisions made by data-driven algorithms created problems of accountability: "Due to the large number of parameters that are used by the algorithms, even the engineers who constructed the system are often not able to explain why the algorithms

243 Written evidence from the Competition and Markets Authority (OPL0055)
244 Written evidence from Professor Aerial Ezrachi and Professor Maurice Stucke (OPL0043)
245 Written evidence from Professor Aerial Ezrachi and Professor Maurice Stucke (OPL0043)
246 Q 118 (Adam Cohen)
247 Written evidence from TechUK (OPL0056)
248 Q 83 (Dr Thomas Weck)
249 Written evidence from e-Conomics (OPL0066)

made specific decisions".[250] Dr Koene said that one consequence of this lack of transparency was "that platform providers may not be able to guarantee that they are compliant with regulations", and concluded that this lack of transparency "offers the potential for abusive manipulation".[251] Professor Rodden and Dr Koene both suggested that the 'interpretability' of data-driven algorithms should be made a priority for 'big data' related research funding.[252]

169. Professors Ezrachi and Stucke said that widespread use of sophisticated algorithms could result in 'tacit collusion', in which rival firms effectively coordinated strategies to reduce competition: "Collusion may be facilitated when the firm programmes an algorithm, among other things, to monitor price changes and swiftly react to any competitor's pricing." They said that "industry-wide use of such pricing algorithms" was "likely to push markets which were just outside the realm of tacit collusion into interdependence", and to "support conscious parallelism". In their view this was one possible "enforcement gap".[253]

170. Professors Ezrachi and Stucke also identified a number of possible data-driven abuses specific to search engines, which involved degrading the quality of the service for users in order to increase revenues from advertisers on the other side of the platform: "a search engine, to incentivise users to click on sponsored advertisements or the results of its affiliated business, can promote, and rank higher, its sponsored results and provide fewer, and rank lower, its more relevant organic results." They also described a "'hold-up' scenario", whereby "the search engine could lower the ranking of potential advertisers appearing in the organic search results to pressure the businesses to advertise with the search engine, namely to bid for keywords to get the attention of viewers who do not scroll down the list of search results."[254] In this way, Professor Ezrachi said, search engines "can actually degrade quality to some extent, because when they have to choose between the free side and the paid side—the side where they make the revenues from advertisements—their loyalty, or their interest, obviously lies with that side."[255]

Degrading privacy standards as an abuse of dominance

171. We also heard that platforms could potentially abuse a dominant position by increasing the amount of personal data they collected from their users. Professors Ezrachi and Stucke said that platforms could "degrade other dimensions of quality, such as collecting more personal data and providing less privacy protection for the data, than consumers would otherwise prefer".[256] Dr Weck told us that this could become a competition problem: "If consumers do not know how their data are used, if consumer rights are not respected and content provider rights are not respected, perhaps because the platform is so powerful that it does not need to heed those rights, then that harm to consumers is a competition related problem". He added that this could amount to "an abuse of market power".[257] Dr Orla Lynskey, Assistant Professor in Law at the London School of Economics, agreed that "powerful

250 Written evidence from Professor Tom Rodden (OPL0074)
251 Written evidence from Dr Ansgar Koene (OPL0079)
252 Written evidence from Dr Ansgar Koene (OPL0079)
253 Written evidence from Professor Aerial Ezrachi and Professor Maurice Stucke (OPL0043)
254 Written evidence from Professor Aerial Ezrachi and Professor Maurice Stucke (OPL0043)
255 Q 24 (Professor Aerial Ezrachi)
256 Written evidence from Professor Aerial Ezrachi and Professor Maurice Stucke (OPL0043)
257 Q86 (Dr Thomas Weck)

online platforms which control information flows" made it "more difficult for individuals to exercise fundamental rights effectively".[258] Indeed, during the course of this inquiry Germany's *Bundeskartellamt* opened an investigation against Facebook, stating that: "Facebook's use of unlawful terms and conditions could represent an abusive imposition of unfair conditions on users."[259]

172. Despite the relationship between market dominance and privacy, witnesses questioned the ability of competition law to address privacy concerns. Dr Orla Lynskey felt that "competition law is not capable of adequately addressing these fundamental rights concerns", because "individual rights interferences do not necessarily correspond to competitive faults" in markets.[260] e-Conomics agreed that "In the context of competition law (i.e. all its instruments), privacy cannot be adequately protected".[261]

173. Witnesses advocated various ways to deal with the overlap between data protection law and competition law. Dr Weck argued that even if the lowering of privacy standards was related to the dominance of a platform, "you should still change consumer regulation—make it and the means of enforcing consumer rights stronger—and not use the tools of competition law, because they are not very suited to that and the heart of the problem lies somewhere else."[262]

174. Mr Rossoglou, from Yelp, advocated closer co-operation between these regulatory regimes instead of regulatory change: "We have rules for competition and for data protection. Just make sure that there is a merger between the two."[263] Charly Berthet, Rapporteur to the French Digital Council, referred to an example of joined up action by the Fair Trade Commission (FTC) in the US, during the merger between Facebook and WhatsApp. He said that the FTC "took the opportunity to remind Facebook of its commitments regarding privacy while it was exercising its supervision of mergers and business concentration." In this case, "the FTC adopted an interesting approach because it dropped the silo approach. This kind of inter-regulation, mixing competition data with other sectoral regulations, is very interesting."[264]

175. e-Conomics suggested that, despite competition law's inability to deal adequately with questions of data protection, the centrality of data to these markets meant that competition authorities needed to integrate the role of data more fully into their analyses. They said competition authorities should consider "whether data market(s) exist and can be defined for the purpose of competition law (because data is traded)", and "whether dominance is possible on such market." In relation to investigations of possible abuses of dominance, they said "access to data, possession of datasets and/or processing capabilities should be considered when assessing market power."[265]

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258 Written evidence from Dr Orla Lynskey (OPL0054)
259 Bloomberg Business, 'Facebook's data dominance risks European antitrust clampdown' (2 March 2016): http://www.bloomberg.com/news/articles/2016–03-02/facebook-probed-by-german-antitrust-regulator-over-user-data [accessed 3 March 2016]
260 Written evidence from Dr Orla Lynskey (OPL0054)
261 Written evidence from e-Conomics (OPL0066)
262 Q 86 (Dr Thomas Weck)
263 Q 129 (Kostas Rossoglou)
264 Q 67 (Charly Berthet)
265 Written evidence from e-Conomics (OPL0066)

176. Taking stock of the range of concerns about the use of data in these markets, Professor Ezrachi concluded as follows:

> "The role of data is something that we still need to learn about and understand a bit more … I am not sure that we yet understand the way in which the data affects this ecosystem. We might at times give it too much weight and at other times not enough weight … competition agencies are aware of it, but more understanding is required of the unique dynamics that are developing in the online market."[266]

Nonetheless, he and Professor Stucke acknowledged that "the above-described dynamics and abuses raise challenging questions as to the adequacy of the current enforcement approach by competition officials."[267]

177. **Data are integral to the operation of many online platforms and the benefits they provide. For this reason, exclusive access to multiple sources of user data may confer an unmatchable advantage on individual online platforms, making it difficult for rival platforms to compete.**

178. **As well as providing new benefits, rapid developments in data collection and data analytics have created the potential for new welfare reducing and anti-competitive behaviours by online platforms, including subtle degradations of quality, acquiring datasets to exclude potential competitors, and new forms of collusion. While some of these abuses are hypothetical, they raise questions as to the adequacy of current approaches to competition enforcement.**

179. **We recommend that the European Commission co-ordinate further research regarding the effects that algorithms have on the accountability of online platforms and the implications of this for enforcement. We also recommend that the Commission co-ordinate further research to investigate the extent to which data markets can be defined and dominant positions identified in these markets.**

180. **It is clear that dominant online platforms could potentially abuse their market position by degrading privacy standards and increasing the volume of data collected from their users. We welcome ongoing research and competition investigations that seek to clarify the circumstances under which degradation of privacy standards could be deemed abuse under competition law. In the meantime, these concerns underline the clear need for the enforcement of data protection law to be sufficiently robust to deter bad behaviour.**

The adequacy of competition law

181. Witnesses were asked if competition law and its enforcement were able to deal with the new challenges we have described. e-Conomics said that EU competition law was "well-equipped to adequately address potential abuses of dominance by online platforms."[268] Mr Chisholm told us that "we have quite wide-ranging tools to be able to deal with problems where they emerge."[269]

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266 Q 31 (Professor Aerial Ezrachi)
267 Written evidence from Professor Aerial Ezrachi and Professor Maurice Stucke (OPL0043)
268 Written evidence from e-Conomics (OPL0066)
269 Q 50 (Alex Chisholm)

182. A number of witnesses argued that the strength of existing competition law was that it was principle-based, and therefore able to take into account the wide variety of different types of abuse that could arise. The Computer and Communications Industry Association (CCIA) said that "competition law remains fit for purpose", because its "principles can just as well be applied to online platforms as to any other area of the economy."[270] Dr Evans reminded us that "competition authorities have been working on many different industries for over 100 years in the UK, the United States and other parts of the world".[271] He said that "competition authorities have slowly acquired the right toolkit"[272] in relation to online platforms; the key was for regulators to "customise" those tools "to the set of facts that you have before you."[273]

183. We also heard that ensuring that existing rules were well enforced should be a higher priority than the introduction of new regulation. Matthew Fell, Director for Competitive Markets at the Confederation of British Industry (CBI), said: "the right response is to ensure that the competition authorities are properly skilled and agile".[274] Dr Evans said that competition enforcement was "a much, much better alternative than considering regulation." He argued that competition authorities were "much more flexible and they know how to deal with these businesses—they have a proven track record in that."[275]

184. Nevertheless, online platforms pose a number of challenges for regulators. According to Professor Ezrachi, the main anticompetitive effects of dominant online platforms were "the steady degradation in quality, including the privacy protections afforded to individuals"; these were "less salient than the traditional monopolist's steep prices".[276] Dr Evans argued that online platforms differed from other businesses because "in many cases they have a free side and a paid side". He said regulators had to be conscious that online platforms operated in multi-sided markets and therefore should "take into account the fact that that intervention could harm the other side of the platform."[277]

185. Dr Pleatsikas highlighted the challenge of differentiating between pro-competitive and anti-competitive behaviour in these markets: "While certain types of behaviour are unambiguously anticompetitive—fixing prices, market allocation and conspiracies to eliminate competitors—most types of conduct that are potentially anticompetitive cannot be so plainly classified." For this reason, "antitrust agencies must necessarily undertake investigations that examine the idiosyncratic circumstances of each case." He concluded that attempts to introduce prescriptive regulation to prevent abuse were doomed: "the search for universal truth and/or universal rules is bound to fail in most real world situations involving non-collusive conduct."[278]

186. **The sheer diversity of online platforms and the complexity of their business models raise obvious challenges for competition authorities. The lack of price signals on the consumer side, and the presence of multiple prices in multi-sided markets, create difficulties for standard**

270 Written evidence from the Computer and Communications Industry Association (OPL0040)
271 Q 25 (Professor David Evans)
272 Q 31 (Professor David Evans)
273 Q 25 (Professor David Evans)
274 Q 42 (Matthew Fell)
275 Q 32 (Professor David Evans)
276 Written evidence from Professor Aerial Ezrachi and Professor Maurice Stucke (OPL0043)
277 Q 25 (Professor Evans)
278 Written evidence from Dr Christopher Pleatsikas (OPL0078)

antitrust analysis. Quality is a key parameter of competition in these markets, but is not easily measured.

187. **While these challenges are significant, we note that the flexible, principle-based framework of competition law, which can be customised to individual cases, is uniquely well-suited to dealing with the subtlety, complexity and variety of possible abuses that may arise in these markets. We cannot see how a less flexible regulatory approach could be more effective.**

Length of competition proceedings

188. One recurrent concern about the effectiveness of competition enforcement was the disjuncture between the rapid pace of change in digital markets and the slow speed at which competition law is enforced. The length of the Commission's investigation into Google, still ongoing after five years, was felt to typify this problem.

189. Skyscanner said that the enforcement of European competition law did "not move at a sufficient pace … This is particularly true in relation to abuse by online platforms given that any Internet business can achieve momentous growth or suffer a devastating fall in such a short space of time."[279] The Computer and Communications Industry Association (CCIA) agreed that "competition law needs to be applied rapidly so as not to be irrelevant".[280]

190. Yahoo suggested that the slow enforcement of competition law led to political pressure to intervene: "there is a general frustration with the length of time required to complete a competition investigation. This frustration often creates pressure for swift action in other policy areas beyond competition law". Yahoo added that this could result "in onerous regulation in a particular market".[281]

191. Mr Loriot, from DG Competition, said that although there was pressure to act quickly, "the cases are often complex and it is critical to get it right."[282] Mr Cohen, from Google, agreed: "Investigations should probably take as long as they need to take. Some of the issues involved in our business are very complicated and have evolved quite significantly even in the period during which we have been investigated."[283]

Interim measures

192. In order to speed up enforcement, Professor Zimmer said that the German Monopolies Commission had encouraged the European Commission to apply interim measures, which require a firm to amend any allegedly anti-competitive conduct pending the outcome an investigation.[284] Professor Zimmer explained that interim measures would enable competition authorities to say, "We order now and for the time of this proceeding that the firm has to refrain from certain behaviour".[285] Interim measures were therefore helpful when it was anticipated that markets would change

279 Written evidence from Skyscanner Limited (OPL0006)
280 Written evidence from the Computer and Communications Industry Association (OPL0040)
281 Written evidence from TechUK (OPL0056) and Yahoo (OPL0042)
282 Q 102 (Guillaume Loriot)
283 Q 113 (Adam Cohen)
284 Interim measures refer to a requirement to amend allegedly anti-competitive conduct pending the outcome of an investigation.
285 Q 81 (Professor Daniel Zimmer)

quickly—within two years, he suggested—in order to ensure that the harm did not become permanent before a case concluded.[286]

193. The French Competition Authority has also frequently used interim measures. Mr Viros said that it had "adopted 30 interim measures decisions since 2000," including in a case against Google regarding its AdWords service. He added that "the interim measures were not contested."[287]

194. Mr Viros told us while the Commission had the power to use interim measures, "almost as a policy choice it has decided since 2001 not to use interim measures. I believe it deems that it is either best left to us or to judges."[288] Dr Weck said Commission officials were concerned about a previous case, in which "the European courts imposed a very high standard on the agency when bringing an interim measures case."[289]

195. We also heard that interim measures had rarely been used in the UK. Mr Viros said that the CMA had "had a difficult time using interim measures", because "its only decision was annulled by the Competition Appeal Tribunal." Under the terms of the Enterprise and Regulatory Reform Act 2013, however, a lower threshold for intervention had subsequently been adopted, which Mr Viros felt meant there was "probably room for a more proactive approach."[290]

196. Mr Chisholm confirmed that the CMA "need to be ready, where justified, to take speedy action through so-called interim measures or in securing voluntary behavioural changes through commitments, where necessary."[291] Baroness Neville-Rolfe said that "we are keen to speed up the process of competition decisions … [and the] time it takes to make decisions. This could include looking at changes to interim measures."[292]

Commitment proceedings

197. Professor Zimmer and Dr Weck suggested that the prolonged nature of the Google case may also have been the result of the use of 'commitment proceedings'. Professor Zimmer said these could have a "retarding effect", because "firms offer certain measures and commitments, there are negotiations and then one side is not satisfied by what the other side says and so on."[293] Dr Weck said that the use of commitment proceedings had become common, because the competition agency "knows that it will be consensual, so it will not be appealed" and said that there was therefore "an incentive to use the tool much more than it should be used."[294]

286 Written evidence from Monopolkommission (OPL0046)
287 Q 65 (David Viros)
288 Q 65 (David Viros)
289 Q 84 (Dr Thomas Weck)
290 Q 69 (David Viros)
291 Q 50 (Alex Chisholm)
292 Q 185 (Baroness Neville-Rolfe)
293 Q 81 (Professor Daniel Zimmer)
294 Q 84 (Dr Thomas Weck)

Box 7: Commitment Decisions

'Commitment Decisions' allow the Commission to describe its concerns about a firm or firms' practices without proving an infringement of the antitrust rules, although the Commission has to demonstrate its concerns are well founded. The accused then have an opportunity to provide commitments to address these concerns. If the Commission, in consultation with market participants, finds the commitments to be sufficient and proportionate, it takes the decision to make them legally binding.

Source: European Commission, 'Antitrust procedures in abuse of dominance (Article 102 TFEU)' (August 2013): http://ec.europa.eu/competition/antitrust/procedures_101_en.html *[accessed 13 April 2016]*

198. Professor Zimmer therefore argued for the imposition of a time limit or sunset clause on commitment proceedings: "closing the case with a commitment decision—which means, in a way, a consensual decision, based on consensus between the authority and the firm—should be possible only within a limited time." The aim was to create "an incentive for both sides—for the agency or authority as well as for the firm in question—to get through to timely decisions."[295]

199. **Competition law is perceived as being too slow to react to rapidly evolving digital markets. While the length of time taken to arrive at a decision in the Google case reflects its importance, it also highlights a wider problem. In such fast-moving markets a competitor who falls foul of anti-competitive conduct may suffer irreversible harm long before a competition case concludes. This undermines public confidence in the ability of regulators to hold large online platforms to account and may create political pressure for legislators to regulate unnecessarily.**

200. **In order to speed up the enforcement of competition law, and in light of recent changes in UK legislation, we recommend that the Competition and Markets Authority make greater use of interim measures. DG Competition should also make greater use of interim measures by lowering the threshold for their use, bringing it into line with that of the UK Competition and Markets' Authority.**

201. **We recommend that the Competition and Markets Authority and DG Competition consider introducing time limits for the process of negotiating commitments between competition authorities and dominant firms. Restricting the period for discussion of commitments should encourage parties to offer serious proposals at the outset and prevent them from delaying the process.**

202. **We also note that our proposal to provide DG Competition with market investigation powers would enable the Commission to identify and address market-wide problems more efficiently and comprehensively than its current sector inquiry tool. (See paragraph 134)**

295 Q 81 (Professor Daniel Zimmer)

CHAPTER 6: DATA PROTECTION LAW AND ONLINE PLATFORMS

203. The collection and use of personal data are key to the commercial success of many online platforms. BEUC, a Europe-wide consumer protection organisation, told us that "many of the mainstream consumer services provided by companies like Facebook and Google are based on 'for free' models, in which consumers are tracked and may be profiled as they surf the web in exchange for using the service."[296] Professor Ezrachi noted that "Data is the currency—the commodity—which provides us with 'free' access to many online services and products and an advanced Internet environment."[297]

204. David Alexander, Chief Executive of MyDex, said that it was possible to put a value on users' data: "If you are trying to value a tech start-up, the value of data is calculated to a very fine precision—$720 per person, per year is Google's estimate when they are talking to investors over time."[298]

205. The Information Commissioner's Office (ICO) noted that the "collection and use of personal data is becoming more central to the business model of the online platforms, particularly to drive personalisation and tailored services, also linked to more sophisticated behavioural advertising."[299] Mr Cohen, from Google, provided confirmation: "our annual turnover last year, 2014, was $66 billion. We derived 89 per cent of that income from advertising."[300]

206. The way in which personal data use is regulated will soon undergo a major overhaul: the Data Protection Directive, which regulates the processing of personal data, will be replaced by the General Data Protection Regulation in 2018.[301] This chapter asks to what extent these changes will address consumers' concerns about the collection and use of their personal data by online platforms.

Consumer concerns about personal data and online businesses

207. The way in which online platforms use consumers' personal data to generate revenues from advertising is complex and opaque, contributing to low consumer trust in online platforms. The Commission said: "only 22% of individuals have full trust in service providers such as search engines, social networking sites and e-mail services".[302] Citizens Advice told the Committee of "general unease" among consumers about how their personal data are collected and used online: "A recent survey of consumers … found that 69% describe the way companies use their data as 'creepy'".[303]

208. BEUC told us that "The misuse of personal data is perhaps the main source of concerns for consumers using platforms, particularly social networks.

296 Written evidence from BEUC (OPL0068)
297 Written evidence from Professor Aerial Ezrachi and Professor Maurice Stucke (OPL0043)
298 Q142 (David Alexander)
299 Supplementary written evidence from the Information Commissioner's Office (OPL0069)
300 Q 110 (Adam Cohen)
301 Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, (OJ L 281, 23 November 1995)
302 Commission Staff Working Document, A Digital Single Market for Europe : Analysis and Evidence, SWD(2015) 100 p 45
303 Written evidence from Citizens Advice (OPL0082)

This is confirmed by recent data showing that 70% of EU consumers are worried about how their data is being collected and processed."[304]

The collection of personal data

209. Skyscanner described the way in which online platforms could collect personal data without users being aware of it. An example of passive collection "would be where a user passively provides data via their web browser (e.g., their IP address) or the cookies that are placed on their device by the online platform, or through their incidental use of the online platform (i.e. what sections of the website did they access, at which point did they exit the website)."[305] The German Monopolies Commission noted that passively collected data were needed in order to facilitate the interaction between the user and the online platform. For instance: "when a website is visited, the IP address of the Internet connection is communicated, which makes it possible to approximately localise the user, but is also needed for communication between the web server and the web browser".[306]

210. At the same time, the Monopolies Commission recognised that passively collected data "may also reveal information on websites visited and on users' interests on the Internet". Such data may be "combined to form (anonymised) user profiles."[307]

211. The use of location tracking through online platforms, without consumers' consent, raised particular concerns. Professor Ezrachi told the Committee that an application for smartphones called Brightest Flashlight provided users with a flashlight app for free, but said that what many "did not know was that that application was tracking your location all the time, even when you were not using it, and that information was being sold to third parties as part of harvesting."[308] Professor Tom Rodden, Director of the Horizon Digital Economy Research Institute, said that Facebook collected personal data through location tracking, which "was recently blamed as [the] possible cause for large power drain in iPhones."[309]

212. Online platforms also collect data by scanning content without users being aware of this. Professor Rodden said: "Google scans content of Gmail", while "Facebook traces everything a user does, including messages that were deleted prior to posting".[310] Professor Clemons noted that "most consumers are unaware that any email sent to a Google account, and any message sent by text to a Google account, can be used by Google to profile the sender of that message." He said this was the case "even though the sender may not have a Google account, may not even have read Google's privacy policy, and surely has not agreed to Google's privacy policy".[311]

The use of personal data

213. Skyscanner told us that the personal data collected by online platforms are used in large part to deliver their services:

304 Written evidence from BEUC (OPL0068)
305 Written evidence from Skyscanner Limited (OPL0006)
306 Written evidence from Monopolkommission (OPL0046)
307 Written evidence from Monopolkommission (OPL0046)
308 Q 29 (Professor Ariel Ezrachi)
309 Written evidence from Professor Tom Rodden (OPL0074)
310 Written evidence from Professor Tom Rodden (OPL0074)
311 Written evidence from Professor Eric Clemons (OPL0071)

> "For many online platforms, the data collected will be used primarily to deliver the specific services or transactions being requested by the user (for example, the purchase of a product) or to better tailor those services for a particular user (for example, by recognising a users' geographic location and tailoring the language which the service is provided in as a result)."[312]

214. Online platforms also use personal data to make advertising more targeted. Michael Ross, Chief Executive of Dynamic Action, said when a consumer visited a retail website, the retailer would be "building profiles", based on "what you click on, how you behave and what marketing you are looking at." These profiles helped them "work out how they can target you with better offers and build a range [of services] that is more attractive to you." He described this as "a fantastic thing", because it helped retail businesses remain competitive.[313] Steve Chester, from the Internet Advertising Bureau, said: "advertisers will not be able to see who that person is or any personal details, but they are actually looking at passion points and interests and being able to sell advertising based on interest levels."[314]

215. However, some online platforms also sell the personal data they collect to third parties. Demos and Ipsos MORI said that in a qualitative survey of about 1,250 people, "while the majority of respondents were aware that advertising is targeted using their social media data (57% said this currently happens) … six in ten (60%) respondents felt that social media data should not be shared with third parties as happens currently under existing terms and conditions of social media sites."[315]

216. Mr Chester noted that the use of personal data by online platforms is hugely complex:

> "There is a whole supply chain here, from the advertiser who buys the advertising to the publisher who then sells it, which could be Facebook or Google, but there could be many businesses in between that transact various forms of data to make the advertising more targeted and relevant to the audience they are selling to. There may be just one broker, if you will, or there could be many in between, with each of them offering a different level of service."[316]

Dr Lynskey concluded that "Individuals are not data brokers", and could not be expected to understand "the multitude of daily transactions which take place online."[317]

Competition on the basis of privacy

217. Consumers' lack of awareness of how their personal data are collected and used means that there is limited competition between online platforms on the basis of privacy standards. The CMA said: "While, in theory, consumers should be able to discipline providers over the level of privacy or the extent to which data may be used … in practice, consumers may find it difficult

312 Written evidence from Skyscanner Limited (OPL0006)
313 Q 140 (Michael Ross)
314 Q 11 (Steve Chester)
315 Written evidence from the Centre for the Analysis of Social Media (CASM) at Demos and Ipsos MORI (OPL0065)
316 Q 12 (Steve Chester)
317 Written evidence from Dr Orla Lynskey (OPL0054)

because of a lack of awareness that data may be used for this purpose and/or the value of the data to the platforms."[318] The European Data Protection Supervisor, Mr Buttarelli, agreed that consumers "do not see privacy use as a barometer of product quality."[319]

218. For some, this lack of competition on the basis of privacy standards reflected the market power of some online platforms. The ICO was concerned about "how free people are to offer consent to use a market-dominant search engine, for example. Nobody has to use search engines or social media services, but in reality they are [the] first port of call for many who want to access or share Internet content."[320] Professor Zimmer went further and suggested that, where a platform had market power, "consent may be forced consent".[321] Dr Lynskey observed that "In reality, most content and services offered by online platforms are offered on a 'take it or leave it' basis."[322]

219. For Mr Chisholm, this lack of competition reflected the fact that consumers valued convenience over privacy: "if you look at the behaviour of consumers online, very often when given a choice between a bit more privacy and a bit more convenience, it is convenience that is chosen." The fact that "relatively few consumers" had explored browser settings, privacy dashboards or opt-out tools and ad-blocking suggested "that it is not a very large concern for people."[323] Mr Ross said that "the vast majority of consumers are very happy with their online experience. They do not really care". He added that if "you both understand and care, there is plenty you can do about it. You can use anonymous browsers and you can hide in a cave somewhere."[324]

220. Nonetheless, Mr Alexander said it was time for online platforms "to stop brushing the offer under the carpet … If somebody chooses to use a service like Hotmail, Gmail or any number of other services in which they receive value back—free services, free email, et cetera—the transparency of that offer is the issue."[325] The ICO agreed: "Platforms must find more effective means of explaining their complex information systems to 'ordinary' service users. This is important as transparency opens the way to the exercise of individuals' rights, and choice and control over their personal data."[326] The CMA noted that "pressure on consumers is only set to increase. Developments such as the Internet of Things—like online devices we wear or carry and devices in the home or in our cars—will mean that data is collected and shared on a regular basis without the consumer having to make a conscious decision."[327]

221. **Consumers agree to share their personal data with online platforms in exchange for access to their services. However, the complex ways in which online platforms collect and use personal data mean that the full extent of this agreement is not sufficiently understood by consumers. As a result, trust in how online platforms collect and use consumers' data is worryingly low and there is little incentive for online platforms to compete on privacy standards. We believe this**

318 Written evidence from the Competition and Markets Authority (OPL0055)
319 Q 53 (Giovanni Buttarelli)
320 Supplementary written evidence from the Information Commissioner's Office (OPL0069)
321 Q86 (Professor Daniel Zimmer)
322 Written evidence from Dr Orla Lynskey (OPL0054)
323 Q 47 (Alex Chisholm)
324 Q 138 (Michael Ross)
325 Q 142 (David Alexander)
326 Written evidence from the Information Commissioner's Office (OPL0016)
327 Written evidence from the Competition and Markets Authority (OPL0055)

presents a barrier to future growth of the digital economy. Online platforms must be more effective in explaining the terms of such agreements to consumers.

General Data Protection Regulation

222. The General Data Protection Regulation (GDPR), which was agreed on 15 December 2015, will substantially change how the collection and processing of personal data is regulated in the EU. The Commission noted that: "The existing Data Protection Directive (95/46/EC) was adopted in 1995 and, even if it remains sound as far as its objectives and principles are concerned, it has not kept pace with rapid technological and social developments in the digital world which have brought new challenges for the protection of personal data."[328] Steve Wood, from the ICO, confirmed that "there was a clear policy intention from the Commission at the outset, when it published the regulation … that it was designed to address some of the issues that have arisen because of the way online platforms collected personal data". In particular, it addressed controversy over the Safe Harbour agreement, which meant that many US based online platforms could transfer personal data to the US and not be subject to EU data protection rules.[329]

223. A description of the existing Data Protection Directive (implemented in domestic law by means of the Data Protection Act 1998) and the changes to be brought forward by the GDPR is given in Box 8.

Box 8: Comparing the Data Protection Act 1998 and General Data Protection Regulation (GDPR)

Under the Data Protection Act 1998, personal data are defined as "data which [relate] to a living individual who can be identified (a) from the data, or (b) from those data and other information which is in the possession of, or is likely to be in possession of, the data controller."[330] The GDPR will extend this definition to include data which are collected through online identifiers provided by their devices, applications, tools and protocols, such as Internet Protocol addresses and cookie identifiers.[331]

Both the Data Protection Act 1998 and the GDPR require personal data to be processed "fairly and lawfully", which normally requires the data controller to have obtained the data subject's "informed and freely given" consent. The GDPR will change the requirement to clear consent, which is considered to be given by a clear affirmative action which establishes a freely given, specific, informed and unambiguous indication of the data subject's agreement to personal data relating to him or her being processed.[332]

328 Commission Staff Working Document, A Digital Single Market for Europe: Analysis and Evidence, SWD(2015) 100 p 46

329 Q 137 (Steve Wood)

330 Information Commissioner's Office, *Guide to Data Protection* (February 2016) p 4: https://ico.org.uk/media/for-organisations/guide-to-data-protection-2-3.pdf [accessed 3 March 2016]

331 Bird and Bird, 'Agreement on general data protection regulation' (18 December 2015): http://www.twobirds.com/en/news/articles/2015/global/agreement-on-general-data-protection-regulation [accessed 24 March 2016]

332 Bird and Bird, 'Agreement on general data protection regulation' (18 December 2015): http://www.twobirds.com/en/news/articles/2015/global/agreement-on-general-data-protection-regulation [accessed 24 March 2016]

The GDPR will strengthen data subject rights through provisions mandating the portability of personal data and the right to erasure ('the right to be forgotten').

Whereas the Data Protection Directive only applied to data controllers established in the EU, the GDPR will apply to data controllers and processors established outside the EU, if their data processing activities relate to EU data subjects.

Source: Information Commissioner's Office, Guide to Data Protection (February 2016): https://ico.org.uk/media/for-organisations/guide-to-data-protection-2-3.pdf *(accessed on 13 April 2016)*

Extending the scope of the types of data covered by the Regulation

224. As outlined in Box 8, the GDPR will widen the definition of personal data to include online identifiers, device identifiers, cookie IDs and IP addresses. In this way, the Regulation encompasses aspects of the e-Privacy Directive (2002/58/EC), which was amended in 2009 to take into account data collection through cookies, traffic and location data.[333].

225. These reforms to the e-Privacy Directive introduced requirements for consumers to consent to the use of cookies on websites, an approach criticised by Mr Ross: "Personally, I think it has been an absolute disaster. Why is it a disaster? Virtually every customer just clicks 'Accept' when asked about being given cookies … The notion that this consent is informed is flawed."[334]

226. The ICO agreed that requesting consumers to consent to the collection of such data did "raise practical issues, as data collection increases, for example through connected devices in the Internet of things, as to how often users can be expected to interact with transparency and consent mechanisms." The ICO was "supportive of a risk based approach that would expect higher standards of transparency and more powerful choice mechanisms where the information is particularly sensitive, or where its use may be unexpected or particularly personally … objectionable".[335]

227. Other witnesses asked how this part of the Regulation related to the e-Privacy Directive, and how it would be applied to online platforms. Mr Buttarelli said the existing e-Privacy Directive focused "more on standard telecom providers and electronic communication services", and was hard to apply to platforms.[336] The ICO said the extent to which the e-Privacy and Data Protection Directive applied to online platforms had "been a contentious issue for many years and some online platform providers have argued that they are only processing 'pseudonymous personal data'—and should be subject to light touch regulation." However, the ICO considered "that search engines are data controllers and are processing personal data when, for example, they deliver name-based search results."[337] The ICO agreed that "passively-collected information can identify data subjects".[338]

228. **We welcome the wide range of reforms contained within the General Data Protection Regulation which will strengthen and modernise**

333 Bird and Bird, 'What is to be done with the e-Privacy Directive?: Part 2' (23 November 2015): http://www.twobirds.com/en/news/articles/2015/global/what-is-to-be-done-with-the-e-privacy-directive-part-2 [accessed 3 March 2016]
334 Q 138 (Michael Ross)
335 Supplementary written evidence from the Information Commissioner's Office (OPL0069)
336 Q 52 (Giovanni Buttarelli)
337 Written evidence from the Information Commissioner's Office (OPL0016)
338 Supplementary written evidence from the Information Commissioner's Office (OPL0069)

the EU data protection regime. This Regulation will expand the definition of personal data to include data collected through the use of cookies, location tracking and other identifiers, and will mean that the data protection regime will apply directly to online platforms established outside the EU for the first time.

229. **Nonetheless, given the limitations of the consent-based model, and industry's reluctance to make the mechanisms of consent more meaningful, we are concerned that the provisions that widen the definition of 'personal data' will be difficult to apply in practice. We recommend that the Commission investigate how the requirement for all businesses to seek consent for the collection of personal data through online identifiers, device identifiers, cookie IDs and IP addresses can be applied to online platforms in a practical and risk-based way.**

Privacy Notices

230. At present, most online platforms communicate information about how they collect and use personal data through privacy notices. The evidence suggested that few consumers read or fully understand privacy notices, which are normally embedded within a company's 'Terms and Conditions'. Citizens Advice said "approximately only a third of consumers' report that they read terms and conditions", but that "actually people are likely to be over-claiming"—according to the evidence of "actual time spent reading terms and conditions … the figure appears closer to 1%."[339] The German Monopolies Commission confirmed that "the collection of personal data without users' explicit consent is likely to be not the exception, but in fact the rule."[340]

231. One problem with privacy notices is their length. Steve Wood, from the ICO, described many privacy notices as being "longer than Hamlet",[341] while Professor Rodden said they were "as long as Othello"[342] and Mr Alexander said they were "longer than the Declaration of Independence".[343]

232. They are, though, much less readable. Professor Rodden highlighted research undertaken by Research Councils UK showing that the language of privacy notices was "overly complex and difficult to read", and that they were "written to be understood and used in [a] US court rather than by ordinary consumers."[344] A Eurobarometer survey found that, of those who did not fully read privacy statements, 67% found them too long, while 38% found them unclear or difficult to understand.[345]

Accessible Privacy notices

233. The ICO, the European Data Protection Supervisor and the CMA all said that online platforms had to improve the transparency of their privacy notices.[346] The Minister, the Rt. Hon. Ed Vaizey MP, agreed: "You get these

339 Written evidence from Citizens Advice (OPL0082)
340 Written evidence from Monopolkommission (OPL0046)
341 Q 14 (Steve Wood)
342 Written evidence from Professor Tom Rodden (OPL0074)
343 Q 138 (David Alexander)
344 Written evidence from Professor Tom Rodden (OPL0074)
345 European Commission, *Special Barometer 43, Data Protection Report* (June 2015): http://ec.europa.eu/public_opinion/archives/ebs/ebs_431_en.pdf [accessed 14 March 2016]
346 Q 137 (Steve Wood), Q 54 (Giovanni Buttarelli), Q 3 (Jason Freeman)

very complex terms and conditions. I signed up to some this morning, to an unnamed provider, on my tablet in order to update my software—I do not have a clue what I signed up to. People have to be told, partly by government and partly by consumer rights organisations".[347]

234. Mr Buttarelli told the Committee that the GDPR would ensure that "the quality of notices in the new framework will be verifiable by regulators", who would be able to object to unclear notices.[348] The ICO also said the GDPR would "open the possibility of stronger sanctions for the breach of the transparency provisions."[349] The GDPR provides for a maximum fine of €20 million or 4% of annual turnover in cases where an online platform fails to obtain explicit consent.

235. In order to address concerns about the length and accessibility of privacy notices, Professor Rodden recommended that privacy notices should be "supported by kite-marks", to identify online platforms meeting EU standards on the handling and processing of personal data.[350] Kite-marks would provide a visual symbol for consumers to quickly understand the implication of any agreement they may make regarding data protection when engaging with an online platform. Kite-marks have also been recommended by the House of Commons Science and Technology Committee in its report on *Responsible Use of Data*.[351] In order to create an incentive to foster competition, rather than just compliance, on the basis of privacy standards, such kite-marks should include a graded scale indicating levels of data protection, similar to the traffic light system used in labelling for food products.

236. The ICO said that the GDPR incorporated provisions for Data Protection Authorities to support privacy seal schemes or stamps of approval to demonstrate good privacy practices, "as a way of demonstrating data protection compliance", and that the Information Commissioner was "developing a privacy seal programme that will enable data controllers to apply for a seal." They said that this would work by allowing third party scheme operators to apply to the Information Commissioner for an endorsement that would enable them to use the seal. The Information Commissioner launched a call for applications in 2015 and expects the first scheme to be formally launched sometime in 2016.[352]

237. **The privacy notices used by online platforms are inaccessible to the average consumer. They are too long and expressed in complex language. While the General Data Protection Regulation will require more transparency in privacy notices, and introduce heftier fines for non-compliance, this alone may not be sufficient to make consumers understand the value of their data when transacting with online platforms.**

238. **We support provisions within the General Data Protection Regulation to allow organisations to use privacy seals, or kite-marks, to give consumers confidence that they comply with data protection rules.**

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347 Q 189 (Ed Vaizey MP)
348 Q 56 (Giovanni Buttarelli)
349 Supplementary written evidence from the Information Commissioner's Office (OPL0069)
350 Written evidence from Professor Tom Rodden (OPL0074)
351 Science and Technology Committee, *Responsible Use of Data* (Fourth Report Session 2014–15 HC 245)
352 Written evidence from the Information Commissioner's Office (OPL0016)

239. **In order to encourage competition on privacy standards, not just compliance with the law, we recommend that the Government and the Information Commissioner's Office work with the European Commission to develop a kite-mark or privacy seal that incorporates a graded scale or traffic light system, similar to that used in food labelling, which can be used on all websites and applications that collect and process the personal data of EU citizens.**

Notifying users of abuse

240. While there is a growing acceptance that kite-marks or the development of other standards will be necessary to incentivise competition on privacy, we suggest that equivalent action should also be taken to communicate abuse of data protection rules to users more clearly. Professor Ezrachi told us that, although Google argued that it must "maintain quality because it is such a competitive market that it will lose its position", that was not obviously the case when it came to data protection. He continued: "there have been cases where it has had to pay fines in the US for misleading users over privacy and use of data. That did not affect its dominance. Unfortunately, we are not very sophisticated users when we use those websites; we just click something and assume that everything will be okay."[353]

241. Moreover, reputation is critically important to online platforms, so requiring platforms to communicate this information directly to their users through the platform itself would potentially be an effective way to deter abuse. A range of witnesses elaborated on the importance of reputation in these markets. Mr Berthet, from the French Digital Council, said: "As the information society grows, trust and reputation become a bigger part of the equation. When competition is supposedly just a click away, reputation is very important for online platforms."[354] Mr Freeman, from the CMA, also suggested that "commercial reputation … exercises constraint" on platforms.[355] The Information Technology and Innovation Foundation (ITIF) suggested that platforms were effectively "regulated by market competition and public reputation".[356]

242. **To discourage misuse of users' personal data, we recommend that the European Commission reserve powers to require online platforms that are found to have breached EU data protection standards, or to have breached competition law by degrading privacy standards, to communicate this information clearly and directly to all of their users within the EU through notifications on their web-sites and mobile applications. We suggest that this power be used sparingly, for repeat offenders or particularly egregious breaches of the law.**

Improving control over personal data

243. The Commission said the GDPR would "equip individuals with a new set of rights fit for the digital age, such as the 'right to be forgotten', the right to data portability and the right to be notified when the security of personal data is breached."[357] These provisions respond to demands from consumers

353 Q29 (Professor Aerial Ezrachi)
354 Q63 (Charly Berthet)
355 Q9 (Jason Freeman)
356 Written evidence from the Information Technology and Innovation Foundation (OPL0076)
357 Communication from the Commission, A Digital Single Market Strategy for Europe, COM(2015) 192 p 11

to have more control over their personal data. Citizens Advice said previous research from Demos in 2012 found that 70% of consumers "would be more willing to share data if they had the ability to withdraw it and see what data was held on them."[358] In its report, *The commercial use of consumer data*, the CMA recommended more "control over how the data is used subsequently—so that consumers can manage the data they are sharing and choose how much, if any, data to share."[359]

Data Portability

244. Mr Alexander told us that data portability was particularly important in order to drive competition and enable consumers to switch to different providers: "if individuals themselves do not have the ability to move those around to different platforms, so that they can apply and share their browsing experience or their purchasing history with other platforms—it makes it incredibly hard for them to find new service providers."[360] Professor Zimmer described a situation in which an acquaintance's phone was damaged when he rescued a child from a swimming pool, and he subsequently "wanted to switch to another phone brand using different software". He therefore wanted "to get to his backup address book and to take the addresses with him. That was denied to him, so he bought another phone from the same producer."[361]

245. Google said they supported "portability of data to promote user choice and switching" through their Google Takeout service which "allows users to download their data … and move them across to another service."[362] Jon Steinberg, of Google, said: "we know that millions of users have used this service in the past year."[363]

246. However, data portability raises complex questions about data ownership. Mr Chisholm said that when "getting your phone record from your service provider you would not think twice about your right to be able to ask for and get it. You would think, 'It's my data and I should be able to get it'". It was more complicated dealing with an online marketplace, because "your online reputation and profile are not just your data; that data reflects a lot of other user feedback on you that has been generated solely through that marketplace and by others … the sense that that is your data to be able to take somewhere else becomes more arguable."[364] Mr Alexander agreed that data portability was "a minefield, particularly with things like Facebook's download, where you are downloading posts and comments made by other people".[365]

247. For data portability to work in practice the data need to be downloaded in a standardised and reusable format. In relation to Google's TakeOut service, Mr Alexander told us: "At best, the terms and conditions allow you to download data on to a hard disk. I cannot imagine that 95% of the population is even vaguely interested in downloading into a CSV file format on to a hard disk."[366] However, Mr Steinberg said that creating a standard for sharing

358 Written evidence from Citizens Advice (OPL0082)
359 Written evidence from the Competition and Markets Authority (OPL0055)
360 Q 137 (David Alexander)
361 Q82 (Professor Daniel Zimmer)
362 Written evidence from Google Inc. (OPL0017)
363 Q 117 (Jon Steinberg)
364 Q 49 (Alex Chisholm)
365 Q 140 (David Alexander)
366 Q 139 (David Alexander)

data risked creating barriers for new platforms entering the market: "We … want new service providers to be able to come up with new ideas, new forms of technology, and new forms of innovation and business models that should not be hampered unnecessarily by a requirement from the beginning to be able to integrate very easily with pre-existing technology."[367]

248. **Data portability could be one of the most significant changes brought in under the General Data Protection Regulation. It could promote quality-based competition and innovation by making it easier for consumers to switch platforms. This would facilitate the emergence of new market entrants.**

249. **However, we are concerned that the principle of data portability may unravel in practice. If applied too rigidly, it could place onerous obligations on emerging businesses; however, unless it is more clearly defined, it is unlikely that it will be implemented by many online platforms.**

250. **We recommend that the Commission publish guidelines explaining how data portability requirements apply to different types of online platform. These guidelines should match data portability requirements to different types of online platform, adopting a proportionate approach depending on the essentiality of the service in question.**

Experiments using personal data on social networks

251. Mr French, from the Digital Catapult, noted that online platforms "carry out research using personal data into the effects of their services on individuals' behaviours and habits". In so doing, and regardless of the impact upon consumers, "the online platform has total autonomy over the purposes and means and no obligation of transparency."[368]

252. Joe McNamee, from European Digital Rights (EDRi), referred to an experiment Facebook conducted for one week in 2012, which altered users' news feeds to see how the change affected their mood. Researchers studied whether positive or negative words in messages read by users determined whether they then posted positive or negative content in their status updates. Mr McNamee told us that "Facebook did this on the basis of a phrase in its 9,000-plus-word terms of service that states the company can use the data for research purposes."[369] Dr Koene mentioned another Facebook experiment, during the 2012 US presidential election, "which showed that people who had been notified when their friends mentioned that they'd just voted were significantly more likely to have also voted during the election."[370]

253. Demos and Ipsos MORI recommended the urgent introduction of new guidelines for the use of social media data for research:

> "Government could play a larger role in helping to incentivise companies and institutions to develop and adopt appropriate industry standard regulation … [by] encouraging wider membership of the Market Research Society, encouraging more binding expectations through the

367 Q 118 (Jon Steinberg)
368 Written evidence from Richard French (OPL0084)
369 Q 3 (Joe McNamee)
370 Written evidence from Dr Ansgar Koene (OPL0079)

Information Commissioner, or establishing a task force for developing government approved best practice for social media research."[371]

254. **The use of personal data as the basis of research, particularly on social media, goes beyond what most users would ordinarily expect or consider acceptable. We recommend that the Government and Information Commissioner's Office publish guidelines in the next 12 months setting out best practice for research using personal data gathered through social media platforms.**

Implementing the General Data Protection Regulation

Engagement between industry and regulators

255. Yahoo expressed concern about the impact of the GDPR on the competitiveness of European digital firms, telling us that "expanding the definition of personal data", and "narrowing the permitted legal bases for lawful processing", as well as introducing "an enhanced role for national data protection authorities … and vastly increased sanction powers", could lead to "a significant (and rather more negative) impact on digital investment in the EU."[372] The Information Technology and Innovation Foundation (ITIF) said: "It is likely that the proposed General Data Protection Regulation will, if enacted and implemented, dramatically further reduce the competitiveness of the European digital economy".[373]

256. Regulators, on the other hand, were clear that success of the GDPR depended on industry taking more responsibility. Mr Buttarelli said the GDPR would lead to a shift from "a basic system articulated on a to-do list, where I check what I should do in terms of privacy", to asking the data controller "to translate into practice existing principles, to allocate responsibilities, to better define roles and to document and demonstrate that I am proactive on the data protection policy".[374] Mr Chisholm noted that data controllers would have to engage in "an active conversation with consumers … an ongoing dialogue."[375]

257. Mr Buttarelli suggested that these changes had yet to be fully understood by industry: "As far as I know, a message has not been passed to designers and developers … that 'privacy by design' and 'privacy by default' are not simply recommendations but legal requirements … They still believe, as was the case in 1995, that there is a space for last-minute changes to water down the existing safeguards."[376]

258. **In the past, online platforms established outside the EU were not subject to European data protection rules. This resulted in a weak data protection regime in which European citizens' fundamental rights were breached, and reduced consumer trust in how online platforms collect and process personal data. We are therefore concerned that industry remains sceptical about the forthcoming General Data Protection Regulation. Online platforms must accept**

371 Written evidence from Centre for Analysis of Social Media (CASM) at Demos and Ipsos MORI (OPL0065)
372 Written evidence from Yahoo (OPL0042)
373 Written evidence from the Information Technology and Innovation Foundation (OPL0076)
374 Q 53 (Giovanni Buttarelli)
375 Q 47 (Alex Chisholm)
376 Q 53 (Giovanni Buttarelli)

that the Regulation will apply to them and will be enforced, and prepare to make the necessary adaptations.

259. **We urge the Commission, the Government, regulators and industry to use the time before the Regulation enters into force to ensure that its terms are well understood and effectively implemented.**

CHAPTER 7: CONSUMER PROTECTION AND ONLINE PLATFORMS

260. This chapter focuses on two key consumer protection issues. First, we consider how existing consumer protection law applies to consumer-to-consumer transactions that are facilitated by online platforms. Second, we ask whether online platforms are sufficiently transparent in how they present information, such as search results or ratings and reviews, to consumers.

Consumer-to-consumer transactions

261. The Commission's Digital Single Market Strategy said that "the only direct interface for users of e-commerce platforms is often in practice the platform itself … a user may consequently be under the false impression that the platform is the supplier, whereas in fact the user's real counterparty is a private individual." This distinction is important because in such cases "users will not have the benefit of protection under EU consumer rules, as this legislation only applies to contracts between businesses and consumers".[377] Citizens Advice agreed that consumer rights were "limited" in such cases, because consumer protection rights were introduced "at a time when such transactions were face to face, small-scale, informal and unmediated—the ad hoc seller in the local pub."[378]

262. Box 9 outlines the relevant consumer protection law in the UK and EU.

Box 9: Consumers and Traders in Consumer Protection Law

Articles 4(2)(f), 12, 114 and 169 of the Treaty of the Functioning of the European Union (TFEU) provide the legal basis for EU legislation on consumer protection. Consumer protection is a shared competence between the EU and Member States, and EU law provides a common basic level of protection to all consumers.[379]

There are approximately 90 Directives relating to consumer protection issues in the EU. This legislation covers a wide range of sectors from product safety and financial services to food safety and labelling. This body of legislation is referred to as the "consumer protection *acquis*".[380]

377 Commission Staff Working Document, A Digital Single Market for Europe: Analysis and Evidence, SWD(2015) 100 p 54

378 Written evidence from Citizens Advice (OPL082)

379 European Parliamentary Research Service, *Consumer Protection in the EU: Policy Overview* (September 2015) p 3: http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/565904/EPRS_IDA(2015)565904_EN.pdf [accessed 15 March 2016]

380 European Parliamentary Research Service, Consumer Protection in the EU: Policy Overview (September 2015) p 5: http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/565904/EPRS_IDA(2015)565904_EN.pdf [accessed 15 March 2016]

This body of legislation concerns contracts and consumer notices between a consumer and a trader.[381] There is not one shared definition of a consumer in all Member States. In the UK Consumer Rights Act 2015 defines a consumer as "an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession".[382] The Act defines a trader as "a person acting for purposes relating to that person's trade, business, craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf."[383]

263. We heard that online platforms had fundamentally challenged the distinction between consumer and trader upon which the consumer protection *acquis* was based. Citizens Advice said: "the idea of a 'trader' itself is now hard to define."[384] The CMA agreed that "the current definitions of 'trader' and 'consumer' may be in need of revision."[385] *Which?* said: "we do not believe that applying existing legislation will necessarily be effective as these online platforms often operate differently through the C2C (consumer-to-consumer) lens".[386]

264. The result, according to the CMA, was a "lack of clarity and certainty as to the legal relationship between users, and the legal relationship between platforms and their users". This was problematic in instances "when something goes wrong, for example when a purchased product does not arrive, when there are surprising charges imposed, or when rogue actors are using a platform."[387]

265. Collaborative economy platforms argued that they dealt effectively with consumer protection problems. Patrick Robinson, from Airbnb, said Airbnb employed around 450 people, "schooled in 22 European languages", who were on call around the clock. While Airbnb encouraged users "to resolve things with their hosts when they check-in", if this was unsuccessful they had a refund guarantee. He accepted that "consumer-to-consumer models present unique challenges in terms of redress", but denied that there was "a gap in the law." Instead he said it was important to "identify whether there is a problem that needs to be filled by regulation."[388] Etsy, an online marketplace for crafts, had similar processes in place to handle disputes between buyers and sellers.[389]

266. First Tutors said that it effectively had "to act as a trading standards mediator to try and seek resolution between tutors and clients on occasion". They said they had "an obvious incentive to take on some responsibility for ensuring the services [which] we introduce run smoothly because it directly affects our reputation", and concluded that further regulation was therefore unnecessary. [390]

267. Mark McGann, Uber's Head of Public Policy in Europe, said that "technology really has stepped in and taken on much of the burden with

381 House of Commons Library, Consumer Rights Act 2015, Briefing Paper, SN 6588 October 2015, p 4
382 Consumer Rights Act 2015, section 2
383 Consumer Rights Act 2015, section 2
384 Written evidence from Citizens Advice (OPL0082)
385 Written evidence from the Competition and Markets Authority (OPL0055)
386 Written evidence from *Which?* (OPL0090)
387 Written evidence from the Competition and Markets Authority (OPL0055)
388 Q 165 (Patrick Robinson)
389 Written evidence from Etsy (OPL0063)
390 Written evidence from First Tutors Edunation Ltd (OPL0020)

regard to consumer protection", through rating and review systems.[391] *Which?* said that while collaborative economy platforms "may disturb the basis upon which existing services are provided, it is not obvious that this suggests any material shortfall in the nature or extent of regulatory protections … in some cases, the new models look to significantly improve protection for consumers".[392]

268. However, the Citizens Advice report *Peer problems: an assessment of the consumer experience of online marketplaces* found that 14% of those who responded to their poll, "were unable to resolve their most recent problem" in relation to a good or service purchased online. Citizens Advice said that "less than half of people know that they have fewer rights when buying from an individual than from a business." Their findings raised "the question of how traditional consumer rights could be translated into an approach that works in the peer to peer economy." Citizens Advice therefore recommended that the Law Commission "review the law covering consumer to consumer transactions, including reviewing the definition of a 'business' or 'trader' and the protections consumers enjoy in consumer to consumer transactions."[393]

269. While the CMA recognised that "Technological advances may have made certain aspects of existing regulation less necessary". Nonetheless, they also considered that "some specific improvements are possible around platform liability, clarifying responsibilities between the platform and the seller". In particular, they believed that online platforms should supervise their users and ensure they were able to comply with consumer protection law. They also recommended more clarity about whether an online platform had to co-operate with authorities if there were allegations about the malpractice of a trader and whether it was appropriate to hold a "platform to account for infringements by its business users". Such clarity was needed "in order that users can be confident of their rights and maintain trust in the market."[394]

270. Claire Bury, from DG Grow, agreed that there was scope to clarify the EU rules that apply to the collaborative economy in the area of consumer law, citing in particular the Unfair Commercial Practices Directive, the Unfair Contract Terms Directive and the Consumer Rights Directive. The Commission was keen to "look at where there might be regulatory gaps and how they can be addressed".[395]

271. **Some online platforms take consumer protection issues seriously and dedicate significant business resources to addressing problems as and when they arise.**

272. **Nonetheless, the growth of online platforms and the collaborative economy raise important questions about the definitions of 'consumer' and 'trader', which form the cornerstone of consumer protection law. This creates uncertainty about the liability of online platforms and their users in instances where consumer protection concerns may arise.**

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391 Q 165 (Mark McGann)
392 Written evidence from *Which?* (OPL0090)
393 Written evidence from Citizens Advice (OPL0082)
394 Written evidence from the Competition and Markets Authority (OPL0055)
395 Q 107 (Claire Bury), Directive on Unfair Commercial Practices 2005/29/EC (OJ L 149, 11 November 2005), Directive on unfair terms in consumer contracts 1993/13/EEC, (OJ L 095, 21 April 1993) and the Directive on Consumer Rights 2011/83/EU (OJ L304, 22 November 2011, p 64)

273. **We recommend that the Commission and the Government review the use of these definitions within the consumer protection *acquis* in order to determine whether gaps in legislation exist and if legislative change is needed. The Commission should also publish guidance about the liability of online platforms on consumer protection issues in relation to their users, including their trading partners.**

274. **We also recommend that online platforms clearly inform consumers that their protection under consumer protection law may be reduced when purchasing a good or service from an individual, as opposed to a registered trader.**

Transparency in how online platforms present information

275. The provisions of the Unfair Commercial Practices Directive are outlined in Box 10.

Box 10: Unfair Commercial Practices Directive

The Unfair Commercial Practices Directive, implemented by the Consumer Protection from Unfair Trading Regulations (CPRs) 2008 in the UK, applies to any act, omission and other conduct by businesses directly connected to the promotion, sale or supply of a product to or from consumers. The CMA said that these Consumer Protection Regulations (CPRs) prohibited

- misleading actions (where information is false or deceptive);
- misleading omissions (where information the average consumer needs is left out, provided unclearly or is hard to find); and
- aggressive practices (where the consumer is put under unfair pressure to make a decision).

According to guidance published by the Office of Fair Trading in 2008, a practice is unfair if it materially distorts or is likely to materially distort the economic behaviour of the average consumer—for instance, if the practice made it more likely that the average consumer would buy a product they would not otherwise have bought.

Source: Office of Fair Trading, Guidance on the UK Regulations implementing the Unfair Commercial Practices Directive (May 2008) p 8–10: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284442/oft1008.pdf *[accessed 15 March 2016]*

Transparency in search results

276. In its Digital Single Market Strategy the Commission said there was a risk that when consumers used search engines they "may not be able to distinguish between organic and paid-for search results." It argued that the lack of transparency in search results extended to consumers' understanding of the "approach taken to 'rank' (order) results or to select pricing information", as well as to how this related "to the underlying business model of the service provider."[396] *Which?* agreed that there were concerns over whether "the basis upon which … search results were generated is clear to the consumer". It said it was important for consumers to know whether search results were "influenced by promotional spending on the part of sellers (to make their

396 Commission Staff Working Document, A Digital Single Market for Europe: Analysis and Evidence, SWD(2015) 100 p 54

offer more prominent)", or "affected by information about the consumer in ways that the consumer would not reasonably have been able to expect."[397]

277. The hotel chain that submitted evidence anonymously was concerned about a mismatch between how online travel agents (OTAs) presented search results, and consumers' expectations. They said that 82% of consumers used OTAs in order "to get the lowest price". However, they noted that OTAs "do not sort hotel search results by price by default". Instead, "hotels are told the more commission they pay, the higher they will appear in the sort results"—the sort order "is entirely shaped by commercial factors". These factors were "not made clear to the consumer", and consumers "will rarely alter the default search on a website (ie, from the 'our favourites' or 'recommended' option'").[398]

278. Similar concerns were raised in relation to insurance price comparison websites. Mr Alexander told us that when his 80-year-old mother "put exactly the same information into three comparison sites [she received] five different answers." It was not clear to her that they were "tied houses", meaning that the price comparison websites had links or contracts with specific insurance companies to whose offers they directed customers. Mr Alexander said that for the "average person in the street", such practices were "unreasonable and unfair".[399]

279. Regulators agreed that the practices of price comparison websites were unclear to consumers. Ms Bury, from DG Grow, said that the Commission's recent research on comparison tools showed that: "Out of more than 1,000 comparison tools that we looked at, less than 40% of them were providing a description of their business model and only 37% were providing an indication of the relationship with the providers that they compare."[400] Mr Chisholm agreed that "the transparency of the business model to the user is very important".[401]

280. Skyscanner recommended that price comparison platforms disclose "their business structure in order for consumers to fully understand the company that they are dealing with and the method of remuneration of an online platform."[402] Dr Plodowski agreed: "A clear graphic should be created for each digital platform to show the network of relationships it mediates in its business model, and [be] displayed on an easily accessible and explicitly named page on the website."[403]

Disclosing the basis of algorithms to improve transparency

281. Witnesses were asked whether requiring online platforms to disclose their algorithms would improve the overall transparency of search results.

282. *Which?* said such a move "would seem an extremely heavy handed, and very likely unjustified, intervention."[404] Professors Broughton and Tambini said that forcing online platforms to disclose their algorithms would raise

397 Written evidence from *Which?* (OPL0090)
398 Written evidence from anonymous witness (OPL0086)
399 Q 138 (David Alexander)
400 Q 99 (Claire Bury)
401 Q 46 (Alex Chisholm)
402 Written evidence from Skyscanner Limited (OPL0006)
403 Written evidence from Dr Anna Plodowski (OPL0088)
404 Written evidence from *Which?* (OPL0090)

numerous practical difficulties: "Google estimated it carries out up to 20,000 experiments of changes in its search algorithms with 585 launching permanently. Would platforms be required to update regulators each time one of these changes was made?" They also raised concerns about how policymakers would "gain and maintain the technical literacy to understand the content and implications of often very complex algorithms and computer software". Finally, they highlighted the "commercial sensitivities" of disclosing information relating to algorithms, which would normally be considered the intellectual property of online platforms, and the risk that disclosing this information could lead to the "gaming" of algorithms.[405]

283. As an alternative, witnesses proposed that online platforms be more explicit about the aims and intentions of the algorithms powering their search results. Mr Alexander argued for transparency that would allow regulators to "audit algorithms for delivering the outcome they were intended to deliver". Achieving this would require greater transparency regarding the types of data used by the algorithm ("input parameters") and transparency regarding the "corporate objective of the algorithm".[406] Professors Broughton and Tambini recommended that online platforms should "be required to inform regulators about the broad guidelines governing information prioritization and agree to abide by codes of conduct".[407] The British Hospitality Association said improved transparency was required in order to assist regulators in "identifying and combatting these effects in the online environment", and "to enable regulators to assess whether they have at their disposal adequate tools to address the potentially harmful effects of these practices".[408]

284. Mr Cohen, of Google, told us: "We have been dealing for some time with a perception that Google is a black box and that there is this magical algorithm that spits out a fantastic search result." Google recognised "that helping people understand how your services work increases confidence in those services, and people are more inclined to use them in an educated and informed way."[409] Mr Cohen also said that over the last five years Google had built internal education pages to explain to its users how search results are derived and how their algorithms work. As an example of Google's commitment to transparency, Mr Cohen explained that when Google recently decided to change their algorithms for searches on mobile phones to prioritise websites structured to appear better on mobile devices, Google communicated this change to its users and "helped websites adapt so that their sites were better for mobile devices". Ensuring the right level of transparency was "a balance" and he added that "we are constantly playing with it to figure out where exactly it works best."[410]

285. **Concerns about the lack of transparency in how search and meta-search results are presented to consumers are well founded, especially in relation to price comparison websites, where the results of a search may be based on a commercial deal between the website and a business, rather than on the best possible price. However, we do not believe that this problem should be addressed by requiring online platforms to disclose their algorithms, which are their intellectual**

405 Written evidence from Sally Broughton Micova and Damien Tambini (OPL0053)
406 Q144 (David Alexander)
407 Written evidence from Sally Broughton Micova and Damien Tambini (OPL0053)
408 Written evidence from the British Hospitality Association (OPL0023)
409 Q113 (Adam Cohen)
410 Q114 (Adam Cohen)

property. Instead, we believe that these concerns should be addressed through increased transparency.

286. **We recommend that the Commission amend the Unfair Consumer Practices Directive so that online platforms that rank information and provide search and specialised results are required to clearly explain on their website the basis upon which they rank search results. We also recommend that the Commission amend the Directive to require online platforms to provide a clear explanation of their business models and relationships with suppliers, which should also be prominently displayed on their websites.**

Personalised pricing

287. *Which?* raised a further concern, around so-called 'personalised pricing', whereby online platforms use "information provided by or revealed by the consumer" to determine prices.[411] Professor Eric Clemons and the German Monopolies Commission also expressed concerns that online platforms' use of personalised pricing was not transparent to the consumer.[412]

288. Professor Ezrachi outlined how online platforms could use personal data to personalise pricing in a particularly effective way: "If you are likely to spend more, you will just have to pay the display price, but if they know that you have some reservations—if your history, the data that were gathered on you, indicates not … you will immediately also get a coupon."[413] He believed the practice warranted greater attention, as it was likely to lead to "the transfer of wealth from the pockets of consumers to the pockets of operators".[414]

289. In contrast, Professor Langlois said that "in most circumstances, price discrimination is economically efficient, since it encourages sellers to serve customers they would not otherwise be willing to serve; but those who are charged a higher price because they have a higher willingness to pay are seldom pleased to see others pay less." Professor Langlois continued:

> "Price discrimination is common and important in platform markets, because the services platforms provide often require high fixed costs but yield low (or even zero) marginal costs … Price discrimination, often in the form of multi-par tariffs, is a way to pay those fixed costs, and thus to provide a platform service that would not otherwise be profitable."[415]

290. Patrick Misener, Global Vice President of Amazon, told us that fifteen years ago Amazon conducted random price testing by giving different prices for several dozen DVDs: "we were serving up discounts of anywhere between 20 per cent and 40 per cent and observing how consumers behaved: where they bought, where they did not". Amazon did this over a five-day period, until it was discovered by two professors monitoring eBay variable pricing and using Amazon as the fixed price with which to compare it. They found when they signed in with different accounts, they got different prices and so "not unreasonably, they assumed that we were serving up different prices based on the demographic information that we had about our customers." He told us that Amazon "will never use demographic information to price. We will

411 Written evidence from *Which?* (OPL0090)
412 Written evidence from Professor Eric Clemons (OPL0071) and the Monopolkommission (OPL0046)
413 Q 26 (Professor Aerial Ezrachi)
414 Q 24 (Professor Aerial Ezrachi)
415 Written evidence from Professor Richard Langlois (OPL0073)

not use purchase history or whatever other assumptions. We will not do that and never have … In the case of this random price test, there is no other word for it than stupid … We have not done it since. It was just dumb."[416]

291. **We note concerns that online platforms can and do engage in personalised pricing, using personal data about consumers to determine an individual price for a particular good or service, without clearly communicating this to consumers. This is another worrying example of the lack of transparency with which some online platforms operate. We recommend that DG Competition build on the work of the Office of Fair Trading and investigate the prevalence and effects of personalised pricing in these markets. We also recommend that online platforms be required to inform consumers if they engage in personalised pricing.**

Ratings and reviews

292. Witnesses described the benefits of rating and review systems used by online platforms. TechUK said that the CMA "estimates that more than half of UK adults (54%) use online reviews", and that "most buyers find that the product or service they have bought after researching it online matches their expectations".[417] Mr Misener compared the information provided to consumers through ratings and reviews with conventional high street retailers: "What happens if I walk into a high street store and buy a sweater or a cardigan? I take it home, I wear it and it starts to get holes in it. I take it and wash it, and the dye runs out. May I write a bad review of that sweater, walk into the high street store and put it on the shelf? Absolutely not."[418]

293. Such reviews are critical to the functioning of collaborative economy platforms. Airbnb said peer-to-peer reviews were "Core to the experience of travelling on Airbnb … These kinds of mechanisms have become hugely powerful ways of regulating quality in marketplaces".[419] Mr McGann, of Uber, said the peer review system, whereby "every time you take a trip, you rate the performance of the person who has driven you, and the drivers rate the customer", meant that there was "constant monitoring and momentum of better customer service, which is again very transparent."[420]

294. However, concerns were raised about the integrity of rating and review systems used by online platforms. The CMA, *Which?* and Citizens Advice said they all had evidence of rating and review systems being misused. The CMA said that it found evidence of "fake reviews being posted on review sites, negative reviews not being published and businesses paying for endorsements without this being made clear to consumers."[421] *Which?* told us that "Different platforms have extremely different systems of reviews, and some seem inherently better than others.[422]"

295. EU VAT Action said that "Online reviews … are rarely checked for validity", and that "review systems are frequently abused."[423] The Bed and Breakfast

416 Q172 (Paul Misener)
417 Written evidence from TechUK (OPL0056)
418 Q 175 (Paul Misener)
419 Written evidence from Airbnb (OPL0061)
420 Q 161 (Mark McGann)
421 Written evidence from the Competition and Markets Authority (OPL0055)
422 Written evidence from *Which?* (OPL0090)
423 Written evidence from EU VAT Action Campaign (OPL0015)

Association said OTAs did not "check their 'reviews' were written by someone who actually booked the accommodation reviewed"; the fact that reviewers often "remain anonymous" meant that "consumers are being misled, and businesses often unfairly disadvantaged, as a result."[424] The British Hospitality Association was concerned that "customer reviews on websites, such as TripAdvisor … frequently give no right of reply to the establishment reviewed."[425]

296. TripAdvisor acknowledged that "Fake or misleading reviews exist", but described the issue as "overblown". They had a "fraud investigation team", which "tracks each review that we know has been submitted by an optimisation company to identify other clients". As a result they had closed down "more than 30 optimisation sites" in 2015. They also imposed "strong penalties on business owners engaged in fraudulent activity, including reducing their popularity ranking and posting a large red penalty notice on our site explaining that the property's reviews are suspicious."[426] Airbnb said that, as well as ensuring that only those who stayed at the property were able to leave reviews, it had introduced "a process of 'double blind' reviews where neither side gets to see the review before it is published—thus incentivising even greater levels of candour and honesty."[427]

297. *Which?* recommended that all ratings and review systems used by online platforms should include measures for "fair handling of negative reviews, and appropriate safeguards against these being suppressed in any way", and added that there should be "clear distinctions between user reviews and any form of paid for promotions."[428]

298. Mr Rossoglou, from the online reviews platform Yelp, said that the existing consumer protection *acquis* already required a degree of transparency. He believed that all the problems described in relation to use of rating and review systems were covered by the Unfair Commercial Practices Directive.[429]

299. **The rating and review systems used by online platforms are instrumental in creating the trust necessary for consumers to engage in online transactions. To ensure transparency, however, we believe that all online platforms should have publicly accessible policies for handling negative reviews, and clearly distinguish between user reviews and paid-for promotions. We recommend that the Commission publish guidance clarifying how the Unfair Commercial Practices Directive applies to the rating and review systems used by online platforms.**

424 Written evidence from the Bed and Breakfast Association (OPL0080)
425 Written evidence from the British Hospitality Association (OPL0023)
426 Written evidence from TripAdvisor (OPL0085)
427 Written evidence from Airbnb (OPL0062)
428 Written evidence from *Which?* (OPL0090)
429 Q133 (Kostas Rossoglou)

CHAPTER 8: HOW TO GROW EUROPEAN PLATFORMS

300. As we noted in Chapter 2, platforms are key drivers of productivity and growth in the wider economy. TechUK said "'Platforms' are a value-driver in the UK and EU economy", and added that they "increased productivity, job creation and economic growth".[430] Professor Annabelle Gawer noted that 70% of all privately funded start-ups valued at over $1bn were digital platforms, and concluded: "it is fair to say that digital platforms are an essential part of our future economic growth."[431] Skyscanner said: "The Internet, and online platforms, will play a hugely significant role in the future financial stability of Europe."[432]

301. For these reasons, industry voices suggested that, instead of focusing on concerns about platforms, policymakers should seek to foster their emergence and growth. In the words of TechUK: "a key focus of the European Commission in the Digital Single Market should be on enabling platforms to emerge and thrive in the UK and in Europe … the European Commission should be clear that it welcomes investment and innovation in new digital platforms".[433] Skyscape suggested that the Commission "refocuses effort to look at how it can nurture and grow native European online platform providers into global presences that can genuinely compete with the US giants."[434] Skyscanner agreed that the policy debate should address ways "to make the most of the future opportunities" for platforms.[435]

302. **European policymakers should not allow concerns about online platforms to obscure the fact that they are key drivers of competitiveness, productivity and growth. It is important that Europe develop its ability to compete in these markets. We therefore urge the European Commission, as part of its current and future work on online platforms, to prioritise actions that promote the emergence and growth of online platforms in Europe.**

The UK's strengths

303. We heard that the UK led the EU-28 in the development of online platforms in financial services, also known as FinTech, and in e-commerce. Antony Walker, from TechUK said: "With FinTech, the UK now clearly [is] a world leader, with its combination of technology expertise and expertise in financial services coming together."[436] Google told us that "The UK excels at this type of e-commerce and export. OC&C [Strategy Consultants] found that the UK has an e-trade surplus of over $1billion. There are UK e-commerce companies successfully selling into foreign markets like Asos, Net-a-Porter and Burberry."[437]

304. Richard French, Legal Director at Digital Catapult, explained the UK's strength by referring to "the level of technological adoption in this country—for example, the number of smartphones in circulation or the number of

430 Written evidence from TechUK (OPL0056)
431 Written evidence from Professor Annabelle Gawer (OPL0050)
432 Written evidence from Skyscanner Limited(OPL0006)
433 Written evidence from TechUK (OPL0056)
434 Written evidence from Skyscape Cloud Services Ltd (OPL0030)
435 Written evidence from Skyscanner (OPL0006)
436 Q 35 (Antony Walker)
437 Written evidence from Google Inc. (OPL0017)

people who are Internet savvy."[438] Mr Walker said that the UK's strengths were a result of it having "an open, dynamic economy; the English language; technology excellence; real creative genius; a population of early adopters that has now been there for 20-odd years, pioneering the adoption of new technologies; a broadly pragmatic approach to regulation; and a growing investor ecosystem."[439] Matthew Fell, Director of Competitive Markets at the CBI, also told us that the UK was "world-class" in the content and creative industries: "We are one of only three exporters in the world that are a net exporter of music, for example."[440]

305. A number of witnesses suggested that the UK had the most to gain from the creation of a Digital Single Market. Mr Fell said that the UK "ought to have the most to gain, because we are, by quite a long way, the Member State in the European Union that does the most e-commerce transactions."[441] Mr Walker agreed: "The UK should be the country that can benefit most from getting the Digital Single Market right and building a scale market."[442] Google said that the UK was home to "a vibrant entrepreneurial ecosystem with start-ups and scale-ups, including leading ad-tech [advertising technology] and FinTech communities that create scalable platforms that would benefit from increased harmonization of regulation across Europe."[443]

306. When asked whether the UK could create its own Silicon Valley, the Minister, the Rt. Hon. Ed Vaizey MP, told us, "I think that we already have Silicon Valley."[444]

307. **The UK has a population of early adopters, the highest levels of e-commerce in Europe, a thriving tech start-up scene, exceptionally strong e-commerce and creative sectors, and is a world-leader in FinTech or Financial Technology services. As a result, the UK stands to gain more than any other EU Member State from the creation of a digital single market.**

Why is there no European Google?

308. Many witnesses noted that none of the largest online platforms is European. As Professor Gawer observed: "All the major platforms (Google, Amazon, Facebook, Apple) are either American or Asian (Alibaba, Tencent)."[445]

309. Mr Fell said that "the weakness [in the UK], particularly relative to the US market, is our ability and capability to break through into those genuinely global organisations, particularly in a digital world … We have managed to move from start-up to scale-up. The next step would be to move from scale-up to really big global players."[446] A recent article in the *Financial Times* argued that: "It is obviously good news that Britain is building tech firms, of any size. But their failure to join the ranks of the megafauna is a problem for

438 Q 35 (Richard French)
439 Q 35 (Antony Walker)
440 Q 35 (Matthew Fell)
441 Q 34 (Matthew Fell)
442 Q 34 (Antony Walker)
443 Written evidence from Google Inc. (OPL0017)
444 Q 181 (Ed Vaizey MP)
445 Written evidence from Professor Annabelle Gawer (OPL0050)
446 Q 34 (Matthew Fell)

politicians as well as entrepreneurs."[447] Mr Cohen rephrased these concerns: "The question is why there is no European Google."[448]

310. Mr Cohen urged policymakers to be more positive about Europe's prospects: "I think that Europe is getting there. It is investing in these types of businesses in this space. Maybe it has started a bit later than the US, but I see no reason to be pessimistic about it."[449] Others were more doubtful. Professor Clemons said the dominant American platforms' profits from their core business "enable them to subsidise almost any new business they wish"; and that this would "effectively block any and all EU firms, including UK firms, from entering any business that the Big Three American giants choose to dominate."[450]

Europe: an exporter of unicorns

311. Despite these concerns, it is clear that Europe is getting better at producing $1bn digital tech businesses, or 'unicorns'. Mr Walker said: "Europe is better at this than we often think. Since 2000, we have had 40-plus unicorn businesses".[451] TechUK noted that "the rate by which new unicorns emerge in Europe is accelerating".[452] Mr French supported this view: "While we lag behind, even in the last year the European Union has, I believe, created 13 $1 billion companies against the US figure of 22. Yes, there is a lag, but there is life in the European Union's business creation model."[453]

312. TechUK told us that within the EU the UK was particularly successful at producing unicorns: "13 new unicorns emerged in Europe in 2014 and eight of them were founded in the UK". Of the 40 unicorns based in the EU, TechUK said 17 were based in the UK, including:

> "ASOS (e-commerce), Shazam (audience platform), Skyscanner (price comparison platform), and Transferwise (financial services). The UK attracts unicorns from across Europe, for example JustEat was founded in 2001 in Denmark and is now based in London. The UK has most unicorns in Europe, followed by Sweden and Russia having five unicorns each, Germany having four and France having three."[454]

313. Despite this positive trend, witnesses noted that UK and EU digital tech businesses were frequently acquired by US online platforms or relocated to the US. During this inquiry there was coverage of the acquisition of London-based tech firm SwiftKey by Microsoft, and of the UK artificial intelligence company DeepMind, acquired by Google in 2014.[455]

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447 'Where American has fangs, Britain has stubby molars', *The Financial Times* (17 February 2016) available at http://www.ft.com/cms/s/0/7a7f7dec-d561-11e5-829b-8564e7528e54.html#axzz40WeQDn88 [accessed on 4 March 2016]

448 Q 121 (Adam Cohen)

449 Q 121 (Adam Cohen)

450 Written evidence from Professor Eric Clemons (OPL0071)

451 Q 33 (Antony Walker)

452 Supplementary written evidence from TechUK (OPL0070)

453 Q 33 (Richard French)

454 Supplementary written evidence from TechUK (OPL0070)

455 'Microsoft steps up AI push with Swiftkey deal', *The Financial Times* (2 February 2016): available at http://www.ft.com/cms/s/0/f86534c6-c9fa-11e5-be0b-b7ece4e953a0.html#axzz40ENfw7xU [accessed 4 March 2016]

BBC, *Google achieves AI 'breakthrough' by beating Go champion* (27 January 2016): http://www.bbc.co.uk/news/technology-35420579 [accessed 4 March 2016]

314. Mr Fell saw a cultural element in this phenomenon: "A culture does exist in the UK of a bit of a propensity to peak out or cash-in early".[456] Mr Walker, though, thought this was "a very difficult question to unpack … There are all sorts of issues at play. Some of those are cultural, in both the business community and the finance community in the UK. There is no doubt that technology businesses have to scale and need the financial resources to scale. That is one key issue. But they also need the market to scale into."[457]

315. Witnesses argued for three strategic changes.

Create a Digital Single Market of 500 million consumers

316. Andrus Ansip, Vice President of the European Commission, said: "We definitely have to ask ourselves why our smart brains, our start-ups, had to move from the European Union to scale up somewhere else. We know the answer: they are moving to the United States." Vice President Ansip was clear that fragmentation was the main factor in such decisions: "Why did Spotify, for example, have to move from the European Union to the United States to scale up? Why is it so complicated to scale up here in the European Union?" He continued: "Of course, we know that it is because of fragmentation. Potentially, we have more than 500 million healthy customers here in the European Union, but because of fragmentation it is very complicated to scale up here".[458]

317. Vice President Ansip's analysis was widely shared. Google's Jon Steinberg described the difference between the EU and US markets in terms of fragmentation: "In terms of growing and scaling a business—scale is so essential to a technology company—the US is a very attractive market." In contrast, "Europe at the moment is a much less attractive market—28 rulebooks, different regimes, some countries having more than one privacy regulator—so we do not get the opportunity of scale in Europe of those 500 million consumers … We think that the intent of a digital single market strategy is right in trying to fix that."[459]

318. Fragmentation of the Single Market was felt to be particularly pronounced in the collaborative economy. Mark McGann, Uber's Head of Public Policy for Europe, the Middle East and Africa, told us: "It is not even fragmentation on the level of the member states. It is not 23 or 28 different ways of doing things; it is more than that. The framework in Catalunya is different from the framework for Spain."[460] Patrick Robinson, from Airbnb, described the effects: "If you are a resident of Barcelona and you want to rent your spare room to a visiting German, at the moment the rules prohibit you from doing that, but the same German can host the same Barcelona resident in his spare room with no restrictions whatever."[461]

319. First Tutors, a UK-based platform, said that divergent regulation and enforcement practice meant that "the reality of doing business in Europe is therefore a barrister's opinion for every territory."[462] Martin Bailey, DG Connect, quantified the cost of this fragmentation for businesses: "We

456 Q 36 (Matthew Fell)
457 Q 36 (Antony Walker)
458 Q 148 (Andrus Ansip)
459 Q 122 (Jon Steinberg)
460 Q 163 (Mark McGann)
461 Q 163 (Patrick Robinson)
462 Written evidence from First Tutors EduNation Ltd (OPL0020)

understand that per country it can be €9,000 for the cost of compliance to work out how much—essentially, legal fees—we will have to pay lawyers to work out what you have to comply with as a small business … Clearly, if we have a regime for contracts that is common as far as possible across Europe, the cost can be substantially reduced."[463]

320. There was strong support for reducing the fragmentation of contract law and consumer protection law: this would particularly benefit start-ups seeking to scale up their activity. Kostas Rossoglou, of Yelp, said: "For a player to go global—a European start up from Estonia that wants to become a major European company and provide a service across Europe—consumer protection legislation is always a problem". It "could really make a difference" to start-ups "if consumer protection legislation could be harmonised across Europe."[464] Mr Fell agreed that "the harmonisation of some aspects of consumer law" would be particularly helpful.[465]

321. Etsy, a peer-to-peer marketplace, strongly supported proposals to reduce fragmentation by removing barriers to cross-border trade: "Efforts to harmonize the rules around the sale of physical and digital goods across borders, simplify VAT collection and remittance, establish consistent *de minimis* customs and duties exemptions, and improve the affordability and reliability of small parcel delivery would significantly reduce the barriers our sellers face."[466] Amazon welcomed the Commission's focus on improving parcel delivery, citing it as "just one example where the digital single market needs work".[467] Professor Clemons agreed that "Facilitating cross border online selling would help a home-grown Amazon or eBay gain scale."[468]

322. Clare Moody MEP also focused on start-ups and smaller businesses. She said that fragmentation was "not an issue for a lot of big companies; they have cross-border supply chains, let alone markets, whereas, without that single market, there are barriers for smaller companies to the opportunities that arise from the digital world, and it is the EU's job to help break them down."[469] Vice President Ansip agreed: "global players are able to deal even today with the 28 relatively small markets, but our own much smaller players have difficulty."[470] Mr McGann said: "Frankly, I am not so worried about the future of the Airbnbs or the Ubers of this world; I am more concerned about domestic companies here in the UK and across Europe not being able to make it into the global market for these services based on technology because of the outdated, protectionist measures that we find so often across this supposedly single European market."[471]

323. In an industry characterised by network effects, witnesses emphasised that the ability to scale at speed was key to enabling European scale-ups to compete globally. Martin Bailey, of DG Connect, said that regulatory fragmentation, and the associated burden of multiple regulatory regimes, "might be one of the reasons why there are first mover advances that are better exploited in

463 Q 104 (Martin Bailey)
464 Q 136 (Kostas Rossoglou)
465 Q 34 (Matthew Fell)
466 Written evidence from Etsy (OPL0063)
467 Q174 (Paul Misener)
468 Written evidence from Professor Eric Clemons (OPL0071)
469 Q 76 (Clare Moody)
470 Q 147 (Andrus Ansip)
471 Q 163 (Mark McGann)

the US."[472] e-Conomics said: "For online platforms originating in the EU to grow successfully, scalability is key. Just like a start-up in the US can grow within a few months from its local origins to a market of some 300 million potential customers, a UK, German, Estonian or Greek start-up should be able to scale up rapidly to the 500 million potential customers in the EU."[473]

324. Vice President Ansip said: "we have to create an environment in the European Union that allows scaling-up within six months, for example, and where our start-ups do not have to go somewhere else."[474]

325. **Market scale is paramount for online platforms, whose value resides in the size of the networks they can create. The fragmentation of the European market in digital goods and services—with 28 different rulebooks—substantially limits growth and acts as an incentive for businesses to shift the locus of their operations to the US, to maximise their growth potential. We therefore strongly endorse the central aim of the Digital Single Market Strategy, which is to reduce regulatory fragmentation and remove barriers to cross border trade, and urge the Commission to retain a sharp focus on this over-riding purpose.**

326. **Initiatives in the Digital Single Market Strategy, particularly the greater harmonisation of contract law and consumer protection, are critically important to enabling digital tech start-ups and platforms to operate without friction across borders and to fully exploit a potential market of over 500 million consumers. We recommend that the Commission and the Government pursue an ambitious degree of integration in these areas, and resist a lowest common denominator approach.**

Facilitate increased investment

327. Mr French noted that "statistically, the three biggest buyers of European tech companies are Google, Facebook and Microsoft", and that these businesses accounted for "more than two-thirds of the largest (by value) tech business acquisitions in the last two years." If a vendor wanted to sell, it was simply a question of who had the money: "if you are going for valuation, it is just a matter of dollars and a cheque book. Between them, Google, Facebook and Microsoft have billions of dollars on their balance sheets."[475]

328. Skyscanner noted that a lack of access to capital in Europe was one reason why businesses naturally looked to (and, in some cases, moved to) the US market for investment: "currently Europe lags far behind the US in terms of the early stage investment being made in the market. In 2010 early stage investment in the US was valued at $20 billion, whereas Europe in the same period saw investment of approximately €3.8 billion."[476] Start-ups and scale-ups we spoke to on our visit to the Digital Catapult Centre confirmed this discrepancy.

329. Mr French referred to a recent *Financial Times* article, which reported that "US VCs (Venture Capital funds) were behind more than 50% of London start-ups (by value) … the European VC presence is there, but it is not as

472 Q 97 (Martin Bailey)
473 Written evidence from e-Conomics (OPL0066)
474 Q 148 (Andrus Ansip)
475 Q 36 (Richard French)
476 Written evidence from Skyscanner Limited (OPL0006)

vigorous as the US VC presence."[477] Mr Fell said: "If you looked at the global share of venture capital markets, you would see that the US snaffles up a good chunk of those. Somewhere in the order of two-thirds, 70%, of global VC money heads to the US. That tells a story."[478]

330. The Monopolies Commission agreed that the lack of venture capital was a problem for the growth of EU-based platforms. Its Special Report 68 "identified funding issues as an important barrier to the growth particularly of start-up firms."[479] Despite the UK being a capital of global finance, TechUK agreed that: "Platforms and other digital technology businesses suffer from a lack of access to Venture Capital."[480] Dr Richard Hill suggested that the reason why "most platforms start in the USA" was "the ease of raising venture capital and attracting the first million customers".[481] Professor Clemons agreed that "the lag in European innovation" could probably be attributed to "earlier technology adoption in the US and a stronger tradition of venture capital investment."[482]

331. The weakness of the European venture capital industry is well documented. Mr French traced it back to "the hollowing out of the European VC industry post-2002 and the dotcom boom … A lot of those specialist skills—bankers, people who could do the due diligence and people who understood the technology and could quickly decide what to do—have been largely lost in Europe because of that hollowing out of the investment industry at the beginning of the millennium."[483] Mr Fell suggested that, even before the dotcom bubble burst, "venture capital markets, for example, were less developed and less well tapped across the European Union than in the United States."[484]

332. The Minister, Ed Vaizey MP, acknowledged that the UK could not compete with the US in terms of investment: "Fundamentally, when you say that companies are going to the US or are being acquired by the US, you are talking about large-scale investment—and at the moment, I do not think that we have the same wall of money that exists in Silicon Valley." The Government was seeking to address this issue through the British Business Bank and "a very benign tax regime, particularly for scale-ups with the Enterprise Investment Scheme and the Seed Enterprise Investment Scheme."[485]

333. The Minister also expressed confidence that things were improving: "And things will change, because we have seen, with the growth of the unicorns—in fact, the lion's share of the unicorns is here—that the investment climate is changing." He said that "Establishing particular sectoral expertise, such as FinTech, where people will naturally gravitate and therefore the money will come, will help as well."[486] Vice President Ansip acknowledged that start-ups from Estonia were "moving to London because it is a much better

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477 Q 36 (Richard French)
478 Q 36 (Matthew Fell)
479 Monopolkommission, *Special Report 68: Competition policy: The challenge of digital markets* (June 2015): http://www.monopolkommission.de/index.php/en/reports/special-reports/284-special-report-68 [accessed 12 April 2016]
480 Written evidence from TechUK (OPL0056)
481 Written evidence from Dr Richard Hill (OPL0002)
482 Written evidence from Professor Eric Clemons (OPL0071)
483 Q 36 (Richard French)
484 Q 36 (Matthew Fell)
485 Q 181 (Ed Vaizey MP)
486 Q 181 (Ed Vaizey MP)

environment here and a much bigger market for them than in smaller Member States."[487] Mr Walker highlighted "growing evidence of individual founders and financiers showing more of a commitment to growing businesses and taking them to that next scale up in the UK."[488]

334. Mr French, though, argued that financial regulations were still a significant barrier in the UK: "It is actually quite difficult to set up a small investment fund in this country. The FCA (Financial Conduct Authority), the relevant regulator, makes it very difficult for people to club together to create an investment fund. It is very easy to do that in the US by comparison." He also noted that "In 2011–12, President Obama signed into law the JOBS Act, or the Jumpstart Our Business Startups Act, which is widely credited with contributing to an increase in the creation of large tech businesses in the US."[489]

335. The Commission, rather than downplaying concerns about investment, said that they were a far-reaching and fundamental barrier to generating growth in Europe. Ms Bury, of DG Grow, said: "There is an investment gap, estimated at around €230 billion at the moment. As an example, EU investments in digital technologies over the last 10 years have been a third of what was invested in the US."[490] She stressed that this problem applied to all businesses, not only online platforms:

> "Obviously we need IT companies that can compete globally, but we also need to make sure that our traditional companies—the more traditional industries, which can be automotive, mechanical engineering, food processing, you name it; it could be any part of the industrial fabric—are able to benefit from what is happening in terms of digital innovation."[491]

336. The Commission said that it was taking unprecedented action on multiple fronts to address this problem, "making sure, through the various funding programmes that we have, that we are supporting and promoting that scaling up of investments."[492] The Commission's proposed Capital Markets Union (CMU) is one key strand of its strategy to tackle this investment gap. This Committee's 2015 report, *Capital Markets Union: a welcome start*, concluded that CMU had the potential to "tackle the deep-rooted cultural obstacles to growth that have held economic recovery in the EU back in comparison with international competitors."[493] The Investment Plan for Europe, backed by the European Fund for Strategic Investments (EFSI), which seeks to mobilise public and private sector investment of at least €315 billion over the next three years, is the largest investment initiative the EU has ever undertaken.[494]

337. On the question of venture capital specifically, Ms Bury said that the Commission's recently announced Single Market Strategy contained a venture capital 'fund of funds' initiative designed to ensure "that there is

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487 Q 148 (Andrus Ansip)
488 Q 36 (Antony Walker)
489 Q 33 (Richard French)
490 Q 96 (Claire Bury)
491 Q 104 (Claire Bury)
492 Q 96 (Claire Bury)
493 European Union Committee, *Capital Markets Union: a welcome start* (11th Report, Session 2014–15, HL Paper 139)
494 European Commission, 'Investment Plan': http://ec.europa.eu/priorities/jobs-growth-and-investment/investment-plan_en [accessed 17 March 2016)

enough capital or access to that venture capital that these kinds of companies need." She continued:

> "We know from the OECD figures that 60% of start-ups go out of business within the first three years of their existence. Keeping them alive in that period and beyond is very important if we are ever going to get companies that will grow and be of a size where we think that they are able to compete both within the internal market but on a global scale as well."[495]

338. **We note the weakness of the European venture capital market compared to that of the US is a barrier to the growth of EU-based start-ups and scale-ups, and an incentive for emerging platforms to move to the US. This lack of investment is not unique to online platforms, and represents a major obstacle to generating economic growth across the Union. We therefore welcome the unprecedented large-scale action from the Commission to address this lack of investment through the Capital Markets Union, the €315 billion Investment Plan for Europe and its proposal to create a venture capital 'fund of funds'.**

339. **We also note the difficulty of establishing small-scale investment funds in the UK, compared to the US. We recommend that the Government review the example provided by the US Jumpstart Our Business Startups (JOBS) Act, and consider whether comparable reforms could facilitate increased investment in UK-based start-ups and scale ups.**

Embrace the strategic role of innovation

340. Witnesses suggested that, although it was necessary to update and adapt regulation for the digital age, if Europe wished to create businesses that could compete with the largest global platforms, it was vital that policymakers support innovation and new entrants in these markets.

341. e-Conomics explained that the presence of network effects and the tendency to winner-takes-all outcomes in these markets meant that "Market entry has to be based on innovative ideas because once the market has tipped, entry on the basis of copying the incumbent's business model is unlikely to be successful." They suggested that firms that succeeded were "disruptive innovators" that changed market structures.[496] Developing this point, Skyscape likened Google's dominance in general search to Hoover's former dominance of the vacuum cleaner market. Innovation was the only way to oust Google: "Innovation, in the form of Dyson, broke the hoover association, and it will be innovation that breaks the excessive power of some platform providers."[497]

342. One way in which Governments can foster the growth of new entrants is through procurement policies. The Government's Digital Strategy itself acknowledges that the UK's many innovative companies are "often unable to access the government procurement market due to high barriers to

495 Q 104 (Claire Bury)
496 Written evidence from e-Conomics (OPL0066)
497 Written evidence from Skyscape Cloud Services Ltd (OPL0030)

entry and complex, expensive and often frustrating processes."[498] Coadec's Startup Manifesto recommends that Government aim to meet the target of 25% procurement from SMEs, and then introduce a more challenging target. It also recommended that the Government "look at using challenges rather than complicated tenders to engage with startups", as "these can be easier to understand as well as more flexible, allowing innovative solutions rather than prescribing exactly what is needed." Coadec drew attention to TfL's Innovation Portal, which sets out challenges that TfL faces and invites ideas, as an example of best practice.[499] We support Coadec's positions on procurement, and also consider that Government should encourage large firms in the private sector to support digital start-ups through procurement.

343. Dr Pleatsikas said that fostering innovation, and preventing it from being constrained, should also be a priority for enforcement agencies: "The key to effective antitrust enforcement is to prevent innovation from being used as a tool to exclude or hinder competitors rather than as a tool to provide continuing benefits".[500] Mr French agreed that "online platforms ought not to be allowed to control the pace of innovation", and suggested that dominant platforms sometimes innovated "at their own pace", because they were "insulated from failure".[501] Ms Jameson said competition authorities should prioritise "effectively dealing with situations where individual companies are striving to hinder innovation", and that the dominance of the largest platforms could only be challenged "by supporting new entrants coming into the market".[502]

344. On the other hand, Professor Gawer cautioned that regulators should take particular care not to be "instrumentalized by disgruntled incumbents who have difficulty adjusting to more efficient new competitors and seek regulatory protection to protect their perhaps obsolete business models."[503] Dr Ellig agreed that "government-granted protection and privileges to incumbent firms" could "prevent innovative firms from entering new markets", thereby inhibiting innovation.[504] Mr McGann said with regard to the collaborative economy, in which Member States and regional authorities share competence with the EU, there was "a high prevalence" in some markets "of regulation over time favouring and protecting the incumbent, to the detriment of the consumer, and certainly of new entrants."[505]

345. Mr Walker said that another reason why Europe lagged behind in these markets was that the US was more receptive to "risk and innovation", including at a regulatory level. He described the US approach as "permissive but accountable versus a European approach that is a little more towards the regulation of a free market."[506] Mr Fell characterised the UK's approach as

498 HM Government, *Government Digital Strategy: December 2013* (10 December 2013), https://www.gov.uk/government/publications/government-digital-strategy/government-digital-strategy [accessed 24 March 2016]
499 Coadec, *The Startup Manifesto* (September 2014) http://www.coadec.com/wp-content/uploads/2014/09/Startup-Manifesto.pdf [accessed 24 March 2016]
500 Written evidence from Dr Christopher Pleatsikas (OPL0078)
501 Written evidence from Richard French (OPL0084)
502 Q 125 (Carolyn Jameson)
503 Supplementary written evidence from Professor Annabelle Gawer (OPL0050)
504 Written evidence from Dr Jerry Ellig (OPL0081)
505 Q 159 (Mark McGann)
506 Q 33 (Antony Walker)

being one where regulators were "watching these sectors and developments carefully and closely but regulating later if there is a problem."[507]

346. We heard that a lack of regulatory certainty sometimes drove innovators elsewhere. Professor Langlois said that: "when innovators … cannot predict what regulators will do, it … adds an extra dimension of uncertainty to the innovator's problem."[508] Mr McGann said that all entrepreneurs "require the legal certainty to know that if you innovate and take risks … you will be able to have access to markets and provide your services at scale".[509] Skyscanner said: "the lack of a clear regulatory regime in Europe will harm its economic position relative to competing economies until resolved."[510]

347. It follows that the signals policymakers send out to the markets are important, in creating confidence and certainty. Skyscape said that the Commission's tendency to focus on the most dominant platforms could in itself be harmful: "The main barrier for growth in the EU is the Commission itself, which manages to give a very good impression that all online platform providers are a) untrustworthy, and b) US global giants."[511] In contrast, the Minister, the Rt. Hon. Ed Vaizey MP, told us that the Government's Tech City initiative had "acted as a beacon for investment" and a "calling card, if you like, to say that the UK is interested in and supportive of tech." He added that "Sharing Economy UK is something else that says that the UK is open to innovative and disruptive companies."[512]

348. A broad range of businesses, regulators and policymakers told us that if Europe wanted to boost its competitiveness in these markets, the need to update and adapt regulation should be carefully balanced with the need to foster innovation. Professor Gawer suggested that: "The challenge for Europe is that of protecting and stimulating the vibrancy of digital platforms and the growth in the jobs and value that they create while protecting consumers and citizens from the power that stems from their growth."[513] Vicky Ford MEP said that although everyone wanted "a level playing field and fairness in the sharing economy, we need to be careful that we do not throttle off that growth".[514] Antony Walker agreed: "We have to achieve the twin objectives of securing privacy and people's fundamental rights while also ensuring that we have an environment that enables the continuation of the innovation that we all as citizens benefit from on a daily basis."[515]

349. The Commission was at pains to stress that the Digital Single Market Strategy was pro-innovation, not protectionist, in outlook. Ms Bury said the Commission was concerned "to ensure that we do not hamper innovation in the single market"; the collaborative economy was "an important innovator, an important generator of wealth and an important contribution to the economy."[516] Vice President Ansip said that regulation that sought to protect

507 Q 33 (Matthew Fell)
508 Written evidence from Professor Richard Langlois (OPL0073)
509 Q 163 (Mark McGann)
510 Written evidence from Skyscanner Limited (OPL0006)
511 Written evidence from Skyscape Cloud Services Ltd (OPL0030)
512 Q 181 (Ed Vaizey MP)
513 Q 2 (Professor Annabelle Gawer)
514 Q 90 (Vicky Ford MEP)
515 Q 41 (Antony Walker)
516 Q 107 (Claire Bury)

incumbents was "a dead end". European companies needed to compete on merit: "we have to be better than even the global players."[517]

350. **If the European Union and its Member States wish to facilitate the growth of online platforms that can compete in these global markets, they must embed innovation at every level of policymaking. The need to update existing regulation in order to protect consumers and the competitive process should be carefully balanced with the need to promote innovation in these markets: we suggest that regulating after markets have matured may be preferable to adopting a more pre-emptive approach.**

351. **If the EU and its Member States can get this balance right, facilitate increased investment in digital tech firms, and—most importantly of all—create a scale market of 500 million consumers, Europe has the potential to play a leading role in the next stages of the digital revolution.**

517 Q 152 (Andrus Ansip)

CHAPTER 9: REGULATING ONLINE PLATFORMS

352. In this final chapter we address the fundamental question underlying our inquiry, namely whether general regulation of online platforms is necessary.

Disrupted regulation

353. While online platforms bring enormous benefits for businesses and consumers, they also result in widespread disruption. Professor Gawer said: "there is no denying that these new business models and the companies that have adopted them are very disruptive to incumbent firms which were operating under the previous industry modes."[518] She said that regulators should accept that some "incumbent firms will not immediately adapt or will not even survive waves of technological change. We saw that in the Industrial Revolution, and when fridges and similar appliances came in; the ice harvesting industry completely disappeared."[519]

354. Witnesses recognised that as well as disrupting existing traditional markets, online platforms also disrupted regulatory frameworks. e-Conomics observed that: "the dynamics of the digital economy … disrupt existing markets and simultaneously challenge the (sector specific) rules that govern those markets."[520] Professors Strowel and Vergote noted that "the term 'disruption' is also associated with the challenge those entrants pose to the existing laws" and observed that "digital platforms generate many legal disputes, especially when they operate at the margin of existing laws".[521]

355. Developing this point, Professors Strowel and Vergote suggested that regulatory disruption was a central feature of online platforms:

> "Our view is that legal disruption is not an accident of the platform economy, it is a core feature. Digital platforms obviously challenge the law, and this is a key feature and consequence of their operations. They like to show how the law is out-of-date with the new economy".[522]

356. Orange, formerly France Telecom, said that the sheer speed at which platforms emerged had contributed to their disruptiveness: "the fast pace of technology and market changes … rendered the current regulatory framework outdated".[523] The CMA also told us that "the speed at which technology is changing—and the rapid emergence of novel online business models—present challenges to the application of many existing and traditional regulatory frameworks."[524]

357. The Minister, the Rt Hon. Ed Vaizey MP, agreed that "as a general point in this tech world, some of these issues arise very quickly." While competition authorities had, in his view, "caught up with the digital age", they were challenged by rapid changes to market structures. The Minister observed that authorities that had "been dealing with supermarkets for 20 years"

518 Written evidence from Professor Annabelle Gawer (OPO0050)
519 Q 1 (Professor Annabelle Gawer)
520 Written evidence from e-Conomics (OPL0066)
521 Written evidence from Professor Alain Strowel and Professor Wouter Vergote (OPL0087)
522 Written evidence from Professor Alain Strowel and Professor Wouter Vergote (OPL0087)
523 Written evidence from Orange (OPL0092)
524 Written evidence from the Competition and Markets Authority (OPL0055)

suddenly found themselves dealing with "these new very big players that have risen very quickly."[525]

358. As a result, some witnesses suggested that large online platforms were, in the words of First Tutors, "effectively above the law". They highlighted "the great advantage non-EU headquartered companies have in knowing they can trade in Europe and that so long as they have a substantial war chest, they can effectively override EU laws whilst they gain traction."[526] e-Conomics suggested that, as a consequence, policymakers' concerns frequently related to the enforcement of existing regulation, rather than the regulation itself: "The fears expressed in policy debates can often be traced back to the enforcement of the law, and not to its substance."[527]

Responding to regulatory disruption

359. Witnesses warned against trying to contain this disruption through heavy-handed regulation, which risked stifling innovation. Professors Ezrachi and Stucke told us that "The risk of chilling innovation and investment due to excessive intervention is real."[528] Smaller emerging online businesses were particularly at risk—Skyscape, a provider of cloud storage, said that the Commission needed "to take care not to impose regulation designed to curb the behaviours of some online platform providers that imposes unnecessary burden and cost … on SMEs and European start-ups."[529]

360. The CMA focused on the potentially anti-competitive effects of "disproportionate regulatory mechanisms", which could have "the counterproductive effect of 'locking-in' a particular market structure", and thereby "insulate incumbent on-line firms from dynamic competition that would otherwise benefit consumers".[530] Professors Dutton and Jeitschko said that extra regulation could "potentially advantage dominant businesses … which have the scale to support the legal and administrative costs of negotiating through this regulatory complexity."[531]

361. Nonetheless, most witnesses argued that there should be regulations to protect the fundamental rights of citizens. BEUC said that the benefits of digital technologies "must not come at the expense of fundamental rights and freedoms."[532] Mr Chisholm said: "I absolutely accept that certain fundamental rights should be protected up front in relation to things such as privacy and data protection. We should, if you like, be able to take that for granted as the regulatory framework."[533] Professors Sally Broughton and Damian Tambini advocated the creation of a regulatory regime that leaned "in the direction of regulating for the protection of individual consumers (data protection, transparency of terms etc.) and not over-regulating the arenas in which freedom of expression and creation are at stake".[534]

362. In previous chapters, while rejecting the case for general regulation of platforms, we have identified a number of adaptations to existing regulation

525 Q 186 (Ed Vaizey MP)
526 Written evidence from First Tutors EduNation Ltd (OPL0020)
527 Written evidence from e-Conomics (OPL0066)
528 Written evidence from Professor Aerial Ezrachi and Professor Maurice Stucke (OPL0043)
529 Written evidence from Skyscape Cloud Services Ltd (OPL0030)
530 Written evidence from the Competition and Markets Authority (OPL0055)
531 Written evidence from Professor William Dutton and Professor Thomas Jeitschko (OPL0057)
532 Supplementary written evidence from BEUC (OPL0068)
533 Q 50 (Alex Chisholm)
534 Written evidence from Sally Broughton Micova and Damien Tambini (OPL0053)

that would address specific concerns. We have also highlighted the need for the enforcement of consumer protection law, data protection law and competition law to be sufficiently robust to protect the public interest and deter abusive behaviour.

363. Witnesses identified further practical ways in which concerns about regulatory disruption and enforcement could be addressed.

Ensure that regulators are properly resourced and willing to act

364. First Tutors suggested that some regulators lacked the resources or were simply unwilling to enforce regulations against large, complex businesses: "Whilst the regulation may often be there already, in case law it is often untested and EU states seemingly lack the appetite or resource to actually enforce on large online businesses."[535] Yahoo also noted that competition law, in particular, was "not well tested for the business models highlighted by the Commission."[536]

365. Witnesses agreed that enforcement agencies should be willing to take firm action where necessary. CCIA said that enforcement procedures should be "robust and rapid".[537] Baroness Neville Rolfe said that it was important to tackle "the over-mighty when they get over-mighty", and said that she welcomed Commissioner Vestager's decision to extend the inquiry into Google Search "with more energy than under the previous Commissioner", as well as DG Competition's decision to launch a sector inquiry into cross-border e-commerce.[538]

366. If existing law is to be better able to deal with large, disruptive businesses, regulators will need to have sufficient resources. Yahoo observed that "the reduction in resources experienced by almost all national and EU regulatory authorities as a result of economic recession will have had an impact on their ability to adapt to and study fast moving markets."[539] TechUK said: "It is important to empower authorities to respond quickly when problems arise… If there is doubt whether the regulator has the capabilities, resources and skills needed to intervene effectively, this should be addressed."[540]

367. Regulators will also need technical expertise. Mr Cohen conceded that the Commission, in its ongoing investigation against Google, relied heavily on expertise provided by Google itself. Nonetheless, he was confident the authorities "apply the time and the resources that they need to understand these issues."[541] Mr Loriot, from DG Competition, recognised that some of the markets they investigated were "complex", and presented "a general challenge" to competition authorities. Nevertheless, he said: "I do not believe that you need to have created a start-up to understand and gather information on the market realities."[542] Martin Bailey, Digital Single Market head of unit at DG Connect, said that he was confident that the Commission had "not suffered, I would say, from a lack of expertise". He said that the Commission employed "people with private sector backgrounds, people who

535 Written evidence from First Tutors Edunation Ltd (OPL0020)
536 Written evidence from Yahoo (OPL0042)
537 Written evidence from the Computer and Communications Industry Association (CCIA) (OPL0040)
538 Q 182 (Baroness Neville-Rolfe)
539 Written evidence from Yahoo (OPL0042)
540 Written evidence from TechUK (OPL0056)
541 Q 113 (Adam Cohen)
542 Q 105 (Guillaume Loriot)

have worked in tech companies and people who have worked in professions … in multinational environments".[543]

Review existing law and develop guidance

368. Most witnesses agreed that the Commission should concentrate on reviewing existing law and its application to online platforms, rather than introducing new regulation. e-Conomics observed: "Many existing rules can be applied to digital business models. Sometimes this may require reinterpretations or adaptations of laws, but often they just need to be enforced." They recommended that policymakers "review the contested rules and focus on the public interests that formed the reasons for why we had these rules in the first place"; only then would policymakers be able to analyse "whether the disrupting forces are a cure or a curse for these public interests and call for less, more, or different rules."[544]

369. BEUC said that it was particularly important to clarify how existing consumer protection law applied to the digital environment:

> "The European legislature has been developing, for almost three decades, specific laws to protect consumers across the EU but with a strong focus on the physical world. Only recently the Consumer Rights Directive incorporated specific information rights for digital content products … The challenge is how to make these laws fit for purpose in the digital environment."[545]

370. Ms Bury, of DG Grow, said that the Commission recognised that it was important to provide "guidance on the extent to which existing law is relevant." Some legislation was quite old, including the E-commerce Directive, which was "20 years old now, so even though it stood the test of time relatively well, because it was very much principle-based … we see that there may be, as the regulatory environment evolves, a need for guidance as to how those principles apply in specific situations."[546]

371. Nesta said that the need for guidance was particularly marked in the collaborative economy, and called on the Commission to "develop a framework of best practice for collaborative platforms on a sector-by-sector basis, applicable to all member states", and to "make clear how legislation on the digital economy applies to collaborative platforms".[547]

372. Ms Bury acknowledged the difficulty regulatory authorities faced when attempting to keep pace with rapid developments in areas like the collaborative economy. She said it was "very important to have an overview of what is happening in regulatory developments in Member States". In relation to the collaborative economy, the Commission was "currently mapping what is happening across Member States … as the background for any guidance we give." By introducing guidance in this area as part of its Single Market Strategy, the Commission hoped to provide "something that may go into the marketplace relatively quickly and be able to help developments".[548]

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543 Q 105 (Martin Bailey)
544 Written evidence from e-Conomics (OPL0066)
545 Written evidence from BEUC (OPL0068)
546 Q 107 (Claire Bury)
547 Written evidence from Nesta (OPL0027)
548 Q 107 (Claire Bury)

373. **The rapid growth of online platforms has disrupted many traditional markets. It has also resulted in uncertainty about how existing regulation, designed in a pre-digital age, applies to these new disruptive business models. As a consequence there is a perception that large online platforms are above the law.**

374. **We do not consider that highly restrictive regulation that seeks to contain disruption would be the right response. It would risk entrenching existing market structures and make it difficult for new platforms to emerge, thereby discouraging innovation. Nonetheless, we acknowledge the need to protect fundamental rights and to ensure that existing regulation is effective and up-to-date.**

375. **In addition to the adaptations proposed elsewhere in this report, we recommend that the Commission, in concert with regulators at Member State level, critically review and refit existing regulation to ensure that its application to online platforms is clear. We believe that in many cases specific guidance from the Commission could provide this clarification.**

376. **As many concerns relate to the enforcement of existing laws rather than the content of those laws, we invite both the Commission and the Member States to consider whether providing regulators with increased resources would be a more efficient way to address concerns about enforcement than introducing additional rules.**

377. **We recommend that regulators robustly enforce against online platforms they believe to be in breach of the law. Enforcement authorities should sometimes proceed even where there is a risk of losing the case or having the outcome appealed—such outcomes help to clarify how the law applies. For this reason we welcome Commissioner Vestager's decision to proceed with the Google case, without prejudice to the outcome.**

A continuous process

378. We heard that the work of reviewing and updating regulation would have to be ongoing, because digital disruption was unlikely to end any time soon. In Professor Rodden's words: "current trends such as the 'Internet of Things' and 'Smart cities' will further expand the influence of online platforms".[549] The CMA echoed this view.[550]

379. e-Conomics said that responding to developments by digital businesses precluded "compartmentalised law making", in which "policy debates are led once, then translated and fixed into a regulatory scheme—a set of definitions with prohibitions and obligations attached to them—and these debates are then forgotten forever after". They argued that "in order for law and regulation to be sustainable in the face of innovation, policy concerns must remain part of the law, so that the law and regulation can be adjusted promptly while keeping focus on the ultimate policy concerns".[551]

380. Skyscanner said that, if regulators wanted innovative businesses to continue to emerge, the process of reviewing the existing law needed to be continuous:

549 Written evidence from Professor Tom Rodden (OPL0074)
550 Written evidence from the Competition and Markets Authority (OPL0055)
551 Written evidence from e-Conomics (OPL0066)

> "Our perception is that governments and regulators often struggle to understand the emerging disruptive business models that exploit such data and how best to fit them into existing regulatory frameworks in a way that protects consumers without stifling business/innovation … it requires governments and national authorities to endeavour to continually keep abreast with developments in the online space".[552]

Coherence across the single market

381. In addition to the growing regulatory fragmentation in specific sectors, such as the collaborative economy, witnesses noted that Member States were taking divergent regulatory approaches to platforms more generally. Yelp told us that "France has recently introduced a draft bill that seeks to regulate online platforms, while Germany is exploring the merits of platform-specific legislation. The achievement of a truly single market requires pan-European reflection and approach."[553] Professors Broughton and Tambini said that "The French Conseil d'État has recommended that a new category of platforms should be devised with new public obligations", adding that "the Prime Minister of Schleswig-Holstein has argued for an obligation on Google to prioritize public service broadcasters in their results."[554] Professors Dutton and Jeitschko suggested that such actions indicated "a likely but worrisome development", where "nations increasingly assert national regulatory authority over global technologies", leading "toward the so-called 'Balkanization' of the Internet".[555]

382. Ms Bury told us that the Commission was "very much aware" that "if Member States introduce different kinds of rules and regulation", this could create "barriers to companies operating in a seamless way across the single market."[556] In the previous chapter we noted that businesses strongly supported increased harmonisation at EU level in order to reduce this problem, and to reduce the regulatory burden of cross-border trade.

383. Regulators recognised that this fragmentation also manifested itself in divergent enforcement actions among Member States. In relation to the investigations into wide price parity clauses in the hospitality sector, Mr Chisholm felt it was not "in the interests of the internal market to have different solutions being developed in different countries in Europe."[557]

384. Witnesses broadly agreed that, to respond effectively to these concerns, both legislators and enforcement agencies needed to coordinate more closely in order to create coherence across the single market. Addison Lee said that "national regulatory structures … require coordination to ensure that online platforms are assessed on their multi-jurisdictional activities." They added: "We believe the European Commission, and national regulators and governments must align more effectively and at a more urgent pace to keep up with technological change."[558] The CMA told us that these co-coordinating mechanisms were already in place for competition enforcement agencies, through the European Competition Network (ECN), and said that it had collaborated "with consumer enforcement counterparts through the

552 Written evidence from Skyscanner Limited (OPL0006)
553 Written evidence from Yelp (OPL0034)
554 Written evidence from Sally Broughton Micova and Damien Tambini (OPL0053)
555 Written evidence from Professor William Dutton and Professor Thomas Jeitschko (OPL0057)
556 Q 107 (Claire Bury)
557 Q 50 (Alex Chisholm)
558 Written evidence from Addison Lee Ltd (OPL0067)

mechanisms provided for in Regulation (EC) No 2006/2004 on Consumer Protection Cooperation (CPC)." The Information Commissioner's Office (ICO) told us that data protection authorities currently co-ordinate enforcement actions through Working Group 29, and that the General Data Protection Regulation would introduce a "one-stop shop" for cases and a European Data Protection Board.[559]

Work across regulatory regimes

385. A further source of confusion and fragmentation is the fact that the challenges presented by online platforms cut across multiple regulatory frameworks and therefore require authorities to co-ordinate their work across these different regimes. Giovanni Buttarelli, the European Data Protection Supervisor (EDPS), identified a need for different types of regulator to work across regulatory frameworks in general: "It is time for us to work less in silos and to understand better what we should do."[560] He referred us to a European Data Protection Supervisor (EDPS) report published in March 2014, which recommended "a more holistic approach to enforcement."[561]

386. The ICO also welcomed the EDPS report, describing creating digital trust as "a multi-faceted issue." They continued: "There are many relevant issues that fall outside the area of responsibility of a data protection authority—for example differential online pricing and competition rules. More work needs to be done to map these relationships". The ICO also supported "closer working". They had "worked with the OFT a few years ago on issues to do with the fairness of using consumers' information to offer people the same goods at different prices", and had "worked closely with the CMA on their recent report 'The commercial use of consumer data'". The ICO emphasised that "more co-working, especially as information privacy becomes more of a mainstream consumer concern, is clearly important."[562]

An outlet for political pressure

387. The inherent difficulty, outlined above, in keeping regulation up-to-date and co-ordinating enforcement activity across Member States and across different enforcement regimes, creates a risk of political pressure leading legislators to act without proper reflection. The Digital Policy Alliance said: "The Commission should resist any political pressure to achieve quick results at the expense of well formulated, clearly targeted and effective remedies."[563]

388. Building on these concerns, e-Conomics suggested:

> "The main question arising at this juncture is how to deal with pressure to intervene arising in the future … As the recent example of network neutrality shows, when a concern catches the imagination of lawmakers and policymakers, it is difficult to carry out a level-headed analysis of whether any additional intervention is needed, and even more difficult

559 Supplementary written evidence from the Information Commissioner's Office (OPL0069)
560 Q 53 (Giovanni Buttarelli)
561 European Data Protection Supervisor, *Preliminary Opinion of the European Data Protection Supervisor, Privacy and competitiveness in the age of big data: The interplay between data protection, competition law and consumer protection in the Digital Economy* (March 2014) p 36: https://secure.edps.europa.eu/EDPSWEB/webdav/shared/Documents/Consultation/Opinions/2014/14-03-26_competitition_law_big_data_EN.pdf [accessed on 17 March 2016]
562 Supplementary written evidence from the Information Commissioner's Office (OPL0069)
563 Written evidence from the Digital Policy Alliance Eurim (OPL0051)

> to carry the day if that analysis would conclude that no legislative intervention is needed. Political pressure can prove too high."[564]

e-Conomics said that this risk "could be the best justification for introducing a mechanism where concerns surrounding online platforms are debated and analysed: it would enable a measured and well-grounded discussion if and when online platforms give rise to serious concerns." On this basis, they asked whether it might be worthwhile "to create an outlet to channel future political pressures, in order to avoid misguided intervention."[565]

An independent expert panel

389. **Online platforms present regulators and enforcement agencies with multiple challenges, outlined in detail in this report. In addition to a perceived gap in enforcement, popular concerns about their use of personal data, disruption of traditional industries and corporate tax contributions have put pressure on policymakers to act at Member State level, resulting in increased regulatory fragmentation. Unless these concerns are addressed in a concerted way at a European level this fragmentation will continue to increase, undermining the possibility of creating a single market in digital goods and services.**

390. **While the Digital Single Market Strategy identifies specific policy interventions designed to achieve this goal, we consider that the political sensitivity of questions relating to online platforms, as well as their sheer variety, make reaching a consensus in this policy area difficult.**

391. **Although we welcome the Commission's consultation as a valuable first step, we believe that it is too broadly designed to address these issues decisively. To support the growth of innovative online platforms across the EU in a sustainable way, we believe that the process of reviewing the effectiveness of existing laws in relation to online platforms must be continuous.**

392. **We therefore recommend that the European Commission appoint an independent panel of experts tasked with identifying priority areas for action in the digital economy and making specific policy recommendations.**

393. **The panel would consist of a representative group of independent experts with deep insight into the digital economy and the emerging challenges it presents, drawn from outside the Commission itself. It would be supported by staff that would enable it to effectively pursue its objectives, and would seek input from a wide range of specialists on specific issues. The panel would report annually to the European Commission, the European Council and the European Parliament.**

394. **The panel would act as a channel for public concerns, engaging with regulators, policymakers, businesses and citizens, but would then subject those concerns to rigorous and impartial analysis, before formulating its recommendations. In this way the panel would seek to build political consensus around its policy proposals, thus reducing**

564 Written evidence from e-Conomics (OPL0066)
565 Written evidence from e-Conomics (OPL0066)

the risk of regulatory fragmentation and removing obstacles to the creation of a Digital Single Market.

395. **While the panel would set its own agenda, on the basis of this report we identify three subjects that require immediate consideration:**

- **The effectiveness of enforcement in these markets, including whether enforcement agencies have the necessary powers and resources to act against abuse by the largest online platforms, and whether enforcement could be better co-ordinated across different jurisdictions and regulatory regimes;**
- **The lack of competition between platforms on privacy standards, and how data portability requirements should apply to different types of online platform; and**
- **Ways to open up access for emerging and disruptive innovation into the digital economy, including in areas such as the Internet of Things and the expansion of the collaborative economy into new sectors.**

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Chapter 2: The importance of online platforms

1. Online platforms are drivers of growth, innovation and competition, which enable businesses and consumers to make the most of the opportunities provided by the digital economy. (Paragraph 24)

2. E-commerce platforms allow SMEs to access global markets without having to invest in costly digital infrastructure, and provide consumers with increased choice. Search engines enable their users to navigate the web efficiently, and enable businesses to engage in more targeted advertising. Social media and communication platforms provide citizens with new opportunities for interaction, self-expression and activism. (Paragraph 25)

3. Policymakers should take care when examining the challenges these rapidly developing markets present not to lose sight of the very considerable benefits that online platforms provide. (Paragraph 26)

4. The Commission's decision to conduct a comprehensive assessment of online platforms should not be seen as inherently protectionist. Given the impact these businesses have had on people's lives and the economy, and concerns about whether existing regulatory regimes are still fit for purpose, a thorough analysis of online platforms is timely. If the growth of Europe's digital economy is to be maximised, it is important that such concerns are investigated and, where appropriate, addressed. (Paragraph 37)

Chapter 3: Defining 'online platforms'

5. The Commission's primarily economic definition of multi-sided online platforms offers insight into central aspects of these businesses including their intermediary role, the interdependencies that arise between their distinct user groups, and the role that data plays in intermediating between these groups. This provides a helpful way of thinking about online platforms that can usefully inform the work of policymakers and regulators. (Paragraph 59)

6. The boundaries of the definition are, however, unclear. This is illustrated by the Commission's own list, which excludes traditional platform businesses that now operate online, yet includes some digital platforms that are not multi-sided. Broadly interpreted, the proposed definition could encompass 'all of the Internet'; strictly applied, it would only capture specific elements of the businesses with which it is concerned. (Paragraph 60)

7. We recommend that further consideration of the need for regulation of online platforms should start by attempting to more precisely define the most pressing harms to businesses and consumers, and then consider the extent to which these concerns are common to all online platforms, sector-specific, or specific to individual firms. (Paragraph 61)

Chapter 4: Market power and online platforms

8. The markets in which online platforms operate are characterised by accelerated network effects. These may fuel exponential growth, increase switching costs, increase entry barriers for potential competitors and lead to monopolistic outcomes. Firms that succeed in harnessing these network effects may become the main platform in a sector, gateways through which markets and information are accessed. This can reduce choice for users and

mean that they become an almost unavoidable trading partner for businesses. Such platforms are likely to possess a significant degree of market power. (Paragraph 100)

9. However, in contrast to some networked industries, the market power of the most successful online platforms is secured through innovation that has succeeded in harnessing network effects. The risk of disruptive innovation is also greater in these markets because the up-front investment in infrastructure required for market entry is often lower. Therefore, 'competition for the market' may create competitive pressure even when one firm has a high market share. (Paragraph 101)

10. Furthermore, we note that competitive pressures vary in type and intensity from sector to sector, and many online platforms are unlikely to possess significant market power. Case by case analysis is therefore necessary. (Paragraph 102)

11. On this basis, while competition authorities reserve the power to break up firms and limit their market shares, we do not believe that ex ante regulation of platforms that sought to substantially restrict their activities on the basis of their market share alone, is necessary. Nonetheless, the potential for dominant positions to emerge means that competition authorities must be vigilant in these markets, to ensure that market power is not abused. Protecting users in these markets also requires that consumer rights and data protection rights are effectively enforced. (Paragraph 103)

Chapter 5: Competition law and online platforms

Restrictions on pricing

12. The increasing use of restrictive pricing practices by online platforms requires critical scrutiny by competition agencies. While some restraints may be justified to enable price comparison websites to operate, these clauses may also, especially when broadly designed, enable firms to exploit suppliers and exclude competitors. A case by case analysis by competition authorities is therefore necessary. (Paragraph 121)

13. While we commend the commitments secured by National Competition Authorities from Booking.com and Expedia to drop the use of wide price parity clauses, we note that the asymmetries of bargaining power that characterise the online travel agent sector may mean that the effects of wide parity clauses persist in practice, even after the prohibition of these clauses. (Paragraph 122)

14. We recommend that the Competition and Markets Authority urgently order a market investigation into the online travel agent sector. This investigation should consider the extent to which banning wide parity clauses has been effective, claims that online travel agents continue to prevent suppliers from offering other online travel agents a lower price, and other misleading practices alleged against online travel agents, including the creation of 'shell websites'. As this is a Europe-wide issue, we recommend that the Commission support this investigation and co-ordinate any related activity by other National Competition Authorities. (Paragraph 123)

15. We believe the findings of this investigation may be of wider application and could provide helpful insights about how to address similar practices in other sectors. While the evidence we received applied to travel accommodation, the

findings of this investigation may be useful in considering the relationship between Online Travel Agents and other supplier businesses, which also affects fares and travel costs for consumers. (Paragraph 124)

16. We note the growing regulatory fragmentation in the online travel agent sector that has arisen as a result of unilateral action by Member States. This undermines ambitions to create a Digital Single Market. We urge DG Competition to publish guidance in due course clarifying the use of wide and narrow parity clauses by online travel agents. (Paragraph 125)

Asymmetries in bargaining power in other industries

17. We support the Government's view that developing codes of practice, most likely on a sectoral basis, could help to discourage unfair trading practices in these markets. Such codes of practice should be based on rigorous analysis. We therefore recommend that the Competition and Markets Authority use its market investigation tool to examine markets where concerns about unfair trading practices are most widespread, with a view to determining whether codes of practice are needed. (Paragraph 133)

18. We note with concern that DG Competition's 'sector inquiry' power does not enable it to impose legally binding sector-wide remedies. This limits the ability of the EU competition regime to address market-wide problems efficiently. We recommend that DG Competition be granted powers to impose legally binding sector-wide remedies as a result of a sector inquiry, subject to conditions to be agreed with National Competition Authorities. (Paragraph 134)

19. Extending the EU's online dispute resolution platform to cover business-to-business disputes could help to address concerns about unfair trading practices by online platforms. Such a mechanism could complement codes of practice described above. However, we note that the business-to-consumer online dispute resolution tool appears not to have been well-implemented. We recommend that the Commission's first priority should be to ensure the effective implementation of the online dispute resolution mechanism in its current form. (Paragraph 138)

20. Fear of commercial retaliation by the online platforms on which they depend may prevent complainants from approaching competition authorities. We recommend that the Competition and Markets Authority introduce new measures to protect complainants in these markets. These should include imposing substantial penalties upon online platforms that are found to have engaged in commercial retaliation. (Paragraph 141)

Vertical integration and leveraging

21. Google's search engine shows how the tendencies to concentration in these markets may result in a successful innovator becoming the main provider of a particular service. Google Search has become a gateway through which a large proportion of the world accesses information on the Internet, which many businesses consequently depend on in order to be visible and to compete online. (Paragraph 153)

22. The Google case illustrates the way in which a platform may use a strong position in one sector (in this case, general search) to integrate a range of other services into its core offering, thereby entering into direct competition with trading partners on its platform. Such integration can offer consumers

benefits, such as increased convenience; it can also exclude competitors and harm consumers, if they are not directed to the best service or if innovation is reduced. (Paragraph 154)

23. The evidence we have received indicates that it is not possible to formulate useful general rules about vertical integration in relation to online platforms, because each case is substantially different. Whether individual examples should be deemed an abuse must be ascertained through rigorous case by case analysis. Competition enforcement is the most appropriate instrument to deal with such concerns where they arise. (Paragraph 155)

Mergers and acquisitions

24. Large online platforms frequently acquire innovative firms, often at a significant premium, in order gain a competitive advantage over rivals; it is important that competition authorities are vigilant to ensure that, in doing so, they are not also buying up the competition. (Paragraph 161)

25. We are concerned that mergers and acquisitions between large online platforms and less established digital businesses may escape scrutiny by competition authorities, because the target company generates little or no revenue and so falls below the turnover threshold adopted by the European Commission's Merger Regulation. (Paragraph 162)

26. We recommend that the Commission amend the Merger Regulation to include additional thresholds that better reflect this dynamic, examples of which might include the price paid for the target or a version of the 'share of supply' test used in the UK. (Paragraph 163)

Data and competition law

27. Data are integral to the operation of many online platforms and the benefits they provide. For this reason, exclusive access to multiple sources of user data may confer an unmatchable advantage on individual online platforms, making it difficult for rival platforms to compete. (Paragraph 177)

28. As well as providing new benefits, rapid developments in data collection and data analytics have created the potential for new welfare reducing and anti-competitive behaviours by online platforms, including subtle degradations of quality, acquiring datasets to exclude potential competitors, and new forms of collusion. While some of these abuses are hypothetical, they raise questions as to the adequacy of current approaches to competition enforcement. (Paragraph 178)

29. We recommend that the European Commission co-ordinate further research regarding the effects that algorithms have on the accountability of online platforms and the implications of this for enforcement. We also recommend that the Commission co-ordinate further research to investigate the extent to which data markets can be defined and dominant positions identified in these markets. (Paragraph 179)

30. It is clear that dominant online platforms could potentially abuse their market position by degrading privacy standards and increasing the volume of data collected from their users. We welcome ongoing research and competition investigations that seek to clarify the circumstances under which degradation of privacy standards could be deemed abuse under competition law. In the meantime, these concerns underline the clear need for the enforcement

of data protection law to be sufficiently robust to deter bad behaviour. (Paragraph 180)

The adequacy of competition law

31. The sheer diversity of online platforms and the complexity of their business models raise obvious challenges for competition authorities. The lack of price signals on the consumer side, and the presence of multiple prices in multi-sided markets, create difficulties for standard antitrust analysis. Quality is a key parameter of competition in these markets, but is not easily measured. (Paragraph 186)

32. While these challenges are significant, we note that the flexible, principle-based framework of competition law, which can be customised to individual cases, is uniquely well-suited to dealing with the subtlety, complexity and variety of possible abuses that may arise in these markets. We cannot see how a less flexible regulatory approach could be more effective. (Paragraph 187)

33. Competition law is perceived as being too slow to react to rapidly evolving digital markets. While the length of time taken to arrive at a decision in the Google case reflects its importance, it also highlights a wider problem. In such fast-moving markets a competitor who falls foul of anti-competitive conduct may suffer irreversible harm long before a competition case concludes. This undermines public confidence in the ability of regulators to hold large online platforms to account and may create political pressure for legislators to regulate unnecessarily. (Paragraph 199)

34. In order to speed up the enforcement of competition law, and in light of recent changes in UK legislation, we recommend that the Competition and Markets Authority make greater use of interim measures. DG Competition should also make greater use of interim measures by lowering the threshold for their use, bringing it into line with that of the UK Competition and Markets' Authority. (Paragraph 200)

35. We recommend that the Competition and Markets Authority and DG Competition consider introducing time limits for the process of negotiating commitments between competition authorities and dominant firms. Restricting the period for discussion of commitments should encourage parties to offer serious proposals at the outset and prevent them from delaying the process. (Paragraph 201)

36. We also note that our proposal to provide DG Competition with market investigation powers would enable the Commission to identify and address market-wide problems more efficiently and comprehensively than its current sector inquiry tool. (Paragraph 202)

Chapter 6: Data protection law and online platforms

Consumer concerns about personal data and online businesses

37. Consumers agree to share their personal data with online platforms in exchange for access to their services. However, the complex ways in which online platforms collect and use personal data mean that the full extent of this agreement is not sufficiently understood by consumers. As a result, trust in how online platforms collect and use consumers' data is worryingly low and there is little incentive for online platforms to compete on privacy

standards. We believe this presents a barrier to future growth of the digital economy. Online platforms must be more effective in explaining the terms of such agreements to consumers. (Paragraph 221)

General Data Protection Regulation

38. We welcome the wide range of reforms contained within the General Data Protection Regulation which will strengthen and modernise the EU data protection regime. This Regulation will expand the definition of personal data to include data collected through the use of cookies, location tracking and other identifiers, and will mean that the data protection regime will apply directly to online platforms established outside the EU for the first time. (Paragraph 228)

39. Nonetheless, given the limitations of the consent-based model, and industry's reluctance to make the mechanisms of consent more meaningful, we are concerned that the provisions that widen the definition of 'personal data' will be difficult to apply in practice. We recommend that the Commission investigate how the requirement for all businesses to seek consent for the collection of personal data through online identifiers, device identifiers, cookie IDs and IP addresses can be applied to online platforms in a practical and risk-based way. (Paragraph 229)

40. The privacy notices used by online platforms are inaccessible to the average consumer. They are too long and expressed in complex language. While the General Data Protection Regulation will require more transparency in privacy notices, and introduce heftier fines for non-compliance, this alone may not be sufficient to make consumers understand the value of their data when transacting with online platforms. (Paragraph 237)

41. We support provisions within the General Data Protection Regulation to allow organisations to use privacy seals, or kite-marks, to give consumers confidence that they comply with data protection rules. (Paragraph 238)

42. In order to encourage competition on privacy standards, not just compliance with the law, we recommend that the Government and the Information Commissioner's Office work with the European Commission to develop a kite-mark or privacy seal that incorporates a graded scale or traffic light system, similar to that used in food labelling, which can be used on all websites and applications that collect and process the personal data of EU citizens. (Paragraph 239)

43. To discourage misuse of users' personal data, we recommend that the European Commission reserve powers to require online platforms that are found to have breached EU data protection standards, or to have breached competition law by degrading privacy standards, to communicate this information clearly and directly to all of their users within the EU through notifications on their web-sites and mobile applications. We suggest that this power be used sparingly, for repeat offenders or particularly egregious breaches of the law. (Paragraph 242)

44. Data portability could be one of the most significant changes brought in under the General Data Protection Regulation. It could promote quality-based competition and innovation by making it easier for consumers to switch platforms. This would facilitate the emergence of new market entrants. (Paragraph 248)

45. However, we are concerned that the principle of data portability may unravel in practice. If applied too rigidly, it could place onerous obligations on emerging businesses; however, unless it is more clearly defined, it is unlikely that it will be implemented by many online platforms. (Paragraph 249)

46. We recommend that the Commission publish guidelines explaining how data portability requirements apply to different types of online platform. These guidelines should match data portability requirements to different types of online platform, adopting a proportionate approach depending on the essentiality of the service in question. (Paragraph 250)

47. The use of personal data as the basis of research, particularly on social media, goes beyond what most users would ordinarily expect or consider acceptable. We recommend that the Government and Information Commissioner's Office publish guidelines in the next 12 months setting out best practice for research using personal data gathered through social media platforms. (Paragraph 254)

48. In the past, online platforms established outside the EU were not subject to European data protection rules. This resulted in a weak data protection regime in which European citizens' fundamental rights were breached, and reduced consumer trust in how online platforms collect and process personal data. We are therefore concerned that industry remains sceptical about the forthcoming General Data Protection Regulation. Online platforms must accept that the Regulation will apply to them and will be enforced, and prepare to make the necessary adaptations. (Paragraph 258)

49. We urge the Commission, the Government, regulators and industry to use the time before the Regulation enters into force to ensure that its terms are well understood and effectively implemented. (Paragraph 259)

Chapter 7: Consumer protection and online platforms

Consumer-to-consumer transactions

50. Some online platforms take consumer protection issues seriously and dedicate significant business resources to addressing problems as and when they arise. (Paragraph 271)

51. Nonetheless, the growth of online platforms and the collaborative economy raise important questions about the definitions of 'consumer' and 'trader', which form the cornerstone of consumer protection law. This creates uncertainty about the liability of online platforms and their users in instances where consumer protection concerns may arise. (Paragraph 272)

52. We recommend that the Commission and the Government review the use of these definitions within the consumer protection *acquis* in order to determine whether gaps in legislation exist and if legislative change is needed. The Commission should also publish guidance about the liability of online platforms on consumer protection issues in relation to their users, including their trading partners. (Paragraph 273)

53. We also recommend that online platforms clearly inform consumers that their protection under consumer protection law may be reduced when purchasing a good or service from an individual, as opposed to a registered trader. (Paragraph 274)

Transparency in how online platforms present information

54. Concerns about the lack of transparency in how search and meta-search results are presented to consumers are well founded, especially in relation to price comparison websites, where the results of a search may be based on a commercial deal between the website and a business, rather than on the best possible price. However, we do not believe that this problem should be addressed by requiring online platforms to disclose their algorithms, which are their intellectual property. Instead, we believe that these concerns should be addressed through increased transparency. (Paragraph 285)

55. We recommend that the Commission amend the Unfair Consumer Practices Directive so that online platforms that rank information and provide search and specialised results are required to clearly explain on their website the basis upon which they rank search results. We also recommend that the Commission amend the Directive to require online platforms to provide a clear explanation of their business models and relationships with suppliers, which should also be prominently displayed on their websites. (Paragraph 286)

56. We note concerns that online platforms can and do engage in personalised pricing, using personal data about consumers to determine an individual price for a particular good or service, without clearly communicating this to consumers. This is another worrying example of the lack of transparency with which some online platforms operate. We recommend that DG Competition build on the work of the Office of Fair Trading and investigate the prevalence and effects of personalised pricing in these markets. We also recommend that online platforms be required to inform consumers if they engage in personalised pricing. (Paragraph 291)

57. The rating and review systems used by online platforms are instrumental in creating the trust necessary for consumers to engage in online transactions. To ensure transparency, however, we believe that all online platforms should have publicly accessible policies for handling negative reviews, and clearly distinguish between user reviews and paid-for promotions. We recommend that the Commission publish guidance clarifying how the Unfair Commercial Practices Directive applies to the rating and review systems used by online platforms. (Paragraph 299)

Chapter 8: How to grow European platforms

58. European policymakers should not allow concerns about online platforms to obscure the fact that they are key drivers of competitiveness, productivity and growth. It is important that Europe develop its ability to compete in these markets. We therefore urge the European Commission, as part of its current and future work on online platforms, to prioritise actions that promote the emergence and growth of online platforms in Europe. (Paragraph 302)

The UK's strengths

59. The UK has a population of early adopters, the highest levels of e-commerce in Europe, a thriving tech start-up scene, exceptionally strong e-commerce and creative sectors, and is a world-leader in FinTech or Financial Technology services. As a result, the UK stands to gain more than any other EU Member State from the creation of a digital single market. (Paragraph 307)

Create a Digital Single Market of 500 million consumers

60. Market scale is paramount for online platforms, whose value resides in the size of the networks they can create. The fragmentation of the European market in digital goods and services—with 28 different rulebooks—substantially limits growth and acts as an incentive for businesses to shift the locus of their operations to the US, to maximise their growth potential. We therefore strongly endorse the central aim of the Digital Single Market Strategy, which is to reduce regulatory fragmentation and remove barriers to cross border trade, and urge the Commission to retain a sharp focus on this over-riding purpose. (Paragraph 325)

61. Initiatives in the Digital Single Market Strategy, particularly the greater harmonisation of contract law and consumer protection, are critically important to enabling digital tech start-ups and platforms to operate without friction across borders and to fully exploit a potential market of over 500 million consumers. We recommend that the Commission and the Government pursue an ambitious degree of integration in these areas, and resist a lowest common denominator approach. (Paragraph 326)

Facilitate increased investment

62. We note the weakness of the European venture capital market compared to that of the US is a barrier to the growth of EU-based start-ups and scale-ups, and an incentive for emerging platforms to move to the US. This lack of investment is not unique to online platforms, and represents a major obstacle to generating economic growth across the Union. We therefore welcome the unprecedented large-scale action from the Commission to address this lack of investment through the Capital Markets Union, the €315 billion Investment Plan for Europe and its proposal to create a venture capital 'fund of funds'. (Paragraph 338)

63. We also note the difficulty of establishing small-scale investment funds in the UK, compared to the US. We recommend that the Government review the example provided by the US Jumpstart Our Business Startups (JOBS) Act, and consider whether comparable reforms could facilitate increased investment in UK-based start-ups and scale ups. (Paragraph 339)

Embrace the strategic role of innovation

64. If the European Union and its Member States wish to facilitate the growth of online platforms that can compete in these global markets, they must embed innovation at every level of policymaking. The need to update existing regulation in order to protect consumers and the competitive process should be carefully balanced with the need to promote innovation in these markets: we suggest that regulating after markets have matured may be preferable to adopting a more pre-emptive approach. (Paragraph 350)

65. If the EU and its Member States can get this balance right, facilitate increased investment in digital tech firms, and—most importantly of all—create a scale market of 500 million consumers, Europe has the potential to play a leading role in the next stages of the digital revolution. (Paragraph 351)

Chapter 9: Regulating online platforms

Disrupted regulation

66. The rapid growth of online platforms has disrupted many traditional markets. It has also resulted in uncertainty about how existing regulation, designed in a pre-digital age, applies to these new disruptive business models. As a consequence there is a perception that large online platforms are above the law. (Paragraph 373)

Responding to regulatory disruption

67. We do not consider that highly restrictive regulation that seeks to contain disruption would be the right response. It would risk entrenching existing market structures and make it difficult for new platforms to emerge, thereby discouraging innovation. Nonetheless, we acknowledge the need to protect fundamental rights and to ensure that existing regulation is effective and up-to-date. (Paragraph 374)

68. In addition to the adaptations proposed elsewhere in this report, we recommend that the Commission, in concert with regulators at Member State level, critically review and refit existing regulation to ensure that its application to online platforms is clear. We believe that in many cases specific guidance from the Commission could provide this clarification. (Paragraph 375)

69. As many concerns relate to the enforcement of existing laws rather than the content of those laws, we invite both the Commission and the Member States to consider whether providing regulators with increased resources would be a more efficient way to address concerns about enforcement than introducing additional rules. (Paragraph 376)

70. We recommend that regulators robustly enforce against online platforms they believe to be in breach of the law. Enforcement authorities should sometimes proceed even where there is a risk of losing the case or having the outcome appealed—such outcomes help to clarify how the law applies. For this reason we welcome Commissioner Vestager's decision to proceed with the Google case, without prejudice to the outcome. (Paragraph 377)

71. Online platforms present regulators and enforcement agencies with multiple challenges, outlined in detail in this report. In addition to a perceived gap in enforcement, popular concerns about their use of personal data, disruption of traditional industries and corporate tax contributions have put pressure on policymakers to act at Member State level, resulting in increased regulatory fragmentation. Unless these concerns are addressed in a concerted way at a European level this fragmentation will continue to increase, undermining the possibility of creating a single market in digital goods and services. (Paragraph 389)

72. While the Digital Single Market Strategy identifies specific policy interventions designed to achieve this goal, we consider that the political sensitivity of questions relating to online platforms, as well as their sheer variety, make reaching a consensus in this policy area difficult. (Paragraph 390)

73. Although we welcome the Commission's consultation as a valuable first step, we believe that it is too broadly designed to address these issues decisively. To support the growth of innovative online platforms across the EU in a

sustainable way, we believe that the process of reviewing the effectiveness of existing laws in relation to online platforms must be continuous. (Paragraph 391)

74. We therefore recommend that the European Commission appoint an independent panel of experts tasked with identifying priority areas for action in the digital economy and making specific policy recommendations. (Paragraph 392)

75. The panel would consist of a representative group of independent experts with deep insight into the digital economy and the emerging challenges it presents, drawn from outside the Commission itself. It would be supported by staff that would enable it to effectively pursue its objectives, and would seek input from a wide range of specialists on specific issues. The panel would report annually to the European Commission, the European Council and the European Parliament. (Paragraph 393)

76. The panel would act as a channel for public concerns, engaging with regulators, policymakers, businesses and citizens, but would then subject those concerns to rigorous and impartial analysis, before formulating its recommendations. In this way the panel would seek to build political consensus around its policy proposals, thus reducing the risk of regulatory fragmentation and removing obstacles to the creation of a Digital Single Market. (Paragraph 394)

77. While the panel would set its own agenda, on the basis of this report we identify three subjects that require immediate consideration:

- The effectiveness of enforcement in these markets, including whether enforcement agencies have the necessary powers and resources to act against abuse by the largest online platforms, and whether enforcement could be better co-ordinated across different jurisdictions and regulatory regimes;

- The lack of competition between platforms on privacy standards, and how data portability requirements should apply to different types of online platform; and

- Ways to open up access for emerging and disruptive innovation into the digital economy, including in areas such as the Internet of Things and the expansion of the collaborative economy into new sectors. (Paragraph 395)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Aberdare
Lord Cotter*
Baroness Donaghy
Lord Freeman
Lord German
Lord Green of Hurstpierpoint
Lord Liddle
Lord Mawson
Baroness Noakes **
Baroness Randerson ***
Lord Rees of Ludlow
Lord Wei
Lord Whitty (Chairman)

* Resigned as a Member of the Sub-Committee on 22 July 2015.

** Recused from the inquiry.

*** Appointed as a Member of the Sub-Committee on 11 November 2015.

Declarations of Interest

Lord Aberdare

No relevant interests.

Lord Cotter

No relevant interests.

Baroness Donaghy

No relevant interests.

Lord Freeman

No relevant interests.

Lord German

No relevant interests.

Lord Green of Hurstpierpoint

Shareholdings as set out in the Register of Lords' Interests.

Discretionary management of shareholdings by Brewin Dolphin.

Discretionary management of shareholdings by Veritas Asset Management.

Chair, International Advisory Committee of British Chambers of Commerce.

Member of the Advisory Board of the Centre for Progressive Capitalism.

Lord Liddle

Lord Liddle's wife, Caroline Thomson, is Chair of Digital UK. This is a joint venture of BBC, ITV, Channel 4 and Arquiva concerned with digital terrestrial television and the provision of services such as Freeview.

Lord Mawson

No relevant interests.

Baroness Noakes

Recused from the inquiry.

Baroness Randerson

No relevant interests.

Lord Rees of Ludlow

No relevant interests.

Lord Wei

Advisory role with Ninety Group (a digital consultancy and accelerator).

Director of Shoreditch Ventures Ltd (which owns Maker Wharf co-working spaces.)

Lord Whitty

No relevant interests.

The following Members of the European Union Select Committee attended the meeting at which the report was approved:

Baroness Armstrong of Hill Top
Lord Blair of Boughton
Lord Borwick
Lord Boswell of Aynho
Earl of Caithness
Lord Davies of Stamford
Baroness Falkner of Margravine
Lord Jay of Ewelme
Baroness Kennedy of The Shaws
Lord Liddle
Baroness Prashar
Baroness Scott of Needham Market
Baroness Suttie
Lord Trees
Lord Tugendhat
Lord Whitty
Baroness Wilcox

During consideration of the report the following Members declared an interest:

Lord Jay of Ewelme

Trustee, Thomson Reuters Founders Share Company

Chairman, British Library Advisory Council

Vice-Chairman, Business for New Europe

Member, Senior European Experts Group

Chairman, Positive Planet UK (British Branch of a French NGO)

Lord Tugendhat

Shareholdings declared in the Register of Lords Interests

A full list of Members' interests can be found in the Register of Lords Interests: http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/

The Specialist Advisors to the Sub-Committee for the inquiry were:

Richard George Feasey

Associate at Frontier Economics, an economic consultancy firm which advises a wide range of clients economic, regulatory and competition matters. In this role, Mr Feasey provided advice to a number of European telecommunications operators in relation to various aspects of the current European Commission review of the Telecommunications Regulatory Framework.

Advisor to the GSMA, mobile industry global trade association on aspects of the current European Commission review of the Telecommunications Regulatory Framework, including the future regulation of online platforms.

Advisor to Vodafone Group plc on EU regulation.

Research fellow at the Centre on Regulation in Europe (CERRE).

Mr Feasey was invited by the European Commission to speak at a workshop on the current European Commission review of the Telecommunications Regulatory Framework on 11 November. Mr Feasey also accepted invitations to lecture on 'net neutrality' and other matters relating to the regulation of telecommunications providers and online platforms at the Kings College, London and Cambridge Judge Business School during February 2016.

Derek McAuley

No relevant interests.

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at www.parliament.uk/hleu and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with ** gave both oral evidence and written evidence. Those marked with * gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

Oral evidence in chronological order

**	Jason Freeman, Director, Consumer Law at the Competition and Markets Authority	QQ 1–10
**	Professor Annabelle Gawer, Associate Professor in Strategy and Innovation at the Imperial College Business School	
*	Joe McNamee, Executive Director, EDRi	
**	Agustín Reyna, Chief Legal Officer, BEUC	
*	Steve Chester, Director of Data, Internet Advertising Bureau	QQ 11–22
*	Des Higham, Engineering and Physical Sciences Research Council Career Fellow in Data Analytics/ Internet of Things	
**	Steve Wood, Head of Policy Delivery, Information Commissioner's Office	
*	David Evans, Lecturer in Law, Chicago Law School and Chairman of the Global Economics Group	QQ 23–32
**	Ariel Ezrachi, Slaughter and May Professor of Competition Law, Oxford University	
*	Matthew Fell, Director for Competitive Markets, CBI,	QQ 33–42
*	Richard French, Legal Director, Digital Catapult	
**	Antony Walker, CEO, TechUK	
**	Alex Chisholm, Chief Executive, Daniel Gordon, Senior Director, Markets, and Nelson Jung, Director, Mergers Group, Competition and Markets Authority	QQ 43–51
*	Giovanni Buttarelli, European Data Protection Supervisor (EDPS)	QQ 52–60
*	Charly Berthet, Rapporteur at Conseil National du Numérique (French Digital Council)	QQ 61–72
*	David Viros, Chief of Staff, Head of International and European affairs at Autorité de la concurrence (French Competition Authority)	
*	Evelyne Gebhardt MEP	QQ 73–80
*	Clare Moody MEP	

**	Professor Daniel Zimmer, Chair, and Dr Thomas Weck, Senior Legal Analyst, Monopolies Commission, Germany	QQ 81–89
*	Vicky Ford MEP	QQ 90–94
*	Martin Bailey and Corneliu Hoedlmayr, DG CNECT	QQ 95–108
*	Claire Bury, Peter Mihok, and Vesa Vanhanen DG GROW,	
*	Guillaume Loriot and Nicholas Banasevic, DG COMP	
*	Dan Dionisie and Michele Voznick, DG Justice and Consumers	
**	Adam Cohen, Head of Competition and Economy Policy for EMEA, Google	QQ 109–122
**	Jon Steinberg, External Relations Manager, EMEA, Google	
**	Ms Ufi Ibrahim, Chief Executive, British Hospitality Association	QQ 123–136
**	Tim Godfray, Booksellers Association	
**	Carolyn Jameson, Chief Legal Officer, Skyscanner	
**	Kostas Rossoglou, Head of EU Public Policy, Yelp	
*	Michael Ross, Co-Founder and Chief Scientist, Dynamic Action	QQ 137–145
**	Josh Smith, Associate Researcher, CASM, Demos	
**	David Alexander, CEO, Mydex CIC	
**	Steve Wood, Information Commissioner's Office	
*	Andrus Ansip, Vice-President of the European Commission	QQ 146–157
*	Hanna Hinrikus, Vice-President's Cabinet, European Commission	
*	Jörgen Gren, Vice-President's Cabinet, European Commission	
**	Patrick Robinson, Head of Public Policy Europe and Canada, Airbnb	QQ 158–165
**	Mark McGann, Head of Public Policy EMEA, Uber	
**	Paul Misener, Global Vice-President of Public Policy, Amazon	QQ 166–175
**	Michael Galvin, Head of Regulatory Affairs, Addison Lee	QQ 176–180
*	Hon Ed Vaizey MP, Minister of State for Culture and the Digital Economy, Departments for Business, Innovation and Skills and Culture, Media and Sport	QQ 181–193

*	Baroness Neville-Rolfe DBE CMG, Parliamentary Under-Secretary of State for Intellectual Property and Government Spokesperson, Departments for Business, Innovation and Skills and for Culture, Media and Sport	

Alphabetical list of all witnesses

**	Addison Lee (QQ 176–180)	OPL0067
**	Airbnb (QQ 158–165)	OPL0061
	Alliance for Intellectual Property	OPL0048
**	Amazon (QQ 166–175)	OPL0064
	Anonymous witness	OPL0086
	Association For Proper Internet Governance	OPL0002
	Association of Authors' Agents	OPL0008
	Bar Council of England and Wales	OPL0026
	The Bed and Breakfast Association	OPL0080
**	BEUC (QQ 1–10)	OPL0068
**	The Booksellers Association (QQ 123–136)	OPL0039
	The British Academy of Songwriters, Composers and Authors (BASCA)	OPL0060
	British Association of Picture Libraries and Agencies (BAPLA)	OPL0033
**	British Hospitality Association (QQ 123–136)	OPL0023
	Sally Broughton Micova	OPL0053
	David Brunnen	OPL0010
	Campaign Against Unlawful Taxis In Our Nation Limited	OPL0038
**	Centre for the Analysis of Social Media (CASM) at Demos (QQ 137–145)	OPL0065
	Chartered Institute of Marketing	OPL0028
	Citizens Advice	OPL0082
	Professor Eric Clemons	OPL0071 OPL0077
**	Competition and Markets Authority (QQ 1–10) (QQ 43–51)	OPL0055
	Computer and Communications Industry Association	OPL0040
*	Confederation of British Industry (CBI) (QQ 33–42)	
	Design and Artists Copyright Society (Dacs)	OLP0021
*	DG CNECT, European Commission (QQ 95–108)	
*	DG COMP, European Commission (QQ 95–108)	

*	DG GROW, European Commission (QQ 95–108)	
*	DG Justice and Consumers, European Commission (QQ 95–108)	
**	Digital Catapult (QQ 33–42)	OPL0084
	Digital Policy Alliance Eurim	OPL0051
	Direct Marketing Association	OPL0029
	Professor William H Dutton	OPL0057
*	Dynamic Action (QQ 137–145)	
	Eastbourne Hospitality Association	OPL0009
	e-Conomics	OPL0066
	Benjamin Edelman	OPL0062
	Dr Jerry Ellig	OPL0081
	Etsy Inc	OPL0063
	EU VAT Action Campaign	OPL0015
*	European Commission (QQ 146–157)	
*	European Data Protection Supervisor (QQ 52–60)	
*	Professor David Evans (QQ 23–32)	
	Experian	OPL0024
**	Professor Ariel Ezrachi (QQ 23–32)	OPL0043
	Federation of Small Businesses	OPL0075
	First Tutors Edunation Ltd	OPL0020
*	Vicky Ford MEP (QQ 90–94)	
*	French Competition Authority (QQ 61–72)	
*	French Digital Council (QQ 61–72)	
**	Professor Annabelle Gawer (QQ 1–10)	OPL0050
*	Evelyne Gebhardt MEP (QQ 73–80)	
	Getty Images	OPL0045
**	Google Inc. (QQ 109–122)	OPL0017
	Herb Hedgerow Ltd	OPL0003
*	Des Higham (QQ 11–22)	
	Impala The Independent Music Companies Association	OPL0035
**	Information Commissioner's Office (QQ 11–22), (QQ 137–145)	OPL0016 OPLOO69
	Information Technology and Innovation Foundation (ITIF)	OPL0076
*	Internet Advertising Bureau (QQ 11–22)	

	Ipsos MORI	OPL0065
	Jisc	OPL0018
	Dr Ansgar Koene	OPL0079
	Professor Richard N Langlois	OPL0073
	LSE Law	OPL0054
*	Joe McNamee (QQ 1–10)	
	Microsoft	OPL0059
**	Monopolkommission (QQ 81–89)	OPL0046
*	Clare Moody MEP (QQ 73–80)	
	Motion Picture Association	OPL0041
**	Mydex CIC (QQ 137–145)	OPL0013
		OPL0083
	Nesta	OPL0027
*	Baroness Neville-Rolfe DBE, CMG, Departments for Business, Innovation and Skills and Culture, Media and Sport (QQ 181–193)	
	Ofcom	OPL0047
	Orange	OPL0092
	Dr Chris Pike	OPL0089
	Dr Christopher Pleatsikas	OPL0078
	Dr Anna Plodowski	OPL0088
	The Premier League	OPL0072
	Producers Alliance for Cinema and TV (PACT)	OPL0014
	PRS for Music	OPL0036
	The Publishers Association	OPL0007
	Professor Tom Rodden	OPL0074
	Sharing Economy UK	OPL0052
**	Skyscanner Limited (QQ 123–136)	OPL0006
	Skyscape Cloud Services Ltd	OPL0030
	STEP Digital Assets Working Group (DAWG)	OPL0011
	Professor Alain Strowel	OPL0087
	Damian Tambini	OPL0053
**	TechUK (QQ 33–42)	OPL0056
		OPL0070
	TripAdvisor	OPL0085
**	Uber (QQ 158–165)	OPL0031
		OPL0091

	UK Music	OPL0032
*	Hon Ed Vaizey MP, Departments for Business, Innovation and Skills and Culture, Media and Sport (QQ 181–193)	
	Professor Wouter Vergote	OPL0087
	Which?	OPL0090
	Yahoo	OPL0042
**	Yelp (QQ 123–136)	OPL0034

APPENDIX 3: CALL FOR EVIDENCE

Online Platforms and the EU Digital Single Market

The House of Lords EU Internal Market Sub-Committee, chaired by Lord Whitty, has launched an inquiry into the regulation of 'online platforms' in the EU. Provisionally defined by the European Commission as "software-based facilities offering two- or even multisided markets where providers and users of content, goods and services can meet"[566], online platforms are ever more central to how businesses and consumers access information and engage in e-commerce.

Types of platform that the Commission identifies include:

- online marketplaces (Amazon, Ebay, Allegro, Booking.com)
- collaborative or 'sharing' economy platforms (Uber, Airbnb, Taskrabbit, Bla-bla car)
- communication platforms (Skype, Whatsapp)
- social networks (Facebook, Linkedin, Twitter)
- search engines and specialised search tools (Google search, Tripadvisor, Twenga, Yelp)
- maps (Google maps, Bing maps)
- news aggregators (Google news)
- music platforms (Deezer, Spotify, Netflix, Canal Play, Apple TV)
- videosharing platforms (Youtube, Dailymotion)
- payment systems (PayPal, Apple Pay)
- app stores (Google Play, Apple app store).

While acknowledging the benefits that platforms bring, the European Commission's Digital Single Market Strategy expresses concern that "some platforms can control access to online markets and can exercise significant influence over how various players in the market are remunerated", and voices reservations about "the growing market power of some platforms". In response, the Commission is now reviewing whether "existing regulatory tools are sufficient to tackle the problem, or whether new tools need to be developed."[567]

From the range of concerns that the Commission has identified, it has prioritised the following:

- transparency (eg in how search results are ranked, how personal data is used, and what rights consumers may have in the event of non-performance by another party)
- regulation of how platforms use the information/data they acquire
- relations between platforms and suppliers (eg asymmetries in bargaining power and the fairness of terms and conditions)
- constraints on individuals and businesses' ability to switch from one platform to another.

566 Commission Staff Working Document, A Digital Single Market for Europe: Analysis and Evidence, SWD(2015) 100, p 52.

567 Communication from the Commission, A Digital Single Market Strategy for Europe, COM(2015) 192, pp 11–12.

In order to arrive at an informed view on this issue, the House of Lords EU Internal Market Sub-Committee will collect evidence from a wide range of stakeholders including consumers, businesses that use platforms to sell their goods and services, regulators, online platforms themselves, and non-digital competitors whose businesses may be disrupted by those platforms. The inquiry will ask if any problems associated with platforms can be resolved by regulation.

Written evidence is sought by 16 October 2015. Public hearings will be held from 12 October until 14 December. The Committee aims to publish its report in spring 2016. The report will receive responses from the Government and the European Commission, and will be debated in the House of Lords.

The Committee seeks evidence on the following questions from anyone with an interest in these issues. You need not address all these questions in your response, and respondents from a particular area or sector are invited to focus on the questions most relevant to them. Evidence submitted by consumers and businesses that use platforms can be anonymized upon request, as explained in Annex 1.

For detailed background on the Commission's views on platforms, please see the Digital Single Market Strategy for Europe and supporting Analysis and Evidence.[568]

Questions

Section 1: Online platforms, consumers, suppliers

Defining online platforms

Do you agree with the Commission's definition of online platforms?[569] What are the key common features of online platforms and how they operate? What are the main types of online platform? Are there significant differences between them?

How and to what extent do online platforms shape and control the online environment and the experience of those using them?

Effects on consumers, suppliers (including SMEs), competitors and society

What benefits have online platforms brought consumers and businesses that rely on platforms to sell their goods and services, as well as the wider economy?

What problems, if any, do online platforms cause for you or others, and how can these be addressed? If you wish to describe a particular experience, please do so here.

In addition to concerns for consumers and businesses, do online platforms raise wider social and political concerns?

Platforms as part of the Digital Single Market Strategy

Is the European Commission right to be concerned about online platforms? Will other initiatives in the Digital Single Market Strategy have a positive or negative impact on online platforms?[570]

568 Communication from the Commission, A Digital Single Market Strategy for Europe, COM(2015) 192,pp 11–12.

Commission Staff Working Document, A Digital Single Market for Europe: Analysis and Evidence, SWD(2015) 100, pp 52–56.

569 Commission Staff Working Document, A Digital Single Market for Europe: Analysis and Evidence, SWD(2015) 100, p 52.

570 Communication from the Commission, A Digital Single Market Strategy for Europe, COM(2015) 192.

Section 2: Competition, data, collaborative economy

Competition and dominance

Is there evidence that some online platforms have excessive market power? Do they abuse this power? If so, how does this happen and how does it affect you or others?

Online platforms often provide free services to consumers, operate in two- or multisided markets, and can operate in many different markets and across geographic borders. Is European competition law able adequately to address abuse by online platforms? What changes, if any, are required?

Collection and use of data

What role do data play in the business model of online platforms? How are data gathered, stored and used by online platforms and what control and access do consumers have to data concerning them?

Is consumer and government understanding and oversight of the collection and use of data by online platforms sufficient? If not, why not? Will the proposed General Data Protection Regulation adequately address these concerns? Are further changes required and what should they be?

Should online platforms have to explain the inferences of their data-driven algorithms, and should they be made accountable for them? If so, how?

The collaborative economy

Can you describe the challenges that the collaborative economy brings? What possible solutions, regulatory or otherwise, do you propose?

The current regulatory environment and possible interventions

How are online platforms regulated at present? What are the main barriers to their growth in the UK and EU, compared to other countries?

Should online platforms be more transparent about how they work? If so, how?

What regulatory changes, if any, do you suggest in relation to online platforms? Why are they required and how would they work in practice? What would be the risks and benefits of these changes? Would the changes apply equally to all online platforms, regardless of type or size?

Are these issues best dealt with at EU or member state level?

APPENDIX 4: EXAMPLES OF MULTI-SIDED PLATFORM BUSINESSES

Exchange Platforms

Exchange platforms typically have two customer groups: buyers and sellers. The platform helps them search for feasible trading partners and for the best prices. Having a large number of both buyers and sellers increases the probability that participants will find a match. Examples of exchange platforms include online marketplaces such as Amazon Marketplace, Booking.com or eBay and collaborative economy platforms such as Airbnb, Uber and Bla-bla car. Exchange platforms can derive their income from charging one side (typically sellers) or both sides (such as matchmaking businesses) of the market.

Advertising Supported Media Platforms

These include magazines, newspapers, free television and web-portals. The platform locates, purchases or creates content and uses this content to attract viewers. These viewers attract advertisers and therefore most platforms of this type earn the majority of their revenue through advertisers (for example, most print media is sold at below marginal cost). Platforms which provide a free service, earn all their revenue from advertising alone. Advertising supported media platforms include general search engines, such as Google, specialised search tools such as TripAdvisor, social networks such as Facebook, and video sharing platforms such as YouTube.

Transaction Systems Platforms

Transaction system platforms provide a common method of payment between two distinct parties. Payment cards, such as Diners Club and American Express, provide consumers and businesses with a means to make and receive multiple payments through one card. American Express sets prices for merchants receiving the payment, while charging customers an annual fee or giving them rewards. PayPal and Apple Pay are examples of transaction system platforms as they facilitate payments online and via a smartphone.

Software Platforms

An important benefit of hardware devices is their ability to incorporate new applications, which have to compatible with the device's existing software. Software platforms provide application developers with access to the code (or APIs) used in the existing software in order to help them develop new applications. Software platforms may give developers free access to their APIs but charge consumers for access to new applications (such as Microsoft updates for personal computers in the past). Alternatively, software platforms can combine with exchange platforms, and charge developers for selling their applications on their marketplace (as is the case with the Apple App Store and Google Play.)[571]

571 David S Evans, Platform Economics: Essays on Multi-sided Businesses, Competition Policy International (2011), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1974020 [accessed 3 March 2016] pp 5-9

APPENDIX 5: GLOSSARY

APIs	API refers to an 'application program interface' which is a set of routines, protocols, and tools for building software applications. An API specifies how software components should interact and APIs are used when programming
B2B	Business to Business
B2C	Business to Consumer
BAPLA	British Association of Picture Libraries and Agencies
BASCA	British Academy of Songwriters, Composers and Authors
BEUC	European consumer protection organisation
C2C	Consumer to Consumer
CBI	Confederation of British Industry
CCIA	Computer and Communications Industry Association
CMA	Competition and Markets Authority
CPC	Consumer Protection Cooperation
CPRs	Consumer Protection from Unfair Trading Regulations
CSV file	In computing, a comma separated values (CSV) file stores tabular data (numbers and text) in plain text
DG Competition	The European Commission Directorate General responsible for establishing and implementing a coherent competition policy for the European Union
DG Connect	The European Commission Directorate General for Communications Networks, Content & Technology
DG Grow	The European Commission Directorate-General for Internal Market, Industry, Entrepreneurship and Small and Medium-sized enterprises
Digital Single Market	This is the title of the Commission's Strategy, published in May 2015, to establish a single market digital goods and services across the EU.
ECN	European Competition Network
EU	European Union

Facebook's IPO	Facebook held its initial public offering (IPO) on Friday, 18 May 2012. The IPO was the biggest in technology and one of the biggest in Internet history, with a peak market capitalisation of over $104 billion
FCA	Financial Conduct Authority
FTC	Fair Trade Commission
GDPR	The General Data Protection Regulation
Germany's Bundeskartellamt	An independent competition authority whose task is to protect competition in Germany
ICO	Information Commissioner's Office
IMPALA	The Independent Music Companies Association
IPO	Initial Public Offering
IT	Information Technology
ITIF	Information Technology and Innovation Foundation
MEP	Member of the European Parliament
MFNs	Most Favoured Nations
Monopolkommission	German Monopoly Commission
Nesta	An independent charity that works to increase the innovation capacity of the UK
OC&C	Global strategy consultants
OECD	Organisation for Economic Co-operation and Development
Ofcom	Independent regulator and competition authority for the UK communications industries
OTAs	Online Travel Agents
PwC	Pricewaterhouse Coopers
RPM	Resale Price Maintenance
SMEs	Small and Medium-sized Enterprises
Silicon Valley	An area located in the US state of California which is home to many of the world's largest high-tech corporations as well as thousands of start-up companies
TFEU	Treaty on the Functioning of the European Union
Article 101 TFEU	Prohibits cartels and other agreements that could disrupt free competition in the European Economic Area's internal market

Article 102 TFEU	Prevents undertakings who hold a dominant position in a market from abusing that position.
UK	United Kingdom
Unicorn	A Unicorn denotes a start-up company whose valuation has exceeded the value of $1 billion
USA	United States of America
VC	Venture Capital
Vertical integration	The combination in one firm of two or more stages of production normally operated by separate firms.

APPENDIX 6: VISIT TO DIGITAL CATAPULT CENTRE

On 21 October 2015, the Committee visited the Digital Catapult Centre in London. The objective of this visit was to learn more about how online platform businesses operate and to speak to UK based digital businesses who have worked with the Digital Catapult to scale up their operations.

The Digital Catapult Centre was set up by the Government in 2013 to help convert specialised research knowledge found across the UK into viable commercial enterprises. The Digital Catapult is part of the network of eleven Catapults which can be found across the UK and which were created in response to the recommendations made by Dr Herman Hauser in his 2010 report, *The current and future role of technology and innovation centres in the UK*.[572] The Digital Catapult's main focus is on helping businesses and organisations to share and use closed or proprietary data in ways which create efficiencies and commercial opportunities.

The Committee met the Legal Director, Richard French, and the Marketing and Centres Director, Jenni Young, to learn about ongoing and new projects undertaken at the Centre. In particular, the Committee learned about the Centre's plans to improve trust amongst consumers about how digital businesses collect and use their personal data through their project to create a set of standards and a Trust Framework. These would enable the creation of a consumer-centric guidelines to empower consumers to know more about how their data is being collected and used. The Catapult also facilitates the 'Personal Data and Trust Network', providing a platform for industry, the public sector, funders, research and organisations to support the UK in becoming the global leader in trust and responsible innovation with personal data.

The Committee also with representatives from UK based digital businesses - Cue Songs, Appic Ltd and Chirp - to discuss the benefits and concerns surrounding large online platform businesses. The Committee was told that small digital businesses benefitted from easy access to global markets provided by larger online platforms and that there was a degree of competition between online platforms who charged similar rates of commission for use of their marketplaces to sell applications. However, the Committee also heard that it could be problematic for smaller businesses to negotiate contracts with larger platforms which were often based outside the UK and tended to look for businesses that were easy to export. These businesses also drew attention to the difficulty they had in accessing finance from Venture Capital funds in the UK, noting that these funds were often not managed by entrepreneurs but more risk averse professionals.

572 Dr Herman Hauser, *The current and future role of technology and innovation centres in the UK* (March 2010): https://interact.innovateuk.org/documents/1524978/2139688/The+Current+and+Future+Role+of+Technology+and+Innovation+Centres+in+the+UK/e1b5f4ae-fec8-495d-bbd5-28dacdfee186 [accessed 11 April 2016]