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# "TECHNOPOLY"
# and what to do about it:

## *Reform, Redress and Regulation*

Executive Summary and Recommendations Overview

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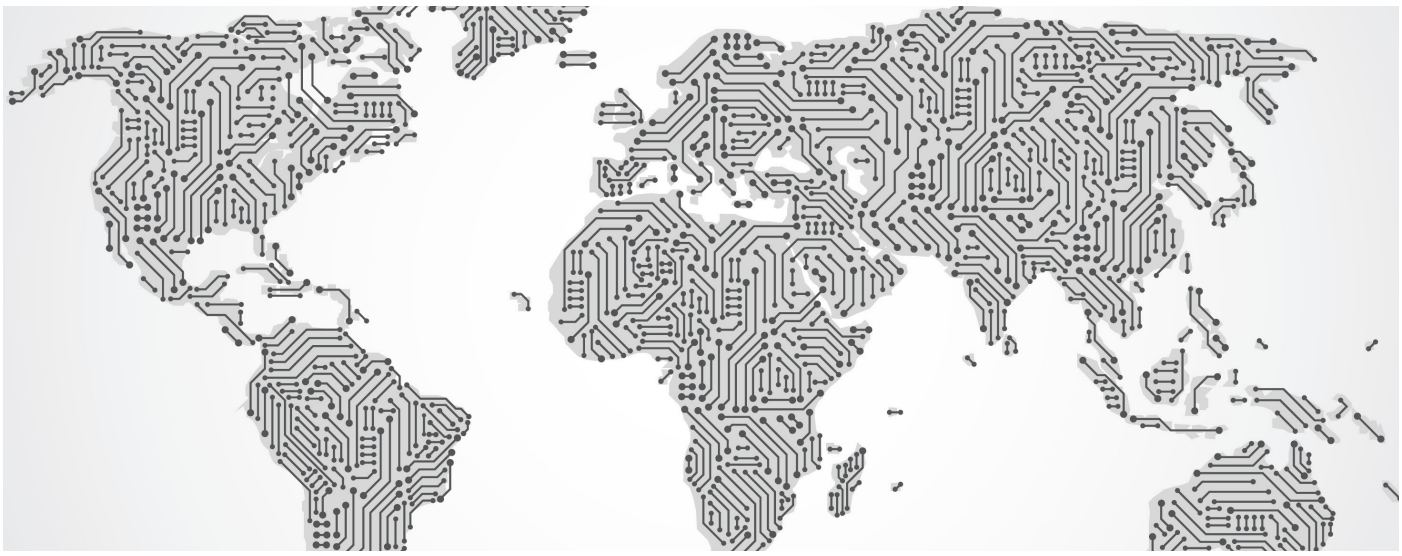

# Executive Summary

Markets matter as they allow more people to own and trade, and monopolies are an evil that restrict such ownership and trade. They illegitimately crush rivals and funnel the rewards their dominance creates to themselves and they expand relentlessly unless stopped. Economic concentration also hinders innovation and productivity, and if unchecked it can predetermine not just the economic fate of individuals, but also of nations. It is not too extreme to say that we increasingly risk re-feudalising society, where ownership in any substantial degree has become an unrealisable dream for too many. This rentier society has created a new digital road to serfdom and unless or until we chart a different path, we risk recreating the market dynamics of the middle rather than the modern age.

In what follows are some of our ideas and policy recommendations for reversing this trend. It builds on our submission to the House of Lords on the impact of Brexit on UK Competition Policy in September 2017,[9] and has culminated in the publication of this report.

We outline in Part I that *market concentration* levels are increasing across many parts of the economy and most clearly in the tech sector. Part II offers a series of concrete recommendations to rectify the situation.

## *Why is 'increased concentration' a problem for the consumer?*

People think Big Tech equals free products e.g. Facebook and Google's services that come at no cost to the consumer. But the consumer does pay, not just with the unacknowledged surrender of their own data, but through other hidden costs. Primarily, with big tech, consumers pay for the choices and services forgone, for the innovation and products lost to market dominance. The major tech players simply pursue "kill in the crib" strategies, buying-out the most viable competitors in their infancy - before they can grow to a size and scale that would challenge the incumbents. The net loss is the denial of all the other multiple centres of innovation and development whose products will never see the light of day. Market concentration, as we will argue, markedly reduces innovation and dramatically narrows the options for consumers.

## *Why is 'increased concentration' a problem for society?*

Since Brexit, Trump and the rise of various European nationalisms, commentators have identified a failure of the market mechanism as in part a cause of political populism. For what market and platform dominance do is restrict ownership and the economic security that this can and should bring. With insecurity the mark of the new age, and workers in the West increasingly unable to access society's goods through wages. Oligopoly and monopoly are, we argue, one of the proximate causes of a rising asset inequality benefitting almost exclusively those at the top, while leaving ordinary working people ownerless and ill served by the market.

This is happening. The economic evidence in this paper supports this thesis. Consequences include an effective re-feudalisation of society, with concentrations of wealth and power in an ever-smaller number of major global companies and their owners. However, action is now possible and urgently needed to prevent these structures from resembling those of feudal lordship in the middle ages and avoid this new emergent serfdom.

Our paper does not accept that the market mechanism has failed and something else should be tried entirely. Rather, it demonstrates that the market has not been allowed to work as it should, and how it could. Part I demonstrates that concentration of industrial structure and

oligopoly has arisen in many sectors of the economy. We outline the evidence on market concentration, dynamism over time, entry and exit and increasing profitability and dividend share. The data is US based. None exists yet in the UK, as no similar research has been commissioned. This indicates a shameful complacency on the part of British regulators. The EU has recently launched a study to gather similar data and evidence for the EU – we suspect it is unlikely to produce different results, as a similar 'competition' regime has until recently been in the ascendancy across the West. This paper therefore acts as a warning. The form of economic dominance revealed herein is incompatible with the free market and if we are to defend the openness of markets, regulators (especially the UK bodies such as the CMA) need to dramatically up their game and improve their concepts and practices.

The risk to well-being and economic and personal freedom for many people, cannot be overstated. Young people question whether they will ever have an opportunity to own anything and make a meaningful contribution to society. We do not doubt that these issues have fuelled populism and find their voice in support for figures as diverse as Trump and Corbyn. The behaviour of purely profit maximising businesses is widely perceived to be immoral. Intervention to impose what is morally correct via direct state action is understood to be under consideration on the left. We would prefer to argue for a different course – a reconceptualization and repurposing of competition law so that it explicitly breaks with the pro-dominance criteria and practises of the past. And that innovation and distribution are recognised as legitimate goals of competition enforcement.

We refer to the most likely culprits and causes that have allowed high levels of concentration to arise. The central economic principle adopted by all competition authorities, the so-called "consumer welfare" standard (against which mergers have been judged) is large part of the reason that big companies have been allowed to get bigger. That principle as we will argue is demonstrably flawed - it promotes and allows deals that improve short term efficiency at the expenses of other long term economic goods and goals. It allows those businesses that achieve global scale, to expand yet further and deny other businesses their legitimate place in the world. Other causes include the incoherent system of outdated turnover thresholds – wholly inappropriate for catching and looking at internet companies whose value is measured in the numbers of people seeing adverts, not in the revenues generated. The likes of Google and Facebook have been able to pursue their "kill in the crib" strategies, taking out infant challengers, outside the remit and hidden from the gaze of the authorities.

In Part I we also identify methodology and management practices and policies which have contributed to these outcomes, which need to be changed. The system needs to be dramatically speeded up. Enforcement needs to operate at internet not analogue speed.

To exemplify and make our case, we focus on the most egregious and telling cases in the technology and media markets. We provide examples of assessment failures and highlight the wider consequences of a failure to act. There is a very real threat to future economic and personal freedoms, from an increasingly concentrated if not monopolised market place.

We reserve a special place for data hungry companies. Our competition law assumes that consumers will be looked after individually or collectively where they drive demand – needless to say recent events and exposures have shown this to be a false conceit.

Data driven businesses are different. They require different assessment. Transactions over the internet leave traces and we can be followed by the digital footprints we all leave behind. Businesses have followed us and captured our needs, wants and desires. They have used that information to tailor ads to us or sold the data to advertisers. Where those players have market power the interests of consumers and the advertisers diverge - users become assets and are routinely exploited for profit. Protecting personal data is vital. However, controlling the use of data, with such mechanisms as the General Data Protection Regulation, presupposes ownership. We consider that clearly establishing, protecting and safeguarding ownership of data is a necessary first step the UK has yet to take. In the face of monopoly or market power, where lack of choice means that data ownership is meaningless, we argue that safeguards need to be put in place to redress the balance of bargaining power, to ensure that users have real sovereignty over their data.

## *Why is 'increased concentration' bad for democracy?*

We make the case that increasing concentration affects economic and personal freedom. It also threatens press freedom and choice of media and, in turn, democracy is threatened if either the message or the medium of its communication is monopolised.

All society benefits from challenge to opinion, testing of received wisdom and disruption of established thought. Groupthink has grown in the filter bubbles - newsfeeds promote a bland perspective and society's concern to ensure plurality of media is all too often revealed as a sham. The British government has, for example, spent the last 18 months examining, in considerable detail and significant cost, the proposed merger of Fox with Sky. Its conclusion - that the merger can go ahead, but because of a concentration of media ownership in the hands of the Murdoch family, the transaction can only proceed if Sky News is sold. In the meantime, Google and Google News has dominated visibility online. It has continued to strip advertising budgets of many other media businesses and accumulate great wealth. This has reduced further the opportunities for many online media businesses and regional and local newspapers, taking the money directly from the budgets of those that could otherwise have advertised and financed great reporting and a stronger and more diverse press.

The "Fantastic Four" (Google, Facebook, Amazon and Apple) are now widely recognised to be dominating the technology sector and controlling the media. They have wrapped the planet with their platforms and inhabit all, or almost all offices, schools and homes. Their impact on communication is pervasive and the

consequences for freedom of expression and press freedom is only now becoming clear. We now find ourselves a year later, living in a surveillance society even further down the road, with more and more evidence of data abuse, and the control of communications and publishing in the hands of a small number of global players. Do we really think that stopping the Murdoch family from owning Sky News will make much difference? It will be irrelevant to the billions of people whose only source of news is their daily Facebook feed. To be clear, we agree with the sentiment and support the conclusion (if not the speed of the decision making), but we point to the scale of what more needs to be done if choice and plurality of the media is to be truly achieved.

Players such as *The Guardian*'s Adam Rusbridge have claimed that Facebook sucked up £20m of his newspaper's digital advertising revenue. If such players can accumulate control of visibility, they can threaten diversity of supply. Weakening of the press is the first step toward weakening of viewpoints, and it undermines democracy. Visibility is everything online. Control over what is seen or found determines what people see, read and, ultimately shapes what they think.

## *Recommendations for change*

We argue that true market liberalism hasn't failed; it hasn't been given a chance, because our regulators have not recognised or responded to changes in the market. The Marxist dictum that markets tend to monopoly appears, in the face of widespread inaction by competition authorities, to have become true. If liberal capitalism is simply reduced to oligopoly or monopoly capitalism, then it behoves those who would defend it to do far far better. Our proposals would seek to restore the focus of the authorities on factors that underpin a merits-based system of competition. Capitalism will only succeed if it is seen to the mechanism that distributes ownership and economic agency to the widest possible extent. On that measure it has currently failed.

This does mean success being rewarded, but success has to be based on the merit of products and services, based on business insight and innovation. Products should be designed around consumer needs. To be sure that they are designed to meet those needs consumers need to be in a position of bargaining power – otherwise the supplier can impose terms on the consumer. In circumstances where there is no choice but to 'click and accept' the terms of the relationship are dictated to and not agreed by the consumer.

If we want to get the benefits of markets pursuing socially beneficial outcomes and a social market economy, the authorities need to intervene to correct the course of dynamic markets. Here, merger control provides an opportunity and it avoids the well-known problems of static intervention and the inflexibility from regulation, state control or even nationalisation. We consider effective merger control, and effective competition law enforcement to be able to correct the course of the market as it changes.

Enforcement action can be used to block or stop unwelcome structural change. Conditions can be imposed to ensure compliance with the law, and to force sales of businesses to reinforce a plural market structure and increase beneficial competition. Anticompetitive practices and increases in market power and its exploitation can and should be nipped in the bud – but enforcement needs take place at speed.

Enforcement action is a way of avoiding the excesses of laissez faire and preventing oligopoly and monopoly. When done well, it can provide a middle ground between the polarised view of free marketeers and those that would regulate away all dimensions of a market.

Our recommendations focus on changing the current prioritisation of consumer welfare and introducing consumer choice and innovation as additional factors. These points may look innocuous, so we provide some examples. Choice would encourage genuine variety. In media we call this plurality. This would be especially welcome in our online media markets – and we use media in a broad sense, including online social media and all forms of communication that can affect people's viewpoints.

Online platforms that already control significant channels or media outlets should be recognised as media players and prevented from accumulating market power. We do not advocate bringing back a general public interest test – our proposal is a very specific realignment of policy without the need to change the law.

Refocusing on innovation is critical. We first suggested this in submission to the DTI when we proposed the Ministerial Steer to restore democratic oversight. It was included in a Ministerial Steer in 2013. It has been largely ignored by the authorities and the profession. The new Ministerial Steer should make it clear that innovation should override efficiency. For example, mergers that restrict or reduce post-merger innovation should not be allowed to proceed even if they can show efficiency benefits through synergies. More care about post-merger market dynamics is needed. Innovation is more important than short-term efficiency for our society, and entry can and should be promoted to encourage longer-term production in ways that will benefit us all over time.

We recommend closing the existing gaps in the system. We suggest monitoring outputs and checking that the markets and remedies are working well. This is simply not done at present, for which no good reason can be established. We outline below specific and concrete steps to fix the problems we have identified.

9 ResPublica, September 2017, House of Lords Written Evidence Submission (CMP0030), https://www.city.ac.uk/__data/assets/pdf_file/0008/400004/Res-Publica-Markets-and-the-New-Monopolies-2017.pdf

# RECOMMENDATIONS OVERVIEW

**1. Assess consumer welfare but also give equal weight to innovation and consumer choice when examining transactions and competition matters.**

Our proposals include a change to the existing system. We respect the importance of consumer welfare as a factor to be taken into account in competition assessments of transactions and competition matters generally. But, we suggest that the promotion of both innovation and consumer choice is at least as important, if not more so. Promoting competition in the interests of all in society would, if consumer choice were to be truly meaningful, lead to increased media plurality and diversity of viewpoints. Market structure is important and competition policy needs to be aligned with the government's Industrial Strategy for this to be achieved. We use media in a broad sense, including online social media and all forms of communication that can affect people's viewpoints.

**2. Restoration of society's interests. The Government's Strategic Steer should promote greater enforcement of the law, especially in the technology sector, to promote innovation and customer choice. This would recognise the importance of market structure and small business to the economic and social wellbeing of the UK, and people's views of how they see the world and what it means and can mean to them.**

The more important innovation becomes to society, the greater the need to enforce the law. The UK has low productivity and increasing inflation. Economic growth, productivity improvements, and worthwhile jobs for people now, and in the future, are the challenge for all governments. We believe this means that enforcement priorities should be established by government in its Strategic Steer and it should place greater emphasis on enforcing the law, especially in the tech sector, to promote innovation and customer choice. Greater levels of innovation, and increased opportunities, means emphasis on choice, and that means emphasis on market structure and entry by small business.

Small business provides about half of all job growth. Small businesses require confidence in the future. Small business involves a sense of ownership and changes the way people think about themselves. Entrepreneurship reinforces certain values. Values like opportunity and responsibility, both for ourselves and to others, be they customers, employees or suppliers.

We understand that succeeding or failing on our own merits changes the way people look at themselves and the world. However, opportunity has to be truly open and the economy free, for each and every one of us to pursue our own goals. Fear of failure corrodes confidence, and a sense of purpose needs daily sustenance.

People won't be willing to spend money, sweat, time and tears on their own venture if the market is rigged against them. People are willing to take risks, but not foolish risks. Innovation, like entrepreneurship, is risky. It costs money. It takes time. It often fails. Therefore, common sense tells us that there will be a lot less of it if markets are not open to competition from businesses that have a better idea or a new way of doing things.

Effective competition is an important contributor to how people see the world as fair or unfair – success based on merit is readily understandable. Markets that promote success based on the merits, either support belief in fairness of the market mechanism or undermine it - a world dominated by the unfair gains from monopoly support a view that capitalism is only for the rich. Currently the view from the street is of a world of major global companies dominating many aspects of life. Personal opportunity is limited and globalisation, epitomised by global tech platforms, is dislocating and contributing to deep insecurities and the "gig economy". A failure of liberal capitalism has been repeatedly blamed for the rise in populism. Viewed through a slightly different lens, what if the analysis is different - what if liberal free market capitalism has not failed - but has not existed and doesn't exist where markets have become monopolised? Where opportunity is dependent on innovation, and that is stifled by Big Tech's behemoths, complaints about the re-feudalisation of society can be seen to be more legitimate and the use of extreme language justified. We consider it is time to reassert the public interest to ensure that markets work in the interests of the many not the few.

**3. We recommend that outcomes should be measured by the authorities. Measurement of outcomes should be used to review the authorities' performance.**

Outcomes require measurement and enforcement requires testing. The authorities do not currently measure outcomes or effectiveness of remedies over the time they should. Indeed, there is no credible case that can be made for the absence of such measurement save that it would show up the effectiveness of administrative action or its lack. Post-merger price rises have been found in certain cases where the predicted outcomes are taken into account in allowing the merger to proceed and would have led authorities to expect competition to drive prices down. In technology markets innovation can be expected in terms of quality improvements. Outcomes in terms of innovation, and measures of innovation, need to be developed and assessed by the authorities on a consistent basis over time. The authorities currently measure their activity in terms of cases taken, and books full of cases stand in silent testament to market failure.

**4. The current merger control system does not properly address innovation mergers: we recommend that the current thresholds should be changed. Assessment practices toward transactions and assessments of market power also need to change.**

Competition is the mother of invention and the current system fails to support smaller players, as it does not catch or scrutinise mergers between major players and innovative upstarts. The jurisdictional thresholds that set the starting point for merger review in the EU and UK were set partly as a political compromise to allocate work between authorities, such that bigger transactions - which tend to be more pan-European or global - are dealt with under the one stop shop approach in Brussels.

Change to merger control has recently taken place in Germany, following concerns that turnover thresholds are the wrong test - since they don't capture transactions that are important, but where the target has a low turnover. Indeed, turnover is a deceptively simple measure that was assumed to represent value of business and is peculiarly inappropriate for the tech sector where the number of users, or volumes of people in terms of internet traffic seeing advertising, is a better measure. In the industry, the number of "eyeballs" or unique users is often referred to as a measure of value. Businesses are bought for many billions on this basis without having much or any turnover - confusing ordinary assessments of value for those who don't appreciate that the volume of people passing a billboard is a better way of assessing the people seeing it, than the turnover generated. For this reason, Germany recently changed its law to adopt a value-based threshold aimed at catching such mergers and subjecting them to more careful scrutiny. The EU has been consulting on making changes to the thresholds on a similar basis. Whatever the outcome of Brexit, the UK should quickly revisit its system of merger control tests and should assess mergers between major companies and upstarts. Current thinking may be that the UK's voluntary system is sufficiently flexible – or vague enough that it can and does catch these types of transactions, whether on its market share or share of supply thresholds – but it is missing something. Given the risk involved in allowing transactions to proceed that should have been blocked, the wrong decisions are with us for a lifetime of regret. Allowing damaging market structures to continue to develop is difficult or impossible to undo. A narrower value-based threshold should be adopted.

We outline in this report the issues that arise from the 'digitisation of machines', and the problems that rapid technology developments create for those assessing which products are operating as competitive constraints over others. Market definition in the old, slow moving real goods world, does not generally need or require an appreciation of left field developments and supply side alternatives as a threshold matter - it is needed in technology markets at the threshold stage, in review of transactions and assessment of market power and its abuse. Indeed, the price of economic freedom could be said to depend on such vigilance.

Reform also means much more careful assessment of the supply side, productive efficiency and market structure. The investigation of productive efficiency and supply side substitution has to be given equal prominence, if not more, to forward-looking supply side analysis of alternatives that would or could meet the same need. If not, the system is blind to new developments meeting current needs and fails to understand the true nature of competition taking place.

**5. We suggest that the current CMA notification system should be enhanced, and smaller businesses encouraged to obtain safe harbour protection under CMA administrative guidance.**

Vertical agreements and innovation-enhancing collaboration, deserve special attention. The current system provides only weak signals to beneficial collaboration. This is because the current law prohibits all vertical agreements, subject to certain "safe harbours" that are defined in EU wide block exemptions. This is an out of date approach toward enforcement, based on an out of date administrative system, and one that has to change.

We have overlooked the importance of collaboration and market structure for the commercialisation of basic research, where public/private as well as multi-private firm collaborations are vital to the effective commercialisation of modern innovation. Persistent productivity failure could be derived from failure to collaborate effectively. Increasing productivity is driven by the use of new processes, often requiring collaboration to meet or beat market power. New ways of working - with productivity per worker often being driven by the adoption of new technology in existing firms, and new or improved products and services being created that tap into existing or latent demand - should be fostered. Small and medium-sized businesses are known to drive innovation and job creation. The innovation process is much more dynamic and interactive than innovation in labs of big companies funded by large R&D budgets – it has to be, to discover latent customer demands. It occurs in places where the new is tested, tailored, and tinkered with by multiple market-facing organisations often developing and using applied research in collaboration with universities. It depends on the integration of ideas from a wide range of organisations. Again, this should be supported and encouraged.

In the UK and the EU we have, in general, banned collaboration and made it illegal, subject to exemption on a self-certified basis. This creates peculiar risk assessments and strange consequences. From the Commission's e-commerce sector results, we have seen that the tech sector is riddled with anti-competitive practices, but lack of clear 'safe harbours' may also have led to risks not being taken when they could have been and where beneficial economic outcomes would have been desirable.

For smaller firms to collaborate they need to know whether their agreements are beneficial and acceptable or not. At present the system is unintelligible and complex, often requiring legal advice that is too expensive for smaller businesses

to obtain. The system should support the commercialisation of R&D, support smaller businesses, and be pro-innovation through collaboration. We suggest that the current CMA notification system should be enhanced, and smaller businesses encouraged to obtain safe harbour protection under CMA administrative guidance.

**6. We recommend that the role of the state, in addressing market failure in R&D and helping businesses cross the "Valley of Death" from invention to commercialisation, be enhanced and that state aid and public purchasing can be used to address the innovation deficit with other countries. We also recommend that Intelligent Purchasing can be used to support innovation and competition.**

The relationship between government-funded R&D, government procurement, and commercialisation is not coherent. When it comes to competing with other global economies such as the United States, the UK's track record on the collaboration between the private and public sectors is unimpressive. It is also widely accepted that the funding of basic research is a role for the state, because the market will not deliver. The next step, the commercialisation of the benefits of publicly funded developments, is under-examined and poorly promoted or protected from exploitation. This risks capture by existing market players. This requires our attitude to collaboration and commercialisation, through collaboration among industry participants and government, whether direct (through grant funding) or indirectly (through its purchasing practices), to change radically.

**7. Enforcement of the law needs to be swift and meaningful. We recommend prioritisation of enforcement against abuse of dominance in the tech sector.**

Our system of enforcement is too slow. Saying that whole industries are blighted before enforcement action is taken, does not bring home the full force of the effect on individuals trying to run their businesses, the corrosion of confidence of small businesses, and the enduring damage to people's lives and our society.

To some extent this is because of the allocation of responsibilities between the UK and EU, and the limited resources and capabilities available to Brussels based enforcement. Especially in comparison to the budgets and interests of the biggest companies in the world. Failure to enforce the law quickly means that we fail to keep markets open and functioning. Further discussion is needed about the factors that may affect speedy outcomes, including:

i. **Management experience.** Where heads of authorities have limited litigation experience is it fair to give them a mandate to take and manage litigation against the world's biggest companies, with unlimited budgets and the best lawyers money can buy?

ii. **Processes and procedures** adopted also typically mean that people are assembled to deal with specific transactions, investigations and issues rather than being organised into industry specific groups. The complexity of the modern economy demands greater knowledge through specialisation, measurement and monitoring of outcomes which would facilitate speed of understanding and more rapid decision making.

iii. **Timescales** are measured in the time taken to achieve perfect administrative outcomes, rather than provide the response needed by markets in market defined timescales. Our authorities need to move at internet speed.

**8. We recommend that the current Ministerial Steer should be overseen and monitored against outcomes.**

We recommend that the goals of policy could be reset to become: *timely action to promote competition, innovation and consumer choice* - this could be sufficient for goal setting - while detailed measurement metrics need to be further developed.

The current system lacks democratic oversight. The system is modelled on the EU administrative system. That system is often derided for its democratic deficit. The EU system also inherently allows a conflation of competition policy, integrated with industrial policy, toward different sectors through the EU Commission and EU legislative proposals. That is why it is enforced by a Commission that is an integrated body. Going forward the UK needs to reconnect its economic management with governance and reconnect democratically elected ministers with industrial policy goals. The administrations must be charged with carrying out their functions in accordance with those goals. A balance needs to be struck between alignment to political goals and certainty for investment. The Ministerial Steer was created in 2013 and included reference to innovation. By and large, however, that steer has not led to any discernible change in the approach or practice of the authorities. It could provide a framework that allows outcomes and policy goals to be defined and a basis on which market participants could make their investments, while administration and enforcement would be for the CMA and sectoral authorities.

That steer should, in our view, seek to ensure that decisions are taken quickly, that breach is not tolerated, and that the focus of the public enforcement of the law promotes innovation and choice to a greater extent. The current draft is simply too long. To provide a meaningful steer to the CMA and regulatory authorities, and the people working in them, it needs to be about the goals of the system. Something along the lines of: "timely action to promote competition, innovation and consumer choice", could be sufficient for goals setting while detailed measurement metrics need to be developed.

In our view, administrative and enforcement bodies should not set policy. In the UK we have a Ministerial Steer that is designed to provide direction from democratically elected ministers. It needs to be used to set goals, and the achievement of those goals needs to be monitored by the government and parliament to ensure they have been achieved.

**9. We recommend that breach of the law should, in addition to compensatory damages, be able to strip the wrongdoer of the profits of their wrongdoing. The CMA should be empowered not only to take enforcement action in the public interest, but to coordinate and support action for harm and damages claims by government bodies.**

In simple terms it doesn't pay for dominant companies to comply with the law as currently enforced. The current system takes a long time and much hay is made while the sun shines. The penalties, which are designed to signify the public interest or damage to society from the breach of the law, are capped at a percentage of turnover. This means that public action and penalties are limited and not truly related to the profits that can accrue to companies who break the rules.

As well as penalties imposed by public authorities, damages actions may be brought by private parties or public authorities that have been harmed. Compensatory damages for breach of the law means that only that which compensates the claimant, need to be paid out and the lawbreaker can profit from its wrongdoing - this can be significant, if only a small percentage of those harmed ever make a claim. Under long established English common law, the courts reserve the power to award exemplary damages in circumstances where deliberate breach of the law was found. Otherwise the law would not be worthy of its name and be brought into disrepute. Deliberate non-compliance for economic gain undermines the rule of law. The ability of the courts to award exemplary damages, and for claimants to take action for exemplary damages, was recently limited by the EU Damages Directive. The position as established at common law needs to be re-asserted. English courts should be able to award exemplary damages in suitable cases.

The law thus does not properly set up compliance incentives, and it does not strip abusers and cartelists of the benefit of their illegal actions. Private actions are only available for those that can provide evidence of harm, causation and loss. It can then take years of expensive private litigation, claiming damages for breach of the law, which leads at best to compensation.

Compensation for only the limited set of brave claimants that can afford to take cases and prove harm, is a wholly inadequate basis to ensure compliance. For example, if a major tech platform abuses its dominance, excludes smaller rivals from the market and reaps huge rewards, claims for compensation cannot hope to strip the abuser of the benefits of its illegal actions. The genie cannot be rebottled, and compensation of a small number of small players for their relatively small losses, may be a worthwhile strategy for the dominant firm who can make more by continuing its practices and paying off those harmed. Worse still for a merits-based society, small rivals may be crushed. Business may become worthless overnight. Even taking a claim would often be financially impossible in such circumstances. The signal sent to other players is that big companies rule. A generation has been taught that moving fast and breaking things pays off - even if that means breaking the law.

The position of public authorities that have been harmed through anti-competitive abuse or the activity of cartels, is a cost to the public purse that is often unrecovered. For example, there has been case after case against pharmaceutical companies abusing their position (overcharging hospitals and healthcare providers), but only one known case of a claim for compensation. The hospitals and public bodies are being overcharged but often have no capability to talk action and no funds to do so. The CMA could be empowered not only to take enforcement action in the public interest, but to coordinate and support actions and claims for damages for harm to government bodies. Each government body would continue to need to establish its case in causation and continue to need to quantify its losses and be separately represented in doing so. But the CMA's evidence gathering powers could be more broadly used on behalf of the state, and available for subsequent enforcement action. These powers could also be adapted and used to support claims where the state's own financial interests have been harmed and public bodies have to be compensated.

**10. Establish data ownership clearly in law - enabling end users to trade their data.**

Protecting personal data is vital. However, controlling the use of data presupposes ownership and clearly establishing and protecting ownership of data is a necessary first step for the UK. In the face of monopoly or market power, where lack of choice means that data ownership is meaningless, we consider that safeguards need to be put in place to redress the balance of bargaining power to ensure that users have real sovereignty over their data. This may require regulation. It could be achieved by enforcing the existing laws against abuse of dominance. This would support fair, reasonable and non-discriminatory terms of trade with relation to consumers' data interests.

We also consider that advertising markets in general, and online advertising markets in particular, exhibit certain features that allow the interests of advertising customers (such as the merchants and their online platform intermediaries) to become divorced from the interests of their users, the end consumers. Users can become assets of the major platforms. To address this issue, we consider that data ownership is more clearly established in law, so that end users can exert the primary driving force in the operation of competitive markets.