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OPEN MARKETS **OUTLOOK**

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WHY WE SHOULDN'T GIVE UP ON FREE AND OPEN MARKETS EVEN WHEN WE ARE LASHED BY PANDEMICS

Message to monopoly regulators: this is no time to take a snooze

Covid-19 has hit the world's economy and, if the monopoly regulators are not exactly snoozing their way through the spring and summer, they are also deliberately not looking in the direction of some obvious abuses.

What is new there, some of their fiercest critics will ask? But, if they do, they may be a little out of date. Starting in the USA and continental Europe, the anti-trust argument has been shooting up the political agenda – admittedly from a rather low ebb.

The real concerns about monopoly power and the coronavirus are actually broader than regulators are normally able to deal with. They include the following issues:

- Whatever happened to the level playing field? Some sectors like tourism and retailing have been hit very badly, while some are booming (online again) - yet both have been given the same levels of government support.

- There is a danger that, now that the big online firms have such an enormous benefit from the lockdown through no great virtue of theirs – that they will be able to buy up their struggling real world competitors much too easily.

Does any company deserve its fate or its success right now?

- There will be pressure to continue state support in some key sectors for some time after the lockdown is over – but should the government really be bailing out airlines, given the damage they do to the planet by burning fossil fuels and global warming? Yet who is to decide?

About 17 per cent of co-ops have no funding options at all...

- Once again, there have been complaints that bailouts have been designed conveniently to suit the biggest businesses, rather than their smaller potential competitors. If you are a childcare business or a co-op, or a family-run café – who is going to support you? At least 17 percent of UK co-ops have no funding options at all – assuming they don't want to load themselves up with yet more debt (and even then...).[1]

This last question is a particular problem for campaigners for a more diverse and competitive economy. They point in particular to the plight of social enterprises many of whom have written an open letter to UK Chancellor Rishi Sunak, warning him that half of the sector could run out of money by June unless funding is urgently released.[2]

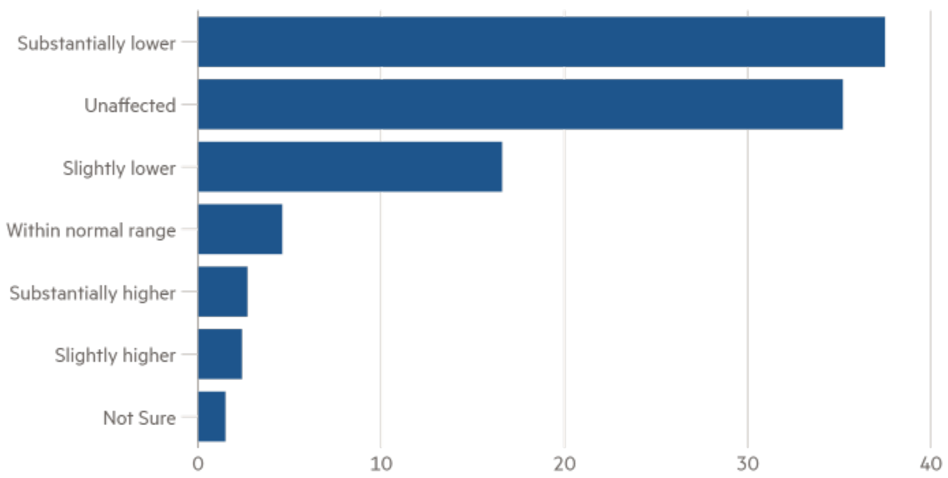
The letter says social enterprises could offer the 'key to the recovery' from Covid-19 however they are not currently benefitting from the package of support on offer for businesses. The letter urges the Chancellor to extend grants to include social enterprises and also change the delivery of loan finance to work for social enterprises.

It also says that emergency financing should be opened up to public services so that social enterprises can deliver services on behalf of the state.

Why governments prefer to deal with the devils they know...

UK businesses that continued operating reported lower turnover

Effect on turnover, percentage of all responding businesses, UK, March 23 to April 5, 2020



Source: ONS
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Once these businesses disappear, the sector will take years to rebuild, said the letter: "Their loss will drag our economy down and unnecessarily elongate our recovery. Social enterprises are more likely to work in the poorest areas than traditional SMEs or charities – with one in five based in our most deprived communities."

The problem with state financing, as we may have mentioned before, is that it tends to flow most easily and smoothly towards the big devils they know – not to the transformative rebels on the next layer down.

TOWARDS A MORATORIUM ON COVID MERGERS

The ban would apply only to businesses worth more than $100 million...

Two leading Democrats in the USA have proposed a moratorium on mergers.

Massachusetts senator Elizabeth Warren and New York representative Alexandria Ocasio-Cortez have proposed legislation to halt harmful mergers, in order to protect the American public from further consolidation and concentration. They are also proposing post-crisis rules to prevent dangerous takeovers once the economy begins to improve.[3]

They have called for a moratorium on mergers and acquisitions involving large companies until the Federal Trade Commission "determines that small businesses, workers, and consumers are no longer under severe financial distress."

The ban would apply to businesses with more than $100 million in revenue or financial firms with market capitalisation of more than $100 million, plus private equity companies and hedge funds or entities that are majority-owned by them, and businesses that have exclusive patents on products, such as personal protective equipment, that pertain to the crisis - and other transactions are already required by law to be reported to the FTC.

This proposal comes just days after David Cicilline chairman of the House Antitrust Subcommittee, called a merger moratorium at an event with the Open Markets Institute, a Washington-based thinktank.[4]

In March, Open Markets urged Congress, the Trump administration, and federal and state law enforcement agencies to "use their various powers to impose an immediate ban on all mergers and acquisitions by any corporation with more than $100 million in annual revenue, and by any financial institution or equity fund with more than $100 million in capitalisation."[5]

Open Markets wrote then that a moratorium on mergers was needed to prevent a wholesale concentration of additional power by corporations that already dominate or largely control their markets, especially in ways that may significantly worsen the crisis that now threatens America's health, social, and economic systems.

They argued that, while most independent businesses are facing hardship, corporations such as Apple have plenty of available cash and are ready to use it immediately for takeovers.

NUMBER OF US SMALL FIRMS AT RISK COULD RUN TO SIX FIGURES

Hundreds of thousands of small businesses shuttered by covid-19 are at risk of closing for good in the coming weeks in the USA, says the Boston-based Institute for Local Self-Reliance. Very small businesses and those with historically limited access to capital are especially vulnerable.

The ILSR has joined a range of allies in demanding a federal small business aid programme with the following characteristics:[6]

- Direct subsidies — not loans — for all employers with 500 and fewer employees to:
    - Retain or bring back their workers at full wages and benefits.
    - Cover fixed costs, including rent, mortgages, utilities, and
        - insurance payments.

- A rapid, streamlined process designed to provide subsidies for all impacted employers and independent contractors with minimal barriers to entry and no confusion or uncertainty.

- Delivered through the US Treasury, with resources directed to multiple agencies, including state and local governments, to make sure there is effective and universal take-up.

Desperate businesses refuse to help people with cancellation rights...

Seattle representative Pramila Jayapal and Missouri senator Josh Hawley have both drafted distinct legislative proposals that follow this set of principles by directly subsidising small business payroll and other operating costs.[7]

CMA TAKES ON CANCELLATIONS DURING THE LOCKDOWN

The UK's Competition and Markets Authority (CMA) has launched a programme of work to investigate reports of businesses failing to respect cancellation rights during the pandemic.

Through its Covid-19 Taskforce, which monitors market developments and identifies the big problems facing consumers, the CMA has seen increasing numbers of complaints in relation to cancellations and refunds.

Four fifths of complaints include cancellation rights

These now account for four fifths of complaints being received into the taskforce and so far include concerns about businesses refusing refunds or firms pressuring people to accept vouchers for holiday accommodation, which can only be used during a more expensive period.

Based on the complaints received, the CMA has identified three sectors of particular concern:

- weddings and private events
- holiday accommodation
- nurseries and childcare providers

It will tackle these areas as a priority and then move on to examine other sectors, based on the information received by the taskforce.

The CMA acknowledges that most businesses are acting reasonably in what are unprecedented circumstances, and the current crisis is placing everyone under pressure, but consumer rights cannot be ignored. But if it finds evidence that companies are failing to comply with the law, the CMA will take appropriate enforcement action, including moving quickly to court if a firm does not address its concerns.

> ""Alongside price-gouging reports, we're now seeing cancellation issues in their thousands. So far, the CMA has identified weddings, holiday accommodation and childcare as particular areas of concern…"
>
> **Andrea Coscelli, CEO of the CMA**

Individuals can also take their own legal action against unfair terms should they choose to.

As well as examining specific sectors, the CMA is issuing a statement on its views on consumer protection law in relation to cancellations and refunds during the current crisis.[8]

For most consumer contracts, the CMA would expect a full refund to be issued where:

- A business has cancelled a contract without providing any of the promised goods or services.

- No service is provided by a business, for example because this is prevented by the restrictions that apply during the current lockdown.

- A consumer cancels or is prevented from receiving the service, for example due to the restrictions that apply during the current lockdown.

IF YOU BREAK IT, YOU CAN'T FIX IT!

'Fixing America' report exposes a big repairs scam…

One of the most reckless profiteering trends in recent decades is dominant corporations' use of repair restrictions to force consumers to use original manufacturers' repair services, says the thinktank the Open Market Institute.[9]

Their report, *Fixing America: Breaking Manufacturers' Aftermarket Monopoly and Restoring Consumers' Right to Repair,* exposes manufacturers' design and legal tactics that prevent consumers, hobbyists, and small businesses from fixing things they paid for.

This exercise of monopoly power allows manufacturers to exclude independent parts manufacturers and technicians while extracting extra revenue during the lifespans of their products.

The report suggests several policy solutions for lawmakers and regulators that take advantage of favourable antitrust precedents and other legal tools that regulators and consumers can use to reopen repair markets and rebalance power among dominant corporations, independent repair shops, and consumers.

"While our antitrust laws languish, dominant manufacturers have seized the opportunity to exert control over consumers by restricting repair. Corporate manufacturers force consumers to use only the manufacturers' authorized repair services by withholding critical tools, guides, and parts," says co-author Daniel Hanley.

"By restricting these aftermarkets, dominant manufacturers destroy opportunities for independent repair businesses. This reduces choice for consumers and degrades community and supply chain resilience, all in an effort to maximize revenue and eliminate competition in aftermarkets. Giant corporations such as Apple and John Deere are looting the pockets of Americans – and the most sinister thing about it is that most people don't even realise it's happening."

***Fixing America* report co-author Daniel Hanley**

ASIA-PACIFIC AIRLINES MAY NOT SURVIVE

Airlines are tumbling in the COVID-19 pandemic…

Governments across the Asia-Pacific region have been willing to relax some competition rules to keep their airlines afloat during Covid-19. But they don't want to cut competition.

The danger in Australia and Malaysia is that struggling carriers are in danger of exiting the market completely and leaving behind only one major player.

Virgin Australia Group has entered into voluntary administration, raising the prospect of rival Qantas remaining as the only significant provider of domestic air travel in Australia.

Malaysian Airlines may also go bankrupt without financial aid or fresh capital. One senior minister suggests that merging the state carrier with the Malaysia-based AirAsia Group should again be considered.

…yet governments rule out single airline markets too…

But competition regulators have made it clear that a monopoly domestic airline industry is not an option.

Australian Competition and Consumer Commission chair Rod Sims said: "Having two airlines is absolutely fundamental to Australia's economic prosperity."

The same tone was used by the Malaysian Aviation Commission, or Mavcom. "In accordance with the Malaysian Aviation Commission Act 2015, any merger or anticipated merger that may substantially lessen competition in any aviation market is prohibited by law," they said.

At the same time, neither government appears to be willing or able to bail out the ailing airlines at this point.

According to Mavcom, government aid should be the last resort, given that its fiscal resources are already under considerable pressure from the expenditure required to fund the public health system and assist financially distressed households and small businesses. Mavcom said that the state carrier had already been supported by the government for far too long.

In Australia, the government has maintained it won't give Virgin Australia a financial bailout, offering industry-wide support instead, with a $1.2 billion financial package last month.

In New Zealand, the Commerce Commission, the local competition watchdog, has said companies won't face enforcement action when co-operating to ensure the supply of essential goods and services during this period.

India has declined to issue any outright exemptions from the country's competition law amid goods shortages and supply-chain disruption caused by the covid-19 pandemic, because the law contains provisions allowing businesses to co-operate to face challenges like epidemics.

REFERENCES

[1] https://www.uk.coop/newsroom/join-fight-co-op-support
[2] https://www.socialenterprise.org.uk/coronavirus-information/save-our-social-enterprises/
[3] https://www.nbcnews.com/politics/politics-news/warren-ocasio-cortez-propose-halt-big-mergers-during-coronavirus-pandemic-n1193756
[4] https://www.cnbc.com/2020/04/23/house-antitrust-chairman-wants-most-mergers-banned-during-the-pandemic.html
[5] https://openmarketsinstitute.org/blogs/open-markets-calls-ban-takeovers-large-corporation-funds-duration-crisis/
[6] https://static1.squarespace.com/static/5e6a768131c8f538ad00b294/t/5e94a99e21219916192a54c7/1586801054885/Principles+-+Save+Our+Economy_+Protect+Main+Street+Jobs+%26+Businesses.pdf
[7] https://jayapal.house.gov/2020/04/10/jayapal-announces-the-paycheck-guarantee-act/ See also: https://www.hawley.senate.gov/sites/default/files/2020-04/Getting-America-Back-to-Work_0.pdf
[8] https://www.gov.uk/government/publications/cma-to-investigate-concerns-about-cancellation-policies-during-the-coronavirus-covid-19-pandemic
[9] https://openmarketsinstitute.org/wp-content/uploads/2020/04/Report_RightToRepair_HanleyKellowayVaheesan-1.pdf