

Digital Britain – Consumer protection in the online world

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Introduction

I'm delighted to be here to address this conference.

So far, discussions have inevitably focused largely on 'supply-side issues'. We have heard about infrastructure, innovation and the Government's approach to businesses that provide services, whether content provision, advertising and selling online or providing the infrastructure.

This is all very important. And obviously, strong competition and keeping markets open to new entry constitute an essential part of that supply-side picture.

I am sure that there are many here who would like to hear more about competition policy in this area, particularly in regard to media mergers, but unfortunately that will have to wait until later this month.

This afternoon, I want to focus my comments on the 'demand-side' of Digital Britain, and specifically on the importance of having confident online consumers.

In my remarks today I want to:

- First, explain why the demand-side is as important as the supply-side and set out a positive vision for how this might work.

- Second, say something about what the OFT has done in this area, and what challenges we see.
- Third, make some suggestions for how Digital Britain can help meet these challenges.

Then I should have a couple of minutes to take questions.

Why the demand-side matters

Let me start by explaining that by 'the demand-side', I am referring to the end customers who ultimately pay for the infrastructure, content, advertising or online goods and services that you provide.

The shape of their current and future demand is critical to the investment and innovation decisions that you take today and tomorrow. There is no better stimulus to private sector investment than the expectation of further and higher demand.

The Government can make a huge difference to future demand. Through taxation, regulation and consumer education, including in schools, it can channel future behaviour. On top of this, the Government can use its role as the biggest buyer, and supplier, of services in the economy to foster future demand.

If the Government wants to create a critical mass effect and stimulate innovation and investment, it is important that it coordinates these various demand levers.

There is one particular aspect of the demand-side that I want to focus on, namely consumer confidence, and here I see a problem.

The problem

In the fast-developing digital world legitimate businesses have done a great deal to create brands which consumers trust.

However, despite these efforts to build trust, a lack of consumer confidence in the medium you operate in persists.

- An OFT Market Study into online shopping in 2007 found that 79 per cent of internet users were very concerned about the risks to the security of their payment details from online shopping.

- In 2008, in the US, the most common complaint about web sites was non-delivery of goods followed by internet auction fraud and credit card fraud.
- US authorities have also recently reported a 33 per cent increase in internet fraud.

As Meglena Kuneva, the Consumer Protection Commissioner, said last month: *'Young people between the ages of 15-25, the most confident of internet users, use the internet in spite of the fact that they generally don't trust it'*.

What happens if we don't have confident consumers?

This lack of confidence in the medium will hold us all back.

If consumers are not confident in online markets, demand will grow at a slower rate. That will affect demand for upstream infrastructure, affect the ability of content providers to commercialise online advertising, and impede retailers from achieving critical mass online.

Large companies may be able to build trust in their brands, but what about smaller players and new entrants, who are often the source of future innovation. And, as I am sure you all know, profitable law abiding business always attracts free-riders.

If consumers had such misgivings about cash or credit cards, we would have much less trade in the economy.

A second problem is that consumers who are not confident are also likely to demand further regulation. The history of consumer policy is that fear-driven regulation, especially during and after a crisis, does not just create unnecessary regulation: it can actually harm consumers themselves.

The vision

In contrast with that, I'd like to propose a positive vision, which involves the following:

- Vibrant and competitive online markets without unnecessary regulatory barriers
- Confident and empowered UK consumers who drive up online demand

- Consumers who are more confident in their private online transactions will be more confident as business people, employees and, indeed, recipients of public services
- A market in which consumer confidence is partly achieved through consumer learning and not over-protection
- Consumers who reward early adapters, those businesses that deliver what consumers want
- The UK leading international standard-setting through example
- A Government that is judicious and proportionate about how it intervenes, and does not crowd out the many important efforts that individual business or consumers will naturally make to improve confidence.

Getting this right now will help prepare the online world for the next period of growth post-recession.

This can only happen if consumers, businesses and Government work together.

What this vision means for consumer protection

We are confident that the same principles of consumer protection should apply online as off-line.

From an OFT perspective, we use the whole range of tools at our disposal to support the consumer at every stage of the online transaction.

- We provide education and guidance before the transaction
- We help shape the transaction itself
- We stay active after the transaction to reduce switching costs
- We help when things go wrong.

The OFT strongly believes that markets frequently solve market failure: we see how companies invest in reputation, how third parties help with complexity, and how industry self-regulation is often better external regulation.

When specific regulation is not needed, we work to 'nudge' the market in the right direction.

A few examples of what we have done in this area:

We took a case on Section 75 of the Consumer Credit Act (joint liability provisions) which resulted in a 2007 House of Lords judgment which

clarified that UK consumers should enjoy the same protection on their credit card abroad as at home.

In 2007, we carried out a Market Study looking at online shopping. The results showed that businesses had low awareness of consumer protection legislation in online transactions. We decided that for the majority of cases, rather than take large scale 'heavy' enforcement action we would focus on business education. This allowed us to target our enforcement resources on the fraudulent end of the spectrum.

In our enforcement on scams, we work with the Serious Organised Crime Agency, the Police, and local authority Trading Standards Services. We have led EU cross-border information sharing and enforcement action on scams, with a landmark court success in the Netherlands. And in our ongoing work on scams awareness we work with a large number of partners to highlight the general and specific dangers of scams through online and other channels. Over 10 per cent of cases being dealt with by our Consumer Direct service are now derived from internet transactions.

We have also tackled payment systems which drive a monopoly wedge between consumers and producers. We have already made the systems faster and cheaper, and we continue to monitor progress and push for further improvements. We must also think about the potential development of new types of monopoly systems, especially online where cash is not an alternative.

I'd be the first to acknowledge that we have not done as much as we would like in this area: confidence in the online medium needs more support and we at the OFT would be happy to do more.

Growing challenges

Policy makers and regulators face three key challenges in applying existing principles to online consumer protection:

1. The enforcement challenge

This involves anonymity; tracing the harm, money or data, international coordination, volume, tech lags, the transient nature of evidence, etc. We have a role in ensuring that fraudsters and free-riders do not harm the incentives of businesses to make the right investments in innovation.

We follow with interest how the US Federal Trade Commission has responded to this challenge by integrating e-consumer protection across its

structure, combining broader consumer protection experience with specifically developed technical expertise. We would like to build our IT competence in this area, and to be able to work more closely with local and international enforcement agencies.

2. The jurisdiction and legislative challenge

There is a lack of clarity around jurisdiction in the UK: the police, the ICO, the OFT, Ofcom, the Home Office and others all have a role. Perhaps the European Commission's criticism of the UK around Phorm underlines this point. We should work together to ensure that we make the most of the existing legislative framework, even where it did not correctly anticipate all the issues.

That said, I see the role of a consumer protection agency as distinct and complementary to other organisations such as crime agencies.

Scammers and rogue traders will exploit national boundaries so international cooperation is essential. The OFT has already been involved in international information sharing and joint enforcement on scams.

3. The policy challenge

We are confident that consumer protection principles must be solid, and remain consistent across offline and online.

But other things, not least some of the rules, will probably need to change to reflect different conditions. For example:

1. Search costs – travelling across town to check a price in response to an advertisement is not the same as one click on a website.
2. Cost of regulation – for example, controls on estate agents designed for traditional models may effectively prevent new internet business models from operating.
3. Consumer power – collective consumer objections for example, Facebook backs down on terms and conditions.

The nature of the transaction is different. For example, great efficiencies may arise when consumers pay with personal data or time exposed to advertising rather than with cash. But if those data are used inappropriately or in a way which means consumers are not willing to engage, then demand may change.

If we are to exploit the full efficiencies, we must understand the risks, and mitigate them.

Concluding remarks

I strongly welcome the Digital Britain initiative.

In considering the myriad of aspects, we must remember that the virtuous circle that links confident consumers, efficient, competitive businesses and overall trust in the market can be broken on both the supply and the demand-side.

Confident consumers are as important as confident suppliers. Confident consumers mean increased market confidence overall, which will stimulate and reward innovation, investment and competition, and will be critical to ensuring a competitive Britain emerges early from recession.

All the players involved should be thinking about how the demand-side affects them, and how we can work better together today and in the future to address the challenges.

By achieving a balance of stimulus efforts between the demand and supply-side, Britain has the opportunity to prepare consumers for the next period of growth, provide a higher quality and more satisfying experience for consumers, and provide some pro-market based leadership within the EU.

There is not a before digital and after digital divide: it is a process of continual and rapid change in markets.

This initiative has offered us at the OFT the opportunity to reflect on what we have done, and how we could contribute more effectively, and we stand ready to play a full part in Digital Britain.

I hope I have done something to convince you that the demand-side is critically important and that, within that, a proportionate but effective approach to consumer protection and empowerment is key if the UK is to succeed in creating a vibrant, innovative and internationally-competitive digital economy.