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Why Tyrie's attempt to make the Competition Authority more like Which? magazine was wrong

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Shelves lay barren, yet the price stickers read "Buy 1 Get 1 50% Off." Hand sanitiser was like gold dust here in Washington DC in March. Demand surged after the Covid-19 hand hygiene advice. Unsurprisingly, stores rapidly emptied of existing stock.

More surprising was the shortages' duration. Prices usually rise with prolonged elevated demand, encouraging new supply and making consumers rethink "unnecessary" purchases or hoarding. Markets ultimately clear – providing more at higher prices.

But no adjustment came. Big chains worried about reputational risks of raising prices in a pandemic. DC's emergency "anti-price gouging law," meanwhile, meant small outlets opted not to bother selling at higher prices, lest they be punished for charging "more than normal." So prices remained notionally low, but sanitiser was unavailable.

Economists oppose anti-price gouging laws for this reason. Price controls denying market realities harm economic welfare. It might seem in consumers' interests to keep prices low by government decree to prevent "rip-offs." But if consumers are unable to get products they're willing to pay more for, they can be worse off collectively than with market pricing.

I remember thinking at the time that I'd never heard of such bad pricing laws in the U.K. Just two days' later, Andrew Tyrie's Competition and Markets Authority warned it would use existing powers to "consider any evidence that companies may have broken competition or consumer protection law, for example by charging *excessive* prices" during the pandemic [my emphasis].

Last week, the CMA confirmed it is investigating four pharmacies and local convenience stores for "suspected charging of excessive and unfair prices for hand sanitiser." Under current law, the CMA must prove these retailers have abused a dominant market position.

Given none of these businesses seem likely to much affect market realities, this is really an attempt to stop price gouging by spooking retailers. The CMA wants to make an example of them to show it is "pro-consumer," focusing on local outlets in all likelihood because consumers had fewer options to shop elsewhere, especially those without internet accdess, giving some semblance of credibility to the idea of dominance.

This absurd use of resources is befitting of Tyrie's legacy as CMA chairman. The former Treasury Select Committee chair resigned last week, frustrated that his demand for ever-more expansive CMA powers from government went unanswered.

But, importantly, Tyrie aimed to shift the emphasis of the CMA's role away from its bread-and-butter role of helping to regulate economic competition (such as breaking up BAA for airport competition, or blocking the merger of Asda and Sainsbury), towards beefing up its consumer protection role as well. He synthesised by pledging that the CMA should champion the "consumer interest."

A Social Market Foundation speech last May outlined his vision. An address on the limits of competition law quickly descended into an analysis of public perceptions about capitalism, with a sort of call to arms that the CMA should bend the knee to "what most concerns ordinary consumers," lest it be swept away by populism.

Tyrie acknowledged he was potentially exiting his lane, but didn't care. Competition experts – who see the most important CMA role as protecting consumer welfare through effective competition law – bemoaned his "grandstanding," in private.

Despite his denial, Tyrie's vision was clearly strongly influenced by a new U.S. anti-monopoly movement that says big is bad, more competitors in a market is good, and consumers face constant threats of exploitation. Economists challenge all such claims empirically. But Tyrie puts huge weight on sentiment. Consumers "feel" they are being ripped off. Even where they pay nothing, for social media, they feel terrified about data harvesting. "We are all vulnerable now," he concluded.

Such generalisations bode ill as a guide even to the CMA's primary role. Amazon is regarded as one of the most reputable brands in the country, as is Google. Digital advertising has lowered advertising costs for social media's true customers, so advertising spending has plunged as a share of GDP.

Platform users meanwhile have the option of free services that economic studies find generate big benefits to them. Even on the supposed "big is bad" opposition to tech acquisitions such as Whatsapp by Facebook and YouTube by Google, opponents ignore the many more acquisitions that don't work or consumer welfare gains from better products when they do.

But that's the point: Tyrie wasn't primarily animated by the idea the competitive process protected consumers' welfare. No, what he envisaged in championing the "consumer interest" was a more populist body with huge discretionary powers marauding around stamping out practices unfavorable to *some* consumers, or which consumers disliked in other more subjective ways than conventional consumer welfare analysis considers.

This distinction between "consumer welfare" and "consumer interest" is crucial. Consumer welfare can be assessed and debated using facts about the structure of the market, pricing, and evidence on innovation. Consumer interests are defined by slipperier concepts of "fairness." Someone caring about consumer welfare might consider higher prices an unfortunate reality in a pandemic market when demand rises; someone animated by the "consumer interest" might see it as unfair to *some* vulnerable consumers.]

A "consumer interest" champion looks at higher prices some loyal customers pay for utilities, and sees an unfair penalty. Those interested in overall consumer welfare muse that teaser rates for new customers encourage switching, pressuring companies to remain efficient to the benefit of consumer welfare. A competitive market allows companies to compete on pricing strategies too.

A consumer interest lens, then, could sometimes actually harm competition, by eliminating businesses' opportunities to profit where reputational constraints bind on large firms or where consumer welfare-enhancing pricing strategies exist. The CMA's ham-fisted intervention on Covid-19 prices almost certainly prolonged shortages of numerous household products, and encouraged supermarkets to remove pro-poor discount deals instead.

Now whether Tyrie is a symptom of a within-CMA attitude shift or its cause, I'm not sure. But his tenure overall accelerated a worrying push towards such discretion. On the audit market, the CMA bypassed the standard market investigations reference process designed to investigate new anti-competitive practices.

His proposals for new CMA powers, meanwhile, would have stripped protections from companies and heightened the risk of wrongful punishments. In short, he wanted the CMA to be an aggressive consumer champion *and* decision-maker simultaneously – "too much prosecution, judge, and jury" according to some experts.

Tyrie now promises to push his agenda strongly in the Lords. But with so much important competition activity coming the CMA's way post-Brexit, this "consumer interest" shift couldn't come at a worse time.

Thankfully, the Government has resisted Tyrie's demand for power – hence his resignation. It should now select a new chair intent on returning the competition regulator to its primary role, rather than becoming the governmental arm of *Which?* magazine.

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