

Big Tech, digital competition and the new frontiers of energy policy

Blog post by Practice Lead Matthew Duhan, 19 March 2019

Last week, the UK government's Digital Competition Experts Panel published its report '[Unlocking digital competition](#)', addressing the role and economic power of large tech firms. The report, also known as the Furman review after lead author Jason Furman, may not have been obvious reading for the energy sector on a day when the Chancellor announced several climate measures in his [Spring statement](#). But the digitalisation of the energy sector has made these the new frontiers of policy, and the review deserves close reading.

Levelling the data playing field

For energy companies, two areas should stand out. The first is the report's attempt to address the competitive advantage enjoyed by companies with access to large volumes of user data. The report's approach centres on the creation of a new government digital markets unit, either as a new body - part of telecoms regulator Ofcom - or within the UK's competition regulator, the Competition and Markets Authority.

The unit's mandate would be to enforce interoperability of user data between platforms through the creation of open data standards and mechanisms in an attempt to level the playing field for smaller companies and new entrants. On top of this, the report proposes to confer "strategic market status" on certain platforms with a view to instituting a more stringent regulatory environment compared to smaller market insurgents.

For the energy sector this is already a live issue, with incumbents wary of market entry from firms such as Google or Amazon who can draw on existing data pools to deliver either new energy services or energy 'bundled' alongside other services - such as electric vehicles, online shopping or smart devices - to retail customers. There is opportunity here. While no energy company would currently qualify as having "strategic market status" in digital terms, the tougher open data requirements applied to large digital platforms have the potential to provide an important leveller in the emerging battle for customers. Alongside engaging with [Ofgem's 'midata' initiative](#) and the work of the [Energy Data Taskforce](#), energy companies should start thinking now about arguments to ensure that any new digital markets unit is broken out of the confines of Ofcom and given a wider mandate.

New approaches to M&A

The second area of interest for energy companies is the report's advocacy for a tougher approach to mergers and acquisitions in the digital economy. The review proposes a "balance of harm" approach in which the CMA would take a long-term view of the economic impacts of any given deal, going beyond the current narrower focus on market share. As ever with competition policy, definition of scope - i.e. what sectors and parts of the economy might come under the "balance of

harm” test - will define its impact. But this is a debate that is just beginning, and in a context in which data-based platforms are driving market convergence across retail energy, banking, insurance, mobility and others there is much to play for among those who would like to constrain large tech firms’ ability to buy their way into new markets.

The report has some way to go before its proposals become policy, and its ultimate impact will partly be determined by the deeply uncertain fate of Theresa May’s government. But it is a notable landmark in the UK’s approach to competition in the digital economy, and will be closely read in the Labour party, and in Brussels too.

For energy companies the review is a reminder that sector convergence will require them to engage with new policy debates, in areas that are both unfamiliar and driven by concerns from outside of the sector; notably by the increasingly antagonistic politics of big tech. This carries the associated risk of becoming policy-takers. But it would be something of a relief for the Big Six not to be the bad guys for once, and - more substantively - there are signs that it might just work in their favour.