

The trusting economy? How peer-to-peer is changing work, business, and policy

Melbourne - 18 August 2015

Policymakers around the world are struggling with how to respond to the peer-to-peer economy. Millions of people use online peer-to-peer technologies to find matches for products, work, transport, accommodation and finance. Further afield, hospitals match kidney donors and recipients, and new digital currencies are emerging.

Some talk of a 'sharing economy', implying a wholesale alternative to today's largely market-based system. Others argue that the new platforms erode labour and other community standards. What is sure is that not everyone will emerge a winner: the peer-to-peer economy disrupts existing industries and occupations. The new technologies also challenge policymakers across tax, consumer protection, competition, and community access.

Professor Ian Harper, who recently chaired the national Competition Policy Review, joined **Dr Nicholas Gruen**, CEO of Lateral Economics and previously chair of the Government 2.0 Taskforce, and **Dr Jim Minifie** from Grattan Institute in this Policy Pitch discussion about the peer-to-peer economy.

JIM MINIFIE: Ian and Nicholas, it's a great pleasure to have you join this discussion. I think most of you in the audience will know the two speakers by their reputation. Ian has had a very long and distinguished career in academia and in public policy. I won't go through all of the details Ian, but most recently and relevantly you chaired the government's Competition Policy Review, which was one of the really major reviews run over the first term of the current government and you touched on issues that are going to be relevant tonight. Nicholas, you've also had a long career on topics that are highly relevant to what we're talking about tonight. As the current Chair of the Australian Centre for Social Innovation and the Open Knowledge Foundation you've got active links into this space and you've had a long career both as a personal entrepreneur, for example as the inaugural chairman of Kaggle, a really fascinating open source or crowdsourced innovation platform, among many other activities.

So I think there's really a lot of interesting topics that we can touch on tonight, and I should also just let the audience know that this event is the third in a series that we've run on the peer-to-peer economy. One of them Susie already mentioned and that's already on our website and we have another due to go up in the next few years which we ran in Sydney last week. So I encourage those of you with an interest in the field to look out for those events.

Let me just tell you a little bit about what we'd like to achieve tonight. Ideally we'll get an overview of some of the main characteristics of these new peer-to-peer markets or platforms which are beginning to really transform some of the sectors of our economy and we'll dig into that in some detail because their characteristics I think are really important for understanding where they might go, which we'll also cover next at a higher level because it's very difficult to know exactly how they might develop. And then we're going to review some of the issues around policymaking for the peer-to-peer economy, so that's going to touch on competition policy, on the consumer protection issues, there's a

set of tax and labour issues that we may touch on and, in addition, when you go into specific sectors of the economy there are issues that regulators are actively grappling with currently. Now many of you were kind enough to pose questions in advance. We've read those questions and I'll be trying to fold some of those into the discussion, but we'll then switch over to an open discussion and we welcome your participation at that point. So that's a high level overview of what we'd like to achieve.

If I can first turn to you Ian, how do you see the key characteristics of this trusting or peer-to-peer economy, as it's called?

IAN HARPER: Thanks Jim, pleasure to be here and good evening everyone. People have different conceptions of what the so-called sharing or collaborative or peer-to-peer economy is, so let me venture my view. I'm not suggesting that's definitive, but it would help at least for you to know where I'm coming from when I think about this. There are many aspects of what we're seeing in this economy that really are not new. There's a long history, for example, to people letting out rooms in their houses; you can read about people letting out rooms in their houses in Dickens. The same thing is true of letting people hire your car to drive around in. Those sorts of things aren't new I think. What is new is the internet-based platform mechanism which facilitates such exchanges being made much more easily and cheaply than has ever been true before.

So for me the distinctive feature is the internet-based platform and what that does is to lower the transaction costs of engaging in what are essentially rental arrangements, rental contracts. Slicing and dicing those contracts in a whole lot of different ways, the platform is not just lowering the literal costs of making the contract; it's also facilitating the reduction information costs as a result of the reputation enhancement that goes with the operation of these platforms. So what that tends to do in my book Jim is to take demand and supply that has been latent, so I could have let out the spare room in my house, that's been true for a long while, I could have done that but the time and trouble to go through and identify somebody whom I can could lend that to or rent it to, going through the contractual arrangements, sorting all that, it was just too hard so it didn't happen. Are there people out there who would like to rent a room in my house? Presumably yes, so there's latent demand and latent supply.

When the platform lowers the costs of transaction then suddenly that supply and demand becomes actualised and a market exchange springs into existence that wasn't there before. That in my book is the essence of what the peer-to-peer economy achieves.

JIM MINIFIE: Nicholas, do you have a perspective on how to characterise what's going on?

NICHOLAS GRUEN: Yes, so I guess I agree, I think Ian's definition is a good working definition, but one of the things that I want to draw attention to is the way in which as the quantity of something changes, its quality may change. If there were 12 people here in the audience this event would be a qualitatively different event to the event that we have now, as it would be if we had 15,000 people and we were at Rod Laver Arena. So to take Ian's comment about transactions costs, the falling of transactions costs is a huge phenomenon, it's clearly incredibly relevant here, but I think it's bigger than that and I want to appeal to another metaphor which is out of physics which is a phased transition.

Now in a phased transition something is what it is and then all of a sudden at some arbitrary point - and with water it's between zero and 4% depending on whether you're going from a solid to a liquid or vice versa - you get a completely different thing on your hands. And we actually have on the internet a kind of beautifully illustrated example of this because the physical infrastructure that builds the internet has got two networks running on it, one is the phone network and the other is the internet, and they're built on different technical foundations. With the phone network it's a point to point connection, I pick up the phone and the network makes a direct connection with somebody on the other side of the world or on the other side of the street. And the suppliers of those connections, there's sufficiently few of them that they can have a good think about how much money they can make out of me for that connection and that's what the internet disintermediates, because the internet sends messages not by making that connection but by sending addressed packages out.

So networks, the phone network and the internet are built in a similar sort of way which is that people who have businesses that have individuals or businesses at the other end of them make this promise, that some of us might have heard at primary school or high school, which his you show me yours and I'll show you mine. So that's how a network gets built up. Telstra will have a whole lot of customers and they'll sell them to other people and for that reason when large companies are doing this they bring along their lawyers, millions of dollars are at stake, months go by before a deal is done. On the internet 99.5% of interconnect agreements are made informally in real time by robots. So that's a world in which if somebody invents a thing, for instance, a search algorithm called Backrub at Stanford University and puts some servers onto the internet, they can connect to the rest of the world without anyone taking a cut and build Google. Imagine if they had to build that on cable TV, what do you think the cable TV executives would have been thinking? They would have been thinking, "How much money are these people going to make and how much money can I make out of them?"

That's the phased transition that happens when you go from a monopolistically competitive system like the phone system to a perfectly competitive system where price equals marginal cost. So we've had one generation of things like Google, Facebook, Twitter, and now we're in this other generation where we've managed to put together so many bits of these puzzles that we can solve large logistical problems just by building some software and connecting to the internet. That's my definition of the space that we're inhabiting and the sort of things that we're trying to think about.

JIM MINIFIE: So would it be fair to say that from both of your perspectives this is mostly about the building of new markets, or is that way too reductive?

IAN HARPER: Well I think I might be closer to that than Nicholas. I take his points, if I understand what you're saying Nicholas, that this does lift it to a new plane, I can understand that. But effectively this is facilitating trade and commerce in a way which is much faster and deeper, there's much richer information architecture - if I can use that word - that goes with it. So it much more closely approximates the economist's definition of pure market exchange than many, not all, but many traditional markets to.

JIM MINIFIE: Why would it be that we're having this discussion now in 2015? EBay was founded about 20 years ago; it seems to be a pretty slow burn?

NICHOLAS GRUEN: I agree. It's one of the things I was going to say, it's kind of surprising it took this long and I guess that's partly because you have to build lots of software resources to do this and you have to have lots of businesses having a crack at it, like Zipcar did in 1999, and getting it slightly wrong or being the Apple Newton of the world, which is the right idea but before the technology is ready for it.

IAN HARPER: But isn't the smartphone the reason this is happening?

NICHOLAS GRUEN: Well not just the smartphone.

IAN HARPER: But the development of that.

NICHOLAS GRUEN: Yes, and all the ancillary services and software around it.

IAN HARPER: Yes, but it was much harder to get this lifted off when people were having to do it through a laptop or a desktop.

NICHOLAS GRUEN: Yes.

IAN HARPER: Even though in principle you could do exactly the same thing that you can now.

NICHOLAS GRUEN: Yes.

JIM MINIFIE: One of the aspects that intrigues me is that we now see private firms very much in the business of building new markets. And so if you think about the world of market design where you're trying to get liquidity, you're trying to build trust, you're trying to solve the matching problem, that's something that these platform firms are in the core business of doing and it's interesting to consider whether there are lessons from that for policymakers; we should come to that later in the discussion.

An obvious question to ask about an environment where you've suddenly built a new market is who's going to win and who's going to lose potentially? Ian, do you have a way to think about the benefits and whether they might be distributed one way or another?

IAN HARPER: In principle, economists are going to argue that if there is exchange now occurring that wasn't occurring before that, absent problems to do with duress and there are some externalities that might go with that, but broadly speaking we're going to say if this entered into voluntarily by consenting adults then the implication is that it produces economic value for both sides. The person who is selling now has an opportunity open to him or her that wasn't there before and the same is true of the person buying, and if they reach an agreement then in classical economic terms there's a gain from trade, this is just Adam Smith. So what this facilitates is in principle the making of those connections in much, much large numbers and in much more variegated forms than was occurring before this technology arose.

So I'm going to say that that adds to the gross economic welfare, even if it isn't measured, that's a separate question, some of it isn't measured, it can be in principle but isn't for various reasons. But it's going to add to economic welfare because it facilitates trade. To the extent to which that competes against existing incumbent mechanisms for doing much the same thing then there can be losers of

course, people who are offering these same services on an old technology can find themselves competing against other suppliers who take their consumers away or they'll be losers. But in aggregate my presumption would be that this is a net gain to the community.

NICHOLAS GRUEN: Yes, I think it's a net gain. I don't think it should pass without notice that Uber is worth \$51 billion and a small group of people will benefit from its capital value and that Uber is keen to see driverless cars, guess why? And it doesn't have to be a scary story, it's either a scary story or a very exciting story, it's an *Economic Possibilities of our Grandchildren* story and I'm quoting that there the title of an essay by Maynard Keynes which he wrote in the middle of the Great Depression. He said just the simple arithmetic of compound interest, the way capitalism is generating an economic dividend our grandchildren, I think he said, will need to work about 15 hours a week. But really it was a challenge.

JIM MINIFIE: Which hasn't happened yet, by the way.

NICHOLAS GRUEN: Well, no, we made different choices.

JIM MINIFIE: We have longer retirements.

NICHOLAS GRUEN: Yes, but we made different choices. He didn't think that we wanted as many things as we want, neither did Adam Smith. Adam Smith said that most people in England in 1776 got most of what they need.

So this is a bit of a moveable feast, but it's a challenge to us to try and utilise the incredible opportunities and get ourselves just a little bit closer to utopia rather than dystopia and we really should keep our eyes open to the dystopic possibilities from this kind of thing. But Ian's basic logical point about gains from trade notwithstanding, I agree with those points. One of the most fundamental things where they start running out of puff is if we can't generate enough jobs for people and so we end up with work rich and over-rich people and work poor people. There is some evidence that that's something we should be pretty concerned about.

JIM MINIFIE: Turning to this question of the world of work, some people have expressed concern that we're looking at a world of work which is more insecure; it's the flipside of the flexibility that the consumers might benefit from. Ian, you've had quite some professional experience looking at parts of the labour market where people might be subject to insecure work. Do you see a reason for concern, I suppose the possibility that employers might avail themselves of these much more flexible on-demand arrangements as being a real risk?

IAN HARPER: I think my initial reaction to that Jim is that what this technology does is to facilitate much greater participation in the labour market and yes, it's true that consumers and, by inference, employers might have a demand for more flexible work patterns, but so do people. A lot of people want flexible work patterns. When I was talking to people about the possibility of recommending in the Competition Review the removal of restraints on retail trading hours, which is something of course that we're very familiar with here in Victoria but it isn't true elsewhere in the country, people genuinely were concerned that they would have to work in principle, for example, all night. And I'm not trying to be disrespectful to these folk, but I had to stop and say, "Hang on a second, the hospitals operate all

night, do you think that means the doctors and the nurses work 24 hours a day?" And then they quickly realised oh no, there's shift workers and that's the point.

We're not suggesting that every business has to open all the time, we're simply saying take away the restraints and let the business decide when it wants to open or close. Does that produce Armageddon? Well, not unless you think Victoria is Armageddon. Go and look for yourself what happens, different businesses open at different times and close. What it creates is a whole new array of different work possibilities and that's something that people actively choose, particularly younger people. But Jim, that isn't to deny that some people want full-time permanent work. Those contracts haven't disappeared, not yet anyway, and I don't think that the advent of this type of technology makes that any less likely.

NICHOLAS GRUEN: Yes, certainly in the short term I would think, and I'm just thinking aloud, it's important to think about demand and supply. We know that a lot of people who work casually want to work casually and appreciate the flexibility. We also know that a lot of people who work casually and appreciate some of the flexibility feel very put upon by their employers who say, "You want that amount of flexibility, well you're going to have to be down here at this time and I know you were going on holiday, but we need you for extra shifts on this day" and so on. And if you think about Uber and services like that, I think that actually tilts the balance more in favour of the workers because so far the only way in which Uber manipulates people's preparedness to work is in a way that Ian would be give 10 out of 10 and I would give 9 out of 10 to, which is surge pricing which is to say, "It's up to you, we're going to keep raising the price until we get enough people out on the road". And it's pretty hard to complain about that.

JIM MINIFIE: By the way, we estimate that about 8% of the Australian workforce would like more hours, they want about 15 more hours each, and so that's equivalent to about 3% of the workforce. And the reasons they cite do include the difficulty getting flexible hours or being discriminated against because they're, for whatever reason, not what full-time or other continuing employment fits. So it strikes us that there's quite a significant opportunity to get better matches for that group.

NICHOLAS GRUEN: Yes, and I think that the mechanisms we have to protect people in the workplace, and look, if somebody wants to come at me and tell me I'm dead wrong here, I might be, are pretty flexibility unfriendly. They tend to penalise flexibility and both employers and employees really want flexibility. So it seems to me in any kind of short term this is a good news story in that regard.

JIM MINIFIE: Why don't we turn then to some of the challenges, so let me just summarise. There's the risk that the platforms themselves will acquire significant market power and that could be exercised in ways that are detrimental to people. There's a concern that essentially people's reputations will be mediated by a private sector player that might not have the same regard for due process and natural justice.

NICHOLAS GRUEN: As opposed to no reputation in the taxi market.

JIM MINIFIE: Fair point. And, as I mentioned, the worker protections. Now Ian, you've just concluded the first major and comprehensive review of competition laws that this country has undertaken for a long time. How do you see these issues playing out in this field?

IAN HARPER: One of the things that we were asked to do by the government on the Competition Policy Review was to think about what needed to be done, if anything, to the Competition & Consumer Act to make it fit for purpose for the world into which we're travelling. One dimension of that is what we're talking about, the digital revolution and how that's affecting trade and commerce. The Competition & Consumer Act was passed in 1974. I know it's been patched and filled over the years, but at the time it was passed of course this was not envisaged. When Professor Hilmer and his colleagues on the Hilmer Inquiry looked into the same issues we were asked to look into in the early 1990s, the World Wide Web had not been switched on. So this is all new in the eyes of the Act.

To cut a long story short, we on the Committee - and you can read this for yourselves in the report, you can find it on the internet obviously, www.competitionpolicyreview.gov.au if you've not yet seen it - concluded that this type of phenomenon was really very good for consumers. It was a very rich source of potential additional competition and it was something which we needed to look at favourably rather than unfavourably, but not with rose coloured glasses, as Nicholas has been saying. The first question then was is the Competition Act in some way unable to deal with this? So does it have the wrong size spanners, if you like, to deal with these new nuts that are being presented? Our conclusion on that was no. Or put it this way, the recommendations that we made to change the competition and consumer law, in particular the infamous recommendation with respect to Section 46 and market power, that recommendation was made not specifically to deal with peer-to-peer issue; that needs to be dealt with anyway in the traditional economy.

But if the government were of a mind and parliament, more to the point, were of a mind to change Section 46 in the way we recommended, that will address market power issues more broadly wherever they arise.

JIM MINIFIE: At the risk of diving into that issue more deeply than we need to, we may have people here who are not across the fundamentals of what you put forward and it could be worth touching on.

IAN HARPER: Okay, very briefly if you like because there's quite a long tail that sits by this. Section 46 is the only section in the competition law which directs attention to the impact of conduct on a competitor. So what it says is basically this: if you've got market power then it is an offence for you to engage in any conduct that takes advantage of that market power for the purpose of harming a competitor. There's a lot of legal argy bargy that goes around this, I don't want to go into the detail, but it's the only section that does that, the only one. All the others focus on the impact of conduct on the state of competition. So there's Section 45 which deals with anti-competitive practices, Section 47 which deals with exclusive dealing, Section 50 which deals with mergers, and in each case it talks about conduct which has the purpose, effect or likely effect of substantially lessening competition in the market.

So as an aside, people who tell you that what we've recommended is the introduction of an "effects test into the Act". Friends, the word "effect" already appears in the Act in those three other sections. We've not recommended the introduction of an effects test, it's already there. What we've said is take

the section that focuses on competitors and replace it with a section which focuses on competition. Why? Our logic is this: the Australian economy is going to become more and more competitive, partly as a result of globalisation, importantly as a result of what we're talking about tonight, digital disruption, will make it much more competitive. And in principle that can generate enormous benefits for consumers, as we're seeing, but if you gave the possibility under the existing law for existing competitors to turn around and say, "Hang on a second, you had the purpose of taking advantage of that position to damage me and that's against the law" we just think that has no place in the Act.

Different matter if the party with market power engages in conduct which substantially reduces competition, what does that mean? Exclusionary behaviour; engaging in things which lock out competitors; ah, that's a no-no. Whether the purpose is there, whether the effect is there or the likely effect is there, that's a no-no, as it already is in 45, 47 and 50. What we didn't want was to give any succour to parties who are trying to resist the force of this competitive inroad which has the potential for great benefit for us in Australia by saying, "Excuse me, I've been hurt by this and that was your purpose, to hurt me, and I'll take you to court and I'll sue you". We want to take that out of the Act. As to why it's become so controversial you can draw your own conclusions folks. There are lots of people who don't want to see the market power provision in the Act become stronger. That was an aside, you took me there.

JIM MINIFIE: So how would it apply in this new world of platforms?

IAN HARPER: Okay, let's just think about that. So in this world of platforms competition occurs at three levels, if you like. There's competition amongst the suppliers on a particular platform, so all the people, all the Uber drivers or all the people who are putting up their apartments on Airbnb or their jobs on Job Tasker, whatever, those are competing suppliers. The demand is on the other side of the platform. Then there's competition amongst the platforms themselves, whether you would use one platform or another platform to essentially do the same thing. And then finally of course there's competition between the collective of the platform plus its suppliers, think of that now as a unit, think of that as the peer-to-peer economy, competing with traditional suppliers, so three dimensions of competition.

In any of those areas the traditional issues that arise in competition economics, the exercise of market power, things like exclusive dealing, resale price maintenance, the whole litany of things that the law has set its face against for 40 years, those problems haven't gone away, they're just the same, and you could exercise any of those things in the new technology as with the old. So we didn't feel that you needed to do really much at all. The courts will catch up with the slightly different form in which this behaviour might arise, but if you want to think of analogy with the criminal law, you don't need to update the criminal law, the criminals change and maybe the way in which they exercise these criminal acts change, but the basic things which the criminal law sets its face against are the same and have been the same since Adam basically. Much the same is true of competition law.

NICHOLAS GRUEN: You couldn't have anything to do with competition law with just Adam; you'd have to have at least Eve.

IAN HARPER: Yes, true.

JIM MINIFIE: I suppose the other side of these platforms is the networks that operate on them and networks are part of every market in some sense, but this is a particular application in which in principle there could be a winning platform because of network effects, and you see that elsewhere in the economy. Nicholas, I know you've thought about some of these questions.

NICHOLAS GRUEN: Yes, so I don't know whether it was my first Uber trip, I think I took my first Uber trip in San Francisco. Anyway, about my third Uber trip I took a trip from the art gallery at Golden Gate Park to Market Street, that's sort of the centre of town, and a taxi would have cost \$21, the Uber fare was \$19, but for the whole of that month was discounted to \$14 and the driver got \$17. Some interesting things going on and I got quite interested in that. So Uber is this company with a vast amount of cash and an idea that this is a market worth taking. It's really quite rare for markets to be cornered and then everyone's driven out of the market and then you drive the price up because then they come back into the market.

So I'm not really arguing that, but I am arguing that Uber is sitting there thinking, "We could easily have 20%, 30%, 40%, 50%, 60% of the market and gee, wouldn't that be a great thing to have?"

JIM MINIFIE: Incidentally, that's not the same thing as saying it's bad for consumers, because if there's a real scale economy to that network than it could be that significant market share is -

NICHOLAS GRUEN: That's exactly right. So we need to be able to tolerate the idea that there's a strong natural monopoly characteristic here, the network has natural monopoly characteristics. The idea is the one with the biggest network can get you your car faster than anyone else, that's the benefit, that's the network benefit. So Uber might hope to get 60%, 70% of the market. And the thing is at that point, because we're in a digital world there are ways of crafting competition policy remedies that might work a lot better in the digital world than they do in the analogue world. So things like access regimes are extremely expensive and we take them pretty seriously in Australia, there's a very elaborate and expensive process to go through.

JIM MINIFIE: Could I trouble you to unpack that?

NICHOLAS GRUEN: So a lot of gas is mined in the Cooper Basin and it's piped to Sydney and when national competition policy came in they created a generalised ability for, what has to be admitted, cashed up businesses to get a declaration of access onto a piece of infrastructure and then it has to be declared as of being of national significance with strong natural monopoly characteristics. I've probably got the legal test slightly wrong and Ian can improve on that, but you get the idea, and so you wouldn't go anywhere near this thing without a few hundred thousand dollars to lose and probably millions. But quite a long time ago now, about 2006 I think, I designed an access regime onto Microsoft Word. It's not very hard, half of it's kind of done, which is the standard that it writes to which was .Doc and is now .Docx needs to be fully public and anyone needs to be able to write to that standard.

The other thing that I would do is I would relax intellectual property law, which we might want to talk about somewhat in this context, to the extent that anyone could produce competing software which didn't copy any of Microsoft's code, but used all the same routines that the software has got us to invest in by learning how to use the software. And by doing that, if Microsoft kept charging \$100 or

\$200 a copy I wouldn't feel too bad about it if that sort of access regime was available. Now, I think you can do something very similar with these sort of network products, Airbnb and Uber, you can say, "We require an API (Application Programming Interface) which allows a driver on Uber to make their details available on another platform, likewise Airbnb. I can elaborate further if you like, but you get the idea. It's pretty neat, it's pretty cheap, and it just allows you to unpick the problem and then if Uber has 90% of the market it doesn't really matter.

JIM MINIFIE: So why doesn't it matter? Can I pick an Uber driver through a platform that lets me search across multiple platforms including Uber's?

NICHOLAS GRUEN: Yes.

JIM MINIFIE: Why would a company running a platform want to do that? I presume the answer is they wouldn't.

IAN HARPER: It may not want to. It may have that imposed upon it, that's Nicholas' point.

NICHOLAS GRUEN: That's my point.

IAN HARPER: It may be an access regime that's imposed. But to the broader point can I just indicate that this issue of course was one which we spent quite a bit of time thinking about on the Competition Policy Review because it clearly is true that particularly in a world of network externalities, network effects, scale can drive costs down dramatically.

NICHOLAS GRUEN: And service quality up.

IAN HARPER: Yes, exactly, to your original point that you made, changing the nature of the product and making it much more attractive in principle. So lower cost, higher value, that's productivity improvement, terrific. But it can also give the capacity to have market power to be exercised, it clearly substantially lessens competition.

So if you've got a situation in which that type of better mousetrap is invented, it drives other suppliers out of the market, which is to say consumers just vote with their feet this is a better quality, lower cost, you wouldn't go anywhere else, it becomes the dominant supplier. Has that substantially lessened competition? Well the answer's yes. Should it therefore be contrary to the law? Ever since 1974 the Act has envisaged this trade-off. We didn't need to write it in, it's already there and the existing institutions, the ACCC (Competition & Consumer Commission) and the Competition Tribunal (ACT), which is the party to which you can appeal in the event you don't like what the ACCC has come up with, they each have, one each has those two tests. The ACCC decides whether this conduct results in a substantial lessening of competition and you can appeal to the ACT, in fact you can go there first if you wish, and argue your case based on what's called Public Benefit.

So the law has already said even if something substantially lessens competition, it could still be true that there is a public benefit. And that machinery has been exercised as recently as a case that AGL and Macquarie Bank entered into with respect of the sale of a generator.

NICHOLAS GRUEN: There's a couple of friends of the public.

IAN HARPER: Well, Nicholas, they had their day in court, they went to the ACCC asking whether this merger would substantially lessen competition, the ACC said yes. They took it to appeal to the Federal Court, it upheld the original judgment and said it would substantially lessen competition, no doubt about that then. So off we go to the ACT and we say, "Notwithstanding that your honour, we still argue this is in the public interest" and the ACT said yes. So the point is we can already allow things to emerge that will substantially lessen competition and yet deliver net public benefit. No-one's saying that making the calculation and judgment is simple or easy, but what I am saying is that the law as it presently stands is sophisticated enough to understand that there's a trade-off there.

NICHOLAS GRUEN: Yes, and I agree with all that and I would just add that it doesn't have to be as bifurcated as that which is to say, "Do you want the 90% market share or don't you?" You can have the 90% market share and, in a digital world I think, you can design quite forensically designed interventions to unpick the bad and get all of the good. Whereas the sort of story that Ian's telling about a pipeline or whatever Macquarie and AGL were arguing about is a more tortured kind of choice.

IAN HARPER: Yes, you can put undertakings in place. Nicholas is right, you can say, "Okay, we can get public benefit, we could get even more public benefit if we impose this access regime onto the single supplier". That's correct and that sits in the Act as well. So I guess I'm just making, again, the point that as important as these new devices are, when we looked at this in detail, very encouraging, the law was flexible enough to deal with it and how you apply that is a matter for the courts, but it will be argued in front of the courts by people like Nicholas and others who'll lead the judges through these more sophisticated arguments. So I think we can be confident that on balance we're likely to get the best out of this.

JIM MINIFIE: If we can just do a few minutes Ian on the consumer.

IAN HARPER: Well, we weren't asked to look at the consumer law, so I'm just going now on my own suppositions, this is not something you'll find in the Competition Review because we weren't asked to look at the Australian Consumer Law (ACL). But, again, my view is the same basic sets of circumstances arise. The ACL is essentially setting its face against misrepresentation, deliberately misleading people, making false and misleading statements, not following up on your promises, that type of thing. There's no reason why these transactions, they're part of trade and commerce, that take place on these platforms should be exempt from the ACL, the same provisions should arise. There is an interesting question as to who makes the representation. Is the representation made by the platform or by the suppliers?

In the end, the law will track down the person who's making the representation and if it's not clear whether it's the platform or the supplier then there can be difficulty actually bringing a case. That may need to be tightened up, but there's no reason why they should be exempted or, for that matter, they're not at the moment exempt from those requirements as I would understand it.

NICHOLAS GRUEN: I'd like to have a minute to talk about something that's a hobby horse of mine. I want to talk about IP quickly and this is in the context of course we're busily, secretly negotiating the

Trans-Pacific Partnership. Uber has filed for 13 patents. One of those patents is a method of getting an app to tell you how to get from one place to another. It wasn't successful in applying for those patents, but the thing is remember we started this conversation with the concept of transactions costs. Transactions costs are on the side of the incumbent and Google went and bought itself a patent cache worth \$12 billion because it didn't have enough defence against Apple and Samsung and various people who were coming after it. So these incumbents are doing what you would expect them to do, which is to try to build as much of a thicket as they can between themselves and people who will follow them and try and compete with them.

So it's really quite important that we try and get these sorts of questions about intellectual property solved on their merits, not behind closed doors - they're not smoke-filled rooms anymore, but they're behind closed doors as power plays between countries, rather than as we've learned to try and make policy in Australia after an open and independent economic inquiry so we know what the hell it is we're doing.

IAN HARPER: We recommended that, as you know.

NICHOLAS GRUEN: Yes indeed, as has the Productivity Commission.

JIM MINIFIE: Thanks to both of you for a really stimulating coverage on some issues. I'm aware we haven't touched on tax, but I'm also aware of time and I'm very keen for people to put questions to both of you. I hope that we've covered off some of the issues that people they put forward in the questions they posed. If you don't you should feel free to raise it again

IAN HARPER: We didn't talk about regulatory neutrality; that might come up.

JIM MINIFIE: Right. What I'm proposing is that we do the questions in groups of three and that we thereby are able to more efficiently get through a good number.

AUDIENCE: Just a couple of things quickly. One is into this whole model there's an asymmetry of information between suppliers and consumers potentially that builds up, so while we're sharing lots of things, potentially the Ubers and Airbnbs are not sharing data and that may partly to the benefit of consumers but also potentially to the detriment. I guess the question is what are your thoughts in terms of, the best way to describe it may be the notion of the informed consumer or consumers using these technologies to inform themselves better?

AUDIENCE: My question relates to the last point that you made Ian in relation to consumer protection. I'm thinking in terms of the spatial dimension where in the past a transaction between a buyer and seller has been typically in the same physical location and the digital platforms can be in a separate location from the actual purchaser. That can lead to a situation where the jurisdiction that's responsible for consumer protection is somewhere else from where the customer is and can add to the actual transaction costs for following that through, and it could lead to a situation where you fall between the gaps potentially. So I'm wondering whether you think that's an issue and how that could be responded to?

AUDIENCE: I would be really interested to hear the panellists' thoughts about tax and about whether existing structures fit, particularly with reference to GST and Uber I suppose.

IAN HARPER: On information, interesting you should raise that because I thought that was one of the strengths of the platform, that what it actually did was to reduce information asymmetry particularly by enabling people to self-report on their experiences and to be reported on. And I thought that was one of the reasons why you could allow certain types of regulatory oversight which was designed to deal with information asymmetry to be dispensed with. The data issue is a bigger question about sharing data; that does come to who owns the data and whether you've been asked to hand over the data. I think that's still evolving that process and it may well be that these companies find themselves having to buy the data from you, at the very least get your permission. But in principle I think they help with information asymmetry.

On the question of the application of the ACL, let me deal with the competition one and I'll come to that indirectly. We face the question of whether or not companies that were operating outside Australia could be arraigned for engaging in certain activities which are contrary to our law whilst selling things to consumers in Australia but operating outside our jurisdiction. The Canadians altered the jurisdiction of their Act to reach into the United States, but they're right next door. We concluded that trying to say that we could take on companies based in the United States or Europe from Australia just was really unworkable. So what we did was to make sure in our recommendation to the government that the Act applies to anybody, any company, any person, whatever, selling things to Australians in Australia. It doesn't matter where you're from. And the same thing in principle could apply to the ACL, that if you are selling to Australian consumers in Australia, they're part of this deal, then you are subject to the ACL.

Look, I'm not a tax expert and I don't want to pronounce on the tax issues. All I want to say is that there is nothing in principle about peer-to-peer transactions that should exempt suppliers, platforms, providers from income tax, expenditure or consumption tax. Whatever applies to the creation of economic value in the traditional economy should apply here. Why wouldn't it? It's the same thing, in the end this is generating economic welfare and that's subject to income tax so that we can provide public goods. If more of it is provided this way rather than traditionally, well that's fine, it has its tax obligations. So briefly I'm going to say tax neutrality should apply, regulatory neutrality should apply. Be careful of neutrality, that doesn't mean it has to be exactly the same, it means its impact needs to be neutral allowing for the distinctions in the nature of the product and the transaction.

NICHOLAS GRUEN: Let me try and say some things about information. The economists in the audience will know that in 1936 an economist called Frederick Hayek gave a paper in London saying that information was utterly at the centre of economic functioning. And that's a commonsensical observation if you think about any bargain that you make, any trade that you do, both parties need to be informed if you're going to be presumed to be doing a good trade. Unfortunately this was part of an agenda that Hayek was running against central planning, the Soviet Union and things like that. He was completely right about that, but the basic insight didn't go much further than being used in his prosecution of the case against central planning, about which I repeat he was entirely right. It was also pretty self-evidently the case that markets don't treat information all that well either because of

asymmetric information. If you're the seller of a good you have an incentive to keep the quality of the good secret from the customer if it's bad and you generally have an incentive to gild the lily.

So in fact, before there was ever an internet guide for consumers, like TripAdvisor or something, I was actually writing about this and saying that policymakers should be more interested in light-handed ways they could improve the circulation of information in our economy. You can go on to a website and you can find that this month, and this is true, Qantas has the best on-time departure followed by Virgin followed by Jetstar followed by Tiger. That may be what you would expect, but it often isn't the case and I think that policymakers should be saying to themselves in that case and in lots of other cases, "How do we come up with a system where business could be encouraged to provide this information, get this information out as part of its marketing effort?" I think a lot could be done without any strong regulation, and I can, if people are interested enough, go into some of that. But it's been a real disappointment how little curiosity and tenacity and finesse my profession has shown about that and it's been comprehensively shown up by all sorts of internet apps, and it's great that they're doing that, but we can still take that as a sort of inspiration to do a lot better in a lot of other areas.

The section question was I think going to the question of how much information Uber collects and how powerful that makes Uber. Now, again, I think that's a really interesting question because digital information is always and everywhere a potential public good. It is infinitely usable. You have to be careful with it because if you simply said to Uber, "You've got to publish it" there'd be privacy implications, there would be all sorts of incentives that you would unleash. So you have to think about those things. But consider Xero, which is the online accounting software. I don't know what its market share is now, but that contains tremendously precious information for economic managers to get hold of when they're trying to run the economy. They can basically start to look through - if not through the forward window of a car they're at least no longer looking in the rear vision mirror. They can see what happened today in the economy. That's tremendously useful. Who's talking about it? Not many people.

So there are lots of really interesting things to talk about here and a lot of great things that could be done without heavy-handed regulation or any of the dysfunctions that come with government.

AUDIENCE: I just wanted to touch on a couple of things around diversity and genuine sharing. I think what gets lost in a lot of this is there's a lot of distinctions and nuances between peer-to-peer renting and the burgeoning and emerging sector of sharing everything from re-localisation through urban agriculture, community gardens, maker spaces, community currencies, skill-sharing, a whole range of cooperatives which is a very large contingent part of the genuine sharing economy which often gets overlooked in the headline-grabbing around Uber and Airbnb. That's my first point.

The next one is in terms of what policymakers are doing around the world is there's a growing discussion around sharing cities and the important role that city governments can play and there's work happening at an international level coming out of Nesta and Ikley to try and develop an international framework to benchmark cities for their capacity for sharing. If we look at cities like Seoul in South Korea as really leading the way here looking at developing sharing city strategies, opening up public land and buildings, supporting sharing start-ups, running incubators. So there are productive

models that we can turn to from here and around the world that can give policymakers lots of clues as to what might be possible down the track.

AUDIENCE: My question was to Ian, picking up on some points that he made, the builder of the better mousetraps could lead to substantial lessening of competition. First of all, could such a builder of a better mousetrap be caught under the proposed new Section 46? Secondly, my thinking is essentially if that better mousetrap leads to lower prices or better quality and so long as the other potential providers that even better the mousetraps and they could still provide those better mousetraps in the future then there wouldn't be substantial lessening of competition. So I'm just wondering what your views are on that?

AUDIENCE: One of the great possibilities that the platform economy introduces here is a revolution in money in the sense that the last great monopoly we have is that we still have government money. I'm wondering how you see the connection between platform economy and cryptocurrencies.

IAN HARPER: The clear distinction between genuine sharing and trade and commerce I think is a useful one, is one that's often alighted, as you point out. We've been talking about trade and commerce. If it's not trade or commerce then the Acts don't apply. So there is no law that engages me if I want to allow Nicholas and his family to use my holiday home and I share it with him, even frankly if he said, "I'll tell you what, you can use my car, I'll buy you a dozen beers" or something. That's not trade or commerce. It starts to get into that arrangement if we had a more formal ongoing arrangement where he's paying me money for the service and I'm paying him for other things, then it starts to leech into that. So it's not a hard and fast rule, but we do need to think about or remember that what I thought we were talking about here is trade or commerce.

Then you think there's no money taking place, for example, in a world of barter, Bartercard and people exchanging goods for other goods or services for goods and vice versa. That has found its way now into the formal economy and the tax office is completely comfortable with dealing with people who engage in barter and just happen to avoid the use of monetary exchanges. Genuine sharing in my view involves no expectation of requital, there's nothing coming in the other direction. That's what sharing is about. You can use my property and I don't expect anything in return. If that's not what's envisaged then I'm asking questions about why this isn't just trade or commerce, even if it doesn't involve money. Certainly the Airbnbs and Ubers of this world, that isn't about sharing, that's about trade and commerce, but we can have that conversation.

On Section 46, indeed that is precisely why in our recommendation we have given legislative guidance, we've recommended to the government that there be guidance in the act which actually says that in determining whether a substantial lessening of competition has occurred, the court must weigh the pro-competitive aspects of the conduct against its anti-competitive aspects. We were informed by lawyers, in fact the legal community is divided about our recommendation on 46, but they are more or less united on this and it's the proposition that we didn't need to do that because the court would do that anyway. That's where the jurist prudence leads the court. In deciding what a substantial lessening of competition is it thinks about pro- versus anti-competitive dimensions and it weighs up its conclusions. In other jurisdictions around the world they call that the reasonableness or the rational test in deciding that. So I don't have a problem at all, the court in applying our recommendation 46

would look at the better mousetrap and would say, "Well, the pro-coemptive dimensions of the better mousetrap outweigh the anti-competitive dimensions and we don't even find that there's substantial lessening". We've got two lines of defence, that and then even if they did find that it was substantial lessening the better mousetrap owner can go to the ACT and say, "In any case your honour, it's in the public interest" and the ACT could find in favour of that.

Last one do to with cryptocurrencies. Indeed, the use of blockchain technology, you'll know the answer to this, is a sort of species of the same genus if I can put it that way, is the obvious substitute for notes. Just give me a second Jim, originally bank notes obviously were issues by private banks and that happened in this country right up until the nationalisation of the currency issue in 1910. Private banks issued private bank notes and they were numbered.

So you would take in your gold and you would give it to the bank and the bank would give you a numbered receipt and that receipt was currency and had a number on it, had a signature from the managing director of the bank, and it was negotiable. So you would take that receipt down the road, I've got the receipt, I give it to Nicholas and Nicholas looks at it, he sees the bank, he sees the signature and he says, "Okay fine, thanks Ian, you can have what I'm offering you and I'll take your note". So I give it to Nicholas, he then goes back to the bank that issued the note that I had and he hands it over and the bank looks at the note, opens up its ledger, goes right the way down and says, "Ah yes, this was issued to a man called Harper some days ago, that is the correct number, it hasn't been cancelled, thank you very much Mr Gruen, here's the gold". Nicholas gets the gold, the bank gets the paper and the bank just tears it up and then issues another one.

The blockchain technology is just facilitating that. Because it was so hard to do that time and time again as the economy grew, ultimately we had currency notes which were not convertible into gold and where the numbers mean nothing except that they try to keep a track on counterfeiting. If you go to the Reserve Bank of Australia now with a Reserve Bank note and walk into the bank and say, "Is this one of yours? Is this a liability of yours?" the Reserve Bank officer will say, "Yes". And then you say, "Redeem your liability" and while they're pressing the red button under the counter what they will do is count out another one, a fresh one and give you the fresh one in exchange for the one that you hand over and the bank will say, "We've redeemed our liability". And you might say, "Hang on a second, I was expecting to get gold, you've got gold in the reserves here haven't you?" and the bank officer will smile at you and say, "We came off the gold standard in 1924".

NICHOLAS GRUEN: Sucker.

IAN HARPER: That's right, you got the paper brother; we got the gold.

NICHOLAS GRUEN: This is welcome to the fair currency world, that's right. The mention of Bitcoin invites us to take this whole discussion in the direction of peer-to-peer financial transactions which is a pretty interesting story. The first currency that we know of looked awfully like the blockchain. I'll explain what the blockchain is to those in the audience who don't know, but Bitcoin works by validating your ownership of a Bitcoin by a complete history of where it's been, who produced it, all the transactions. And those old clay tablets from Babylon with lots of funny marks on them, some of those are the blockchain in Babylon. The Houses of Parliament burnt down because they were burning off exchequer tally sticks which went back to Magna Carta and probably before and these

were the way in which the parliament kept track of bond issues. So they would borrow money and then they would pay some of it back and this would be recorded in notches on the tally stick.

So that's actually a smarter way to think about money than a thing that you hold. The thing that you hold is a token, well it also can be made of gold so it has value. In that case what it's doing is it's providing incentives for the social and economic system that it goes into to do that blockchain work, to make sure that it knows what's happening and who currently has this token. But when the person asking the question said, "This is the one monopoly that hasn't gone yet", I've got some bad news for you. You want the currency to have certain monopolistic characteristics. You certainly want the currency to have scarcity because that's what a currency is, otherwise you're in Zimbabwe and you've got hyperinflation and it's not worth the paper or the electrons that it's written on.

So the question is a somewhat different one. The more I learn about banking the more I'm pleased with how complex and clearly it does its job, but the more shocked I am at how inefficient it is in terms of the margins that it charges. Think of a Skype call versus an international phone call or, dare I say it, global roaming and then think of transferring currency. It's a complete outrage that we pay 200 basis points to get a few computers to validate a transfer in currency.

JIM MINIFIE: In fact, in Australia at the moment it's over 600

NICHOLAS GRUEN: Well, it depends who you are but on a credit card and stuff like that. If you go into a retail counter that's a bit different, you're paying for people's wages and so on. I'm talking about computers. The marginal cost of a bank facilitating me spending money with my credit card in a restaurant in London is 20 basis points or less. And so this isn't just a little monopolistic margin, it's really out of the money, it's really, really serious, and unfortunately the banking system is in a public/private partnership with government and it's very difficult to disintermediate the least competitive parts of the system, it's much easier to disintermediate the less competitive parts of the system. So peer-to-peer lending and these kinds of things, which is sort of like Airbnb or Uber for lending, you can do the thinking in your head, I don't think that will ever disrupt banking because banking has so many advantages, but it's nice that it's there and it will do some good. But I think it will be much less disruptive, much less powerful in driving costs down than it is in these other areas.

JIM MINIFIE: With some reluctance I'm going to have to draw this discussion to a close. There's a lot I think in what people have already brought up in questions which deserves much more discussion. I'd encourage you, as I did at the beginning, to refer to the records on the web, the blockchain on the web of our previous transactions on these topics. For me it's been a most fascinating early evening. Ian and Nicholas, thank you so much for making it as rich as it has been and thank you to all of you. If I can just pass on a token of my appreciation and just on behalf of the Grattan Institute once again to thank the State Library of Victoria for hosting this series, so with that, if you can put your hands together to thank our two speakers.

END OF RECORDING