Question 18:

What other considerations should the CMA take into account in responding to the Secretary of State's request for advice?

In responding to the request for Advice from the Secretary of State the CMA needs to take into account the Independent Dasgupta ***Review into the Economics of Biodiversity*** announced by Chancellor Philip Hamond in his budget in 2019 and published in February this year together with the official response published in July. In his preface to that response the Prime Minister has concluded:

"I thank Professor Dasgupta for his pioneering Review. Our response is the first step, not the final word, in ensuring the protection of nature is rooted in our policy, economic and financial-decision making in the UK and around the world."

As a first step the response commits the UK to develop a "nature positive" future and to ensuring that economic and financial decision making, and the systems and institutions that underpin it, supports the delivery of that nature positive future. This is evidenced, for example, by committing £3 million to support the establishment of a Task Force on Nature Related Financial Disclosures (TNFD) to complement the Task Force on Climate Related Financial Disclosures (TCFD) established by **Financial Stability Board** of the Bank For International Settlements in 2015 and chaired by Michael Bloomberg.

It is recognised that the issues to be addressed by the TNFD are considerably more complex than those addressed by the TCFD and that it is lagging behind in terms of addressing those issues. For example NERC has joined forces with Finance for Biodiversity to provide a £700,000 seed corn fund for research to support the TCFD. With respect to transition risks their call states:

"Building nature into financial decision-making, as with climate, requires effective risk assessment over extended periods of time, notably during the so-called 'transition' to a net zero and nature positive economy. Whilst this has progressed in relation to net zero, such a framework is lacking for nature positive. Complicated by its greater complexity, a lack of a single measurable goal (i.e., 1.5 degrees), and the complex climate-nature nexus, there is a need to consider nature not in isolation, but in an integrated transition risk framework alongside the existing progress on a net zero transition. Research is required to build on the experience of climate transition pathways and initial work on nature positive linked financial risk assessment to invent, conceptualize and develop a framework on solid theoretical building blocks, with considered practical application for the policy, regulatory and financial communities."

If the earlier review conducted by Nick Stern established human caused climate change as the greatest market failure facing the world, Partha Dasgupta establishes the nature crisis to be the greatest institutional failure facing the world. Both the climate emergency and the nature crisis pose existential threats to humanity, and they are both driven by a degenerative economy. Although all markets are institutions, not all institutions are markets. In terms of markets and their regulation with respect to the transformative change required to achieve a nature positive economy (i.e. an economy operating within the regenerative capacity of the biosphere and its constituent ecosystems) it is not simply an issue of Pigouvian externalities (i.e. activities that create adverse side effects for society), but the issue of missing markets. As Kenneth Arrow, with whom Partha Dasgupta worked closely up until his death, the topological theory of general equilibrium Arrow developed with Gerard Debreu in 1954 implies that a complete set of markets for an imperfectly competitive economy is impossible. The Royal Society recorded a comment by Lord Stern at the launch of the Review:

“The Dasgupta Review shows that we are taking out much more from the Earth than it can stand, we are running it down fast, and we will pay the price. With its clear, comprehensive and conceptually well-founded framework, it provides the foundation for urgent action needed now to tackle the interconnected challenges of climate change and biodiversity loss.”

The CMA will need to be agile in its response, as a regulator, to the emerging requirements of the transition to a nature positive economy. The evidence base does not, as yet, fully exist to inform these responses as the NERC call makes clear. In some respects the CMA finds itself in a similar position to the WTO, in that the traditional terms of engagement are likely to change, but in ways that are difficult to predict. On 5th June this year the Director General of the WTO, Okonjo-Iweala, delivered a speech for World Environment Day in which she said:

“The well-being of people is dependent upon the well-being of our planet, and trade can play an important role here. By connecting people and markets, trade helps lower costs and disseminate new environmental technologies. Trade can make resource use more efficient, reducing the strain on our ecosystems. New trade rules can help our economies become greener, cleaner, more prosperous, and more inclusive. . .

“International cooperation is essential to achieving our collective commitments to protect the environment, mitigate climate change and prevent biodiversity loss and deforestation. As economies recover from COVID-19, we have an opportunity to build back better and greener and bluer. Nature is the source of our health and prosperity, and we must all act together to restore, protect and strengthen our ecosystems.”

The Dasgupta Review identifies an impact inequality, which can be measured by techniques such as foot-printing, in which the demands we put upon the biosphere have been increasingly diverging from the capacity of the biosphere to meet those demands since around 1970. Dasgupta employs a modified Cobb-Douglas Aggregate Production Function based upon inputs from Nature, Human and Produced Capital Stocks with a new twist in which he modifies the Solow residual (which is reported as Total Factor Productivity) to take account of the degradation suffered by biodiversity, which he treats as an enabling asset distinct from Natural Capital, caused by the impact inequality. Thus reported measures of TFP have been grossly inflated, and the productivity puzzle since the bankruptcy of Lehman Brothers is even more puzzling. Dasgupta also postulates a Wealth-Well-being hypothesis in which well-being can be maximised if and only if inclusive wealth is maximised (that is the sum of Natural, Human and Produced Capital). This implies that whilst GDP still has a role in terms of short-term stabilisation policy (with respect to say prices or employment) it should be replaced by inclusive wealth per capita for the purpose of medium and long-term economic targets.
As the Nobel laureate Eric Maskin commented to the Royal Society at the launch of the Dasgupta Review:

“Soberly and authoritatively, the Review shows that we are degrading our natural environment so quickly that avoiding our own impoverishment or extinction will be hard. It also offers a possible escape route, but one that requires nations to replace GDP as their measure of success with “inclusive wealth– comprising not only conventional economic assets but the biosphere itself.”

Question 19:

How should the CMA apply its wider policy tools to support the UK’s Net Zero and sustainability goals?

The CMA seems to have made a very good start with its work related to guidance on the compatibility or otherwise of sustainability agreements (for example trade standards) and competition law, the market study conducted on electric vehicle charging infrastructure, and on misleading environmental claims.

NRW does not have expertise in the law relating to these and other issues that have or may in future arise with respect to UK policy goals and international obligations around net zero and the transition to a regenerative economy to achieve nature positive economic activity. However certain broad principles seem to be desirable.

With respect to market power and the fair distribution of wealth and income, it would seem highly desirable for the CMA to be able to act to prevent Sheriff of Nottingham style redistribution (i.e. from the poor to the rich via the exploitation of economic rents), although Robin Hood style redistribution (i.e. from the rich to the poor) is probably better dealt with by the tax and benefits system. Case and Deaton (2020) analyse how big pharma and the health industry, including "not-for profit" firms, have systematically extracted huge rents in the USA and this is has now led to a $26 billion settlement with respect to the opioid scandal and further litigation Drug companies say enough U.S. states join $26 bln opioid settlement to proceed | Reuters. The IMF notes that the margins have increased by more than 30% amongst all listed companies in advanced economies since 1980 and that the probability of top decile companies in any given year being in the top decile the next year has risen to 0.85 from 0.75 in the 1990's. Rising Market Power—A Threat to the Recovery? – IMF Blog .

The situation concerning consumption and the environment is perhaps more complex. The UN Sustainable Development Goal 12 requires a transition to both sustainable production and consumption. The market price for many goods and services diverge widely from the appropriate shadow prices because of missing markets. The application of Competition Law to prevent market values from more adequately reflecting such shadow prices would risk the CMA becoming part of the problem rather than part of the solution. In particular, arguments that pit distributional requirements against true allocative efficiency (i.e. allocation based upon shadow prices that adequately value nature rather than market prices that do not) need to be identified and avoided. It is not simply good enough to crack down upon practices that encourage "over-consumption" unless it is accepted that our current economy systematically encourages "over-consumption." Barrett *et al* (2020) argue:

"The current structure of market prices works against our common future, the biosphere is precious but priced cheaply. To shift consumption patterns in the rich world and the aspiring consumption patterns of the poor world and those of emerging economies away from resource intensive goods and services will require massive, co-ordinated actions."

This analysis forms part of the emerging theory around socially embedded preferences. Shiller (2020) for example describes a dialectic between frugality and conspicuous consumption and argues that "the new modesty" based upon social conventions focused upon frugality and driven by harrowing narratives about people becoming destitute through no fault of their own, explains why the recession following the Wall St crash in 1929 was prolonged to become the Great Depression and also the ease with which the US economy was put on a war footing following Pearl Harbor.

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