

# Interview with Andrea Coscelli CBE, former CEO of the Competition and Markets Authority

## Speaker key:

**MR** Michael Reynolds

**AC** Andrea Coscelli

**MR:** Ladies and gentlemen, welcome to a spot we now traditionally hold at the Florence Conference, a one-to-one interview with a former competition agency official. Someone who, when in office, helped shape competition policy around the world. Today, I'm absolutely delighted to welcome Dr Andrea Coscelli CBE, who was the CEO of the Competition and Markets Authority (CMA) at a crucial time from July 2016 (if you'll remember, that was just after we had a certain referendum in the United Kingdom) until 2022. Andrea joined the CMA in November 2013 as an executive board member, in charge of the merger control and markets regime. Before that he was with the competition practice Charles River Associates (CRA) and now he heads Keystone Law's European practice.

So, Andrea led the CMA during its expansion after the rather traumatic event of the UK's exit from the European Union. Because of the CMA's new position and role, one of the things he did immediately was to increase the staff from about 630 to 900. You know, political analysts and pollsters in the UK are now researching to see whether the opinion of the Great British public has changed, whether there's any buyer's remorse, if they've changed their minds. And there's some

indication that indeed a change is taking place. But those historical pollsters have also revealed, to our surprise, that there are more voters than we thought. On 24 June 2016, various parts of the UK weren't actually aware that the UK was even in the EU, at a time when David Cameron's government was asking them whether they wanted to leave it or not. And an even larger number, it seems, thought they were voting to leave the Eurovision Song Contest! And, of course, the tragedy for them is that the UK remains in the Eurovision Song Contest but out of the EU. Andrea, what were the main challenges you faced when you took over the scenes at that very crucial moment in 2016?

**AC:** I started a couple of weeks after the referendum, which was a very traumatic period in terms of politics and for agencies like the CMA, which are obviously linked to the government of the day. The first challenge was really to think about Brexit and the changes in the CMA. Suddenly, after 40 years of being part of the European ecosystem, there was potential freedom. But, at the same time, we had to work out what our role would be.

Secondly, I inherited an agency which was, as you say, reasonably well staffed. And so, we were part of the debate and there were a number of trends there. The first one was the digital economy discussion, which was in its infancy but we want to have a voice in that, we want to be part of the discussion on merger enforcement. And then, if you'll remember, an immediate political reaction to the referendum was very much a sense of, 'Well, obviously we missed a number of trends'. And, so, there was a bit of soul-searching within the CMA, which at the time was entirely London-centric, full of lawyers and economists representing the whole of the UK. I remember, for instance, meeting one of the senior ministers in Scotland who asked me how many of our people were in Scotland at the time. I think three people were in the office in Edinburgh. It was a bit embarrassing because Scotland is seven, eight per cent of the GDP of the UK. It's a very important part of the UK, and how can you credibly argue that you are in tune with the issues in Scotland if you are completely in London, when basically all your meetings are within one square mile of your office? So, we started a big programme to strengthen the office in Edinburgh. The CMA now has offices in Manchester, Belfast and Cardiff, which was helped by the fact that the CMA was expanding.

I was then interim for a period because governments kept falling in the UK, so no one was able to run a competition for a permanent position. So, it took me a while to get the permanent position and that was when I could finally get the board to approve a number of things, which I then executed during my tenure.

**MR:** How do you think the cooperation with the Directorate-General for Communication (DG Comm) and the national European agencies works outside

the European Economic Community? And how does that work in practical terms in a post-Brexit world?

**AC:** It was a difficult transition because obviously the UK was one of the key members of the European Competition Network (ECN). It took quite a long time for the UK government to work out what to do with Brexit, for we had around two and a half years where we were still part of it, but it was clear we were leaving. We had very good personal relationships with the DG Comm, the heads of the various agencies. But then mid-way through my tenure things got worse because the Boris Johnson government decided to take this very aggressive approach to the negotiations. At the end of the day, the European Commission is a political body. Its position at a top level was, 'Well, we're not interacting with the UK government if the UK government is taking certain positions on protocol and all of that'. And so that clearly was suboptimal on both sides, but in a sense was above my pay grade and the pay grade of everyone working for the UK government at the time.

Now, I understand things are a bit better. So, I think for Sarah Cardell, my successor, it's now in a better place. But we had two or three years that were quite difficult. So, you know, you're trying to work on these global mergers together, but you're not really able to communicate properly and obviously there's still no cooperation agreement. We went from a world within ECN where you could exchange confidential information on enforcement, etc, to a world where we couldn't. Part of the reason why I think the UK agents in the last two or three years have had to spend more time with the Federal Trade Commission (FTC) and US Department of Justice (DoJ) than with the DG Comm is also this constraint on the offer on the legal side at the moment.

**MR:** You mentioned the political instability in the UK. We had four prime ministers between 2019 and 2022. Theresa May, Boris Johnson, Liz Truss and Rishi Sunak. Mrs Truss managed to achieve the record of having the shortest period in office of any Prime Minister in the history of the United Kingdom. 49 days of rather uncharitable tabloid newspapers (and we've got several of those), one of which bet on the duration of her political life against the shelf-life of a lettuce – *and the lettuce won*. Given that environment, how far is the CMA protected from political interference?

**AC:** In many ways, the CMA is probably more protected than most agencies globally because essentially you have what we call, internally, double independence. So, the CMA is run by a board. There is a full-time CEO and a non-executive chair usually for a couple of days a week, and a board, which is majority non-executive, so very similar in the sense of a private company. The political side is mainly the appointment of the chair, which is a process, but the ultimate decision is made by the minister responsible, the sort of business minister. The CEO is supposed to be

a fairly technocratic appointment. A lot of the key decisions of the CMA, including the big decisions on phase two mergers, are taken by this independent panel.

Something that people don't fully appreciate outside the UK is that essentially there is a quasi-judicial part sitting inside the agency because that agency was created as a merger of two separate agencies. And at that point, the Competition Commission had this essentially quasi-judicial role. The legislation and the culture in the organisation was very much about preserving that. It's a difficult position for a CEO because you own the regime, you want the guidelines, you want the part of the process, but a lot of the key decisions on phase two are taken by this independent panel.

And the other point that is important for people to be aware of is that historically, appointments to the independent panel often tend to be people at the end of their executive career, which I think is actually very good. These appointments are for a single eight-year term and the reality is that the vast majority of the members retire the day they finish their term. And, so, they are very independent because most of these people have had a successful career as partners in major law firms or economic consulting firms or as academics. And they do the job with a strong sense of public service and then they go. So, to be honest, they are not particularly influenced by the government of the day, which means the CMA is generally pretty independent. Obviously you are still part of an ecosystem and if you have ministers commenting on television about what you should or shouldn't do, that's not great, but the system is pretty independent.

**MR:** Reassuring. As CEO, what was the most difficult decision you had to take in your time in office?

**AC:** Some decisions I could take. Others I couldn't. Some of the really high-profile decisions I couldn't take. Things like we blocked the Sainsbury-ASDA merger, which is a big domestic retail grocery merger, NVIDIA-Arm, a bunch of the digital marriages that were either abandoned or blocked: Sabre-Farelogix, Facebook-Giphy. These were not decisions I could take as the CEO. They were taken by the independent panel. In my case, I was heavily involved in other parts of the portfolio. We did quite a lot of competition enforcement in pharma, which is an area I know quite well. I was quite involved with that. Obviously, we had to take lots of decisions on litigation. Interestingly, as CEO you're not involved in the decision on mergers, but then you are a decision-maker in litigation. And then we did lots of market studies – audit market, online advertising, mobile ecosystems – which are decisions for the board so the CEO plays a major role. I also took a lot of phase-one merger decisions of both clearances and a bunch of referrals as an individual. That's the way it works.

**MR:** What is the one thing you would do differently if you had your time again at the CMA?

**AC:** I was reflecting yesterday on the Unilateral Conduct Panel. If you're trying to run a regime as an agency head, the reality is that Article 102 enforcement basically has failed in the UK. I think it has failed in Brussels, has failed in Washington, because these cases take too long. They are too complicated. I'm an economist. I believe in industrial economics. But I think we overplayed that side of things and we need to rebalance between rules and case-by-case assessment. I think we went way too far on a case-by-case and had to spend months and months against arguments that are, frankly, quite spurious. So I think I should have been more radical there. Essentially, I inherited a system that was not great and I kept pushing within the boundaries. You know, we did a handful of cases, in pharma, digital cases. But if I had to be honest, the CMA's performance on competition enforcement the day I left was very similar to the day I joined, whereas in other areas I think I made much more of a difference. And I think it is harder. Most people here today are following the Google case. It was filed at the end of 2020, presumably the DoJ must have spent at least a year preparing that complaint, which goes to trial after three years. There's going to be a decision after 'x' months, most likely appeals. I mean, this is not a system that is delivering. The reality is if the system doesn't deliver within a reasonable ballpark, other things happen. For instance, last week I was reading about a single bill concerning a market cap for activity in the meatpacking industry. And again, I think for all people like us, the idea that you end up with sector-specific single bill merger control is clearly far from attractive. But if merger control doesn't deliver enough, you will end up with more and more of that. So, for me, it's a combination of parliaments, courts and agencies. You need a bit of a reset because more of the same is not good enough.

**MR:** Now you're in the private world, do you recognise the portrayal of the CMA as a particularly aggressive enforcer? I'm thinking about some recent high-profile prohibitions, Meta-Giphy and Microsoft-Activision.

**AC:** The CMA is one of a handful of agencies who block mergers. It's very hard to block tough mergers because there is massive firepower on the other side. First of all, you need to be comfortable taking tough decisions against media pressure, sometimes political pressure and defending litigation. So clearly, CMA is in the space.

Is the CMA now very different from some of the other agencies? I would say yes. When I was there, the CMA started a process of fairly rigorous, ex-post assessment of merger control. You can do studies about a bunch of mergers. You can look at the

academic studies on concentration, mark-ups, profitability, and these are all things that eventually need to feed into your guidance and your case-by-case decisions. So, for instance, we found that we had fairly systematic biases on the way we were treating entry by competitors. There were a number of mergers cleared in the early 2010s where there was an overall optimistic view. I mean, obviously merging parties concentrate on markets: rival X. That's what they are doing. They're going to be a massive constraint. We checked *ex post* in aid of these decisions four times. It turned out to be true. So, I think this is the type of work that as a competent agency you need to do.

The other issue is, as CEO you get lots of complaints about markets that don't work. When you go back, you think, 'Well, there was a merger there that maybe with hindsight didn't work'. You can read the DoJ complaint, and Google-DoubleClick is a massive indictment on that or the FTC's complaint on the Meta-Instagram case. I did a lot of work on the audit market where major agencies have been trying for many years to increase the number of auditors from four to five or six. Go back in time 20 years ago, Coopers and Lybrand and Pricewaterhouse were allowed to merge. With hindsight, given the colossal barriers to entry and expansion in that market, it was not a great decision. You look at Boeing, which has had all sorts of regulatory scandals, they're still doing really well because it is really hard to come in and compete with them on Airbus. We would like to have at least a third credible player.

I think you need to do that kind of exercise because then when you take the specific merger decision, which as we know are often fine margins, very often there's a package of complex remedies. Is that good enough or not? I think that's an exercise. The way I read the draft DOJ-FTC Merger Guidelines is that they've done a very similar process. It's a different case law and probably far greater scepticism by the courts at the moment on some of these changes, but it's a very similar process. So, yes, the CMA is an important enforcer of merger control, but also the last six months have cleared Broadcom-VMware, Amazon-iRobot, which have had more scrutiny in other jurisdictions. So, I don't think it's completely one-way traffic and certainly the US agencies have been very explicit that they think there has been under-enforcement. And so, in terms of the agencies, I think the US agencies are at the moment more aggressive than the CMA. Even if the outcomes maybe are different because of the court reviews of some of these deals.

**MR:** Did you want to say a little bit more about the staffing of the CMA? I mentioned that huge increase in staff, bringing it almost to the size of DG Comm, which struck me as an interesting figure.

**AC:** One of the things I spent a lot of time on was really to increase the number of technologists. I probably had the advantage of being an economist; I was quite

relaxed about the role of economics versus other things. And, so, for me, it was very clear that it was important in all these cases to have lawyers, economists and technologists together working on cases from day one. And I think one of the reasons I joined a company like Keystone, which essentially is a very big tech practice, is because I think there is a subset of cases in the digital space where you really need to understand the issues. The simple industrial economics model is just not good enough at this point. And, so, I pushed quite hard.

I think the CMA was one of the first agencies doing that, which had a number of advantages that I think people internally liked. For instance, Wilbur Ross of CMA has lots of very good lawyers. So, I'm very happy to work with technologists and economists very closely as part of their own development. And I had plenty of these discussions with my fellow agency heads and the CMA internally is a bit more flexible. So literally, I went to our board and I said, 'I want to move X millions of pounds in my budget from A to B, and B has to be this unit where we're going to hire technologists, behavioural scientists, all of that'. And they were like, 'Great idea, let's do it'.

In practice this is quite hard because, as I see it now, the pay levels are really in a very different place. But you can create a bit of a sense that, you come in for two or three years in an agency, you learn a lot about policy and then you can go back to your tech company slightly more rounded. And we were more successful than I expected at first. A number of agencies are now doing the same. There are bureaucratic constraints, so some have been less successful than others. But it seems to me, if I had to guess five years from now, a lot of these agencies will have three major buckets of people, which are lawyers, economists and technologists.

**MR:** We've talked about cooperation within Europe. Turning to the wider global stage, what were the reference points that you used when thinking about how the CMA would interact on the global stage?

**AC:** We do quite a lot of work. If you go back to first principles, now you are an independent agency of a mid-size economy in sort of the Organisation for Economic Co-operation and Development (OECD). So, countries like Australia, Korea, Japan, Canada have become very relevant because, essentially, they have the same problem, which is, 'You need to get good outcomes in your domestic economy, but also you want to be part of some kind of international coalition in this course because a lot of what happens globally has a big impact'. I spend a lot of time talking to my counterparts there. And I think the conclusion you reach is that there is no perfect answer, that it changes a bit over time. For instance, you have a major cost of living crisis. Suddenly, you feel you probably need to do more domestically. But, at the same time, the idea that you're not a player on discussions like what's happening



with Google, what's happening with AI, what's happening with news and platforms doesn't make sense.

And, so, if you look at the last few years, obviously the Australian Competition & Consumer Commission when Rod Sims was running it, I think, played quite similarly to ours because there were some areas where they were leading and they were coming up with lots of proposals that tried to get the government to make some changes. Likewise, with the Canadian authorities, we've been working with the government about these regulations, legislation about the sort of value for news. So, everyone is moving a bit in that space of trying to find some areas where they can lead, others where they follow, and others where they're part of a coalition.

It's not easy. Obviously, the current Microsoft–Activision situation for the CMA, I'm seeing it from the outside because I'm still conflicted. You know, that case, which is taking so long, I was there when it started. But can you, as a country, which is five per cent of the revenues, block a global transaction? And I think the answer is a problem either way, because if you say 'No, you can't', essentially you are outsourcing the merger. It's a complete irony of Brexit. We were part of a system where at least we had some soft influence, we got out and now we're outsourcing to the EC without the UK, and the US agencies where the agencies change their position with every administration in a very material way, which cannot be right. But at the same time, is it reasonable, or then do we end up in a world where companies are then negotiating deals around you and you create a lot of friction, complexities? So that's a problem that obviously these other agencies have had for many years. And, so, I think that's something that would settle one way or another.

But, also, at the end of the day, you need some political steer on these things because it reflects also the ambition our country has on sovereignty. And it's not just competition. The current UK Prime Minister said, 'We're going to have this global AI forum' and some people were laughing at him and saying, 'Well, what are you going to do?' You know, all these companies are not really in the UK. These are global companies. Who cares about your rules? But at the same time, he says, 'Well, we have good regulators, we have some tech expertise. We've historically been good at crafting these kind of pro-business rules that work. So, we have a role in it'. So, I think we will see how it settles, but it's very linked to what happens in other environments.

**MR:** What about the International Competition Network (ICN)? How useful did you find the ICN? And I mean, we are all off soon to the ICN which is being hosted by the Spanish agency in Barcelona this year. It's going to be hosted by Brazil and the year after it's actually going to be hosted, we gather, by the CMA.

**AC:** Yeah, they're pushing it back.



**MR:** Was it useful and do you think it could be improved?

**AC:** I love the ICN and I must say, I think Andreas [Mundt] has done a fantastic job. I think the way to interpret the ICN, if you're an agency head, is it's a great democratic, multilateral institution. What was super interesting for me was that, we have these colossal biases about the Anglo-Saxon world of antitrust. Let's just look at what happens in the US. I mean, the reality is we are obviously in a plural multilateral war. And I learned a lot from talking to my fellow agency heads from all over the world about competition law in the context of democracy, in the context of other pieces of legislation. So, I think it's a great forum for agencies to have very open conversations about themselves on how they can satisfy their mandates. And their mandates are complex mandates. So, different countries are different mandates. Obviously, the issue of independence is more of a problem in some countries than others. So, I think it's working really well. When you think about change, I mean, the reality is it's a very difficult organisation to run. We had endless discussions on the position to take on the war in Ukraine. Now, probably in this room you would think the position is fairly clear. It wasn't within ICN and so it's difficult to run, and I think different people obviously have different views about how useful we can be and how to move it. But, certainly, my personal experience is that it's a great forum. So, I'm actually going to be in Barcelona because I'd really like to go back. It's one of the things I really liked about my previous job.

**MR:** We also understand that in 2025, when the CMA hosts it, it's going to be in Edinburgh, which is, I think, quite a popular choice. Finally, do you foresee any fundamental changes in antitrust enforcement over the next decade?

**AC:** Yeah. Political pressures are really important. If you think about the Digital Markets Act (DMA), it happened quickly and 90 per cent of MEPs supported it, and that was because there was this sense that antitrust wasn't delivering in an important part of the economy. We're in Italy, and a few weeks ago there were these headlines in Italy because suddenly the government pretty much overnight imposed some price caps on airfares between the major Italian cities and Sicily and Sardinia. And Ryanair is very big in Italy. EasyJet is very big in Italy. I mean, you could argue on many levels that the domestic airline sector is very competitive in Italy. But, at the end of the day, the fares went up. They've gone up generally around Europe and there's been a lot of migration from Sicily, from Sardinia, to northern Italy for people to work. Salaries in Italy have not really kept up with inflation and all these price increases. So, the government ended up with massive pressure to do something and they ended up with price caps. And these price caps were designed probably overnight. There is already a complaint from Ryanair to the EC, so they are not going to last.

So, what you learn if you are an agency head is that those pressures need to be addressed at some level. If you don't do anything, other things happen. It's generally every day something new happens. So, we are clearly not in a place where we can craft rules or can have enforcement or anything. But, you know, if in one, two or three years' time some very bad outcomes occur, things will happen, and will happen quite quickly. So, I think the problem with antitrust at the moment is that antitrust enforcement is not really working in an acceptable way.

Anyway, in terms of the major jurisdictions, merger control is probably OK. But again, it's trending towards longer and more complex litigation, which again I don't think is trending in the right direction. I think we might end up with more sector-specific regulation rulemaking because, at the end of the day, the pressure's out there and if you're a politician, you can't just ignore it. I think our role, the role of enforcers and the role to some extent of the wider community, is while we discuss and fight individual cases, we also have a bit of an eye for the overall regime. It's a bit of an historical accident that antitrust at the moment is as prominent as it's become over the last 20, 30 years. In ten years' time we could be in a world where it is pretty peripheral because other things overtake it. I spent years at Ofcom as a regulator. You can have sector-specific rules and we know there is a trade-off because the problem is then they become a bit obsolete and they ossify, then they create other problems. But you still need to come up with solutions. And the idea of just defending what we have now, no matter the evidence, doesn't work in the long term. So, I personally think there are going to be some changes. I think the politics realistically are going to be quite important; you know, whether we keep going towards a more populist approach or whether we go back to a technocratic approach.

**MR:** Any questions from the floor?

**Speaker 1:** We've heard several times in this conference that a number of authorities are emulating the CMA in market investigations, market studies. That seems to be a tool that is increasing in popularity and it's linked to what you just said, really, which is maybe there is a role for competition regulators using that tool to identify ways to create solutions for markets. I wondered if you could comment on that tool specifically and its use?

**AC:** I completely agree. I think that this is about markets that have poor outcomes and to some extent is about political problems. As agencies, we have time, we have resources, we have expertise. Whereas a lot of politics is literally, 'Tomorrow you have to be on television because something has happened'. It's a very different division of labour. I think we can be very helpful to politicians in dealing with some of these problems and so we've spent quite a lot of time doing exactly that, which is partially direct action. So, the legal powers on market investigation allow the

CMA to fix problems. I mean, obviously, again, historically, there's been a lot of litigation. Sometimes those work well, sometimes less so. But the market study, the way we interpret them, was a partnership essentially with government. It was, 'you have a problem'. So, the CMA was doing a lot on that and on the green economy. Like electric vehicle charging: can we do a nine-month smart piece of work which essentially gives a bunch of recipes so that household ministers can then put them in a bill? I think these things are very useful because as an agency, you have the expertise and, at the end of the day, you have a technocratic role. Your role is that of an expert adviser in how markets work. All of us in this room, we know these markets are complicated – a combination of regulations, competition, other pieces of legislation – and I think good competition authorities are really experts in markets and how certain things can work. And that means you get some support and buy-in from the politicians about the agency as a whole and the mission because they think you're useful and you're doing something sensible.

**Speaker 2:** To what extent do you think that antitrust, whether it's through merger control, market investigations or conduct sanctions, can really assist in issues such as protection of privacy, ensuring accurate information is being provided, the sorts of things that we think of as being more important in democracies than perhaps merely making markets work? Given that that's been part of the progressive antitrust agenda, and yet certainly in the US, the courts are not accepting that sort of reasoning approach or indeed any of the cases so far.

**AC:** My personal view is there is still a division of labour. The CMA has clear legal powers to make markets work better and there are other areas where I don't think you should stretch too much the existing legal powers of the CMA. But you can be an expert adviser. So, the way I was discussing these things internally was 'OK, problem A and B, we think they are within our legal powers. We can do something about those problems. But in C and D we're just going to say in the report that we think there are these issues and then it is for the government to do something if they want to change the legislation or we work very closely with the regulator'. So, I spent a lot of time with privacy regulators, communications regulators. In some of those cases it was about trying to convince them to do something. But I think in a system like the UK, where you have competent regulators and generally governments are quite sensible in the way they deal with these type of issues (though maybe not in very recent years), there is no point in stretching the antitrust laws too much. I think it's a division of labour that works quite well.

**MR:** One last question, which I usually ask former officials when they leave their position as head of an agency. Did you leave a note in your desk drawer for your successor, Sarah? And if so, what did it say?

**AC:** I was in a very lucky position because I work very closely with Sarah. She was General Counsel during my tenure and she was very much in the room for all the difficult decisions. So, I was very happy that she was taking over. And also the other interesting thing was that there was a new chair appointed pretty much when she started, coming from a senior partner role at a major strategy consulting firm. I know that there are certain things where she really likes what we do and I'm sure she will continue, and other things that I'm sure she would do differently and is already doing differently.

I try quite hard to really remove myself because, you know, I was there for eight-and-a-half years, six years as CEO. So, you end up projecting quite a lot. And I think it's quite healthy, particularly when there are very competent people running it, to just be out. I spent a year pretty much outside the UK debate and now I'm coming back a bit more. The CMA is a very good agency. For instance, they're now dealing with AI and competition. We probably never had a conversation about AI when I was there, so within a year things change very fast.

**MR:** Well, thank you very much. You clearly made a huge contribution to making it such a strong agency.