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Time and the bubble

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Sometimes it's hard for regulators to see the world beyond the protective bubble in which they spend so much of their working lives. Professional preoccupations can easily blind them to the real concerns – or lack of them – of people living outside the bubble. Often this visual disability is accompanied by a strange failure to measure time like the rest of the world: what is warp speed to a regulator so often looks like tortoise pace to everyone else.

Take the heavily publicised row over the Microsoft browser choice screen, for instance. Only last month, the European Commission announced a new investigation into whether the US computer giant has broken its 2009 promise to offer its customers a choice screen so that they could choose their preferred web browser.

Microsoft had originally made the promise to meet the Commission's worries that the company had abused its dominant market position by tying its Internet Explorer web browser to its Windows operating system. The choice screen – a thoroughly annoying interruption for most PC users who knew perfectly well that they could pick another browser if they wanted – was meant to remain available until 2014.

However, Microsoft seemingly forgot to include the choice screen with its new Windows 7 Service Pack 1, released in February last year. As a result, millions of people were mercifully spared the pleasure of seeing the wretched thing yet again. Sadly, though, Microsoft made the mistake of saying in its December 2011 compliance report that it was still honouring its original promise to display the choice screen.

A mere 18 months on from the erring Windows 7 release, the Commission has now decided to waste time investigating something that the outside world couldn't care tuppence about. Given the competition commissioner's purse-lipped comment to the media – "I trusted Microsoft's reports were accurate but it seems that was not the case so we have immediately [sic] taken action" – you might think that what the Commission really wants to do is punish Microsoft for that December compliance report rather than protect consumers from any abuse of a dominant position.

On the other hand, at least the IT sector is big enough to warrant the attention of a mainstream regulator, even if the actual case is a stupid one. At other times, it's hard to see why anybody bothered to take action in the first place.

Take, for instance, the European Commission's recent announcement that it thinks four traders of North Sea shrimps have colluded to fix prices and allocate both markets and customers in the

Netherlands, Germany, France and Belgium. This follows on from unannounced inspections three years ago – so clearly this is a *terribly* urgent case – at the premises of several producers of North Sea shrimps. At this stage, the Commission won't name the traders involved "as it respects the rights of defence and the presumption of innocence", something that hasn't always stopped the Commission from naming people in the past.

One reason for all the fuss may be that the food sector has been marked as a priority sector for European competition authorities who are worried about whether food markets are working ok for suppliers and consumers. In other words, it's a political issue. The trouble is that the reason for the policy is not obvious – especially when there isn't an immediately identifiable food crisis in the EU – so suddenly sounding off about a few crustaceans three years after the initial inspections makes the Commission look faintly silly.

Mind you, the shrimp story doesn't hold a candle to the Pepe's Ducks saga in Australia. Here, the Australian Competition and Consumer Commission has launched ferocious legal proceedings in the Federal Court against Pepe's Ducks, seeking declarations, fines, injunctions, the compulsory introduction of a trade practices compliance programme, public factual corrections and costs.

And what has Pepe's Ducks done? It has allegedly told a lot of fibs about its duck-meat products on its packaging, website, trucks, signage, stationery and merchandising. In particular, it has claimed that its ducks are open range, "grown nature's way" and live outdoors next to a lake. In reality, the poor creatures are kept in sheds without any access to the outdoors.

However, given the European Commission's bracing example of how to turn a molehill into a food mountain, it can surely only be a matter of time before the ACCC finds a way of accusing Pepe's Ducks of some form of anticompetitive behaviour: perhaps the poor birds colluded to fix prices and markets by secretly living in sheds, thereby driving up prices and helping to exclude happier free-range ducks from entering the market (or shed). You laugh, but anything can happen when regulators make a fuss about things that don't really matter.

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