Facebook's light approach to corporate governance

Amongst the regular challenges of modern governance are the corporate scandals. These have affected almost every business sector, most recently of course the so-called disruptive Big Tech companies. It seems none of these social media technology companies are exempt from scandal. Google have been accused of abusing the dominance of its Android smart phone operating system and Apple were hit by Europe's largest tax penalty.

The current scandal *du jour* involving Facebook – 'data scraping' from users for third-party political campaigning in America, UK and Europe – is particularly damning as it is one in a long line of 'errors of judgement' from its founder, leader and CEO Mark Zuckerberg and his apparently supine executive team. The current imbroglio must rank as one of the most serious for the company – especially given how unusual it is for a CEO to actually be summoned to appear before Congress to be grilled by the elected representatives of the American people to (notionally) fully account for their decisions and actions. Sadly, those requiring news of concrete action to stop and/or mitigate future transgressions by Facebook found little to excite from the 500 – often painfully easy, often dolly drop – questions posed by US lawmakers.

The fact that Facebook was known for questionable tax issues in the UK should not, of course, go unnoticed (in 2014 they paid £5 000 in tax, despite making billions of profit and the UK being a very important market). As we all know or are getting to better understand and appreciate, notionally at the heart of the Facebook business model is the claim that consumers can trust the company to look after its data.

Sadly, this claim looks at best increasingly specious and, at worst, deliberately misleading. As with many other scandals, one of the major contributory issues is the ineffectiveness of the Facebook company board, especially as it relates to the key metrics of independent analysis and advice from its executives and non-executive directors alike – should they exist in any meaningful way. In general terms, the consequences of this lack of appropriate governance, oversight and supervision is reduced shareholder value, job reductions and reputational damage, along with reduced morale amongst employees and anger amongst users and lawmakers.

In the case of Facebook, it appears that the board is ineffective in a number of important areas. Firstly regarding strategy. The business is not diversified – compared to Google or Amazon, for instance – while its current product offerings rely totally on the trust of consumers in data protection and their ongoing confidence in that. Almost all of its revenue eggs comes from the same basket, namely advertising.

Though never slow to play the victim or issue heartfelt *mea culpas* not worth the comment streams they appear in, it is a truism that Facebook are victims of their own 'success'. Others may deem this a sign of lack of global regulation and governmental influence or control – in that they grew too big too quickly. In the FT, John Gapper writes that Zuckerberg cannot even control his own creation. At the Congress hearing he apologised many times for the havoc he has unleashed at Facebook. The Board had failed to plan for such fast growth and had not identified the issues which it would face. It is a situation massively compounded by Zuckerberg occupying – as the American corporate governance regulatory environment permits – both the roles of Chairman and CEO simultaneously, apparently without the difficulty of naysayers or contrary opinions in the rush to extract and maximise huge profits. For Gapper, this has lately left Zuckerberg looking "more like apprentice than sorcerer".

Secondly, regarding risk management, the Facebook board failed to have a plan to deal with an incident such as the (disputed) Cambridge Analytica data scraping (and networked dumping) scandal. Even now the company is struggling to deal with its consequences. When inevitably caught bad acting, Facebook has either underestimated or failed to anticipate the reaction of people globally (and that of their elected representatives), which could lead to a change in the law that could really affect the super profits and possibly the viability of their increasingly aggressive business model – though we will all believe this when we see this come to pass (preferably with teeth and financial consequences). For example, limiting the use of data as LinkedIn does or, possibly, requiring consumers to pay, which would have an enormous impact on their current very high margins of profit.

A further significant contributory factor to Facebook problems is the light to non-existent touch approach to corporate governance symbolized by the combined chairman and CEO role. For a company with international pretensions, let alone one that straddles the world globally, not even bothering to appear to take account of best practice is an arrogance borne of a management bubble with almost zero effective regulation, supervision and oversight.

A pragmatic optimist could make the case for possible much-needed positive corporate governance change at the leadership and executive level at Facebook. Notional or actual legislative gatekeepers with real teeth is something that would also be a useful corrective for other all-powerful founders of disruptive social media companies – like Twitter, Google and Apple et al. This would be doubly handy. There is no time like the present, since these companies collectively enjoy sacred-cow, most favoured status with worldwide stock markets, venture capital and private equity investors, as well as (wannabe) shareholders – without, it seems, any government being able to provide any influence upon them.

Sadly, along with the oft-cited disruption, these digital titans invariably lack independent chairmen/chairwomen and are often led by a single shareholder or a small cadre of equally unaccountable majority shareholders. If Facebook were to care enough to set an example in sincerity about corporate governance best practice, they would briefly proactively take control of their own messaging and positioning in the global (media) news agenda sufficiently to announce immediate but voluntary change to let some air into their deliberately and rigorously closed structure of their shareholding and management bubbles.

This would be a wise move before global legislative strengthening finally forces this more 21st-century corporate governance reality upon them. They should also immediately dilute their voting share ownership, and also employ and empower independent directors to advise, guide and supervise their strategies, policies and procedures, as well as ring-fence their current dominance and success more openly and equitably.

What are the specific better governance steps I would recommend for Facebook? Here in the UK, it is now a requirement for public companies to have an external board evaluation carried out every three years. When it comes to conducting a board evaluation the checklist issues that usually need to be covered include:

Overall Impression of the Board

Dynamics of the board

Culture and climate in the boardroom

Sense of teamwork

Quality of discussion / balance of debate

Organisation of the Board

Agendas, and formation of agendas; coverage of the right topics

Reporting, including of board committees

Meeting frequency and length

Formal processes and duties **Overall Impression of the Board**
Informal processes (including board dinners)
Strategy sessions
Information and support materials; company secretariat and support
Committee Organisation: Audit, Remuneration, Health, Safety & Environment, Nomination
Agendas
Meeting frequency and length
Membership, internal attendees and adviser attendees
Information and support materials
Topics for the board versus topics for the committees
Board Composition
Size
Balance (including number of executives)
Skill sets
Independence
Rotation
Board Involvement and Engagement
Directors' knowledge of the business
Relationships with management
Contact outside the boardroom
Strategy development
Induction and training for new directors
Communication with Shareholders/Stakeholders
Shareholder messages
Analyst meetings and reports
AGM (annual general meeting)
Chairman's role with shareholders/stakeholders
Other Directors' role with shareholders/stakeholders
Looking forward
Succession planning (Executive and Independent)
Directors' development needs
Overall Board Effectiveness
Progress since last board evaluation
Fulfilment of fiduciary duties
Ethics, Corporate Social Responsibility and Environment
Compliance with UK Corporate Governance Code
Expectations placed on directors including their responsibilities for governance and remuneration
Support to the business
Checks and balances
Short- and long-term health of the business

Colleagues
Chairman
Senior Independent Director
Chairmen
Independent Directors

Executive Directors **Overall Impression of the Board**

The above checklist would be an excellent place for Facebook to embark on their self-confessed road of repentance and contrition. However, and that said, with Mark Zuckerberg's recently heavily scripted apologetic mood music to Congress still echoing in our ears worldwide, the signs of better governance and transparency moving forwards don't look positive. If Facebook's actions are anything to further judge them by: allegedly for purely coincidental housekeeping and 'administrative' reasons, the company is transferring data currently stored in Eire (subject to EU legislation), to much laxer regulatory environments – to circumvent the EU's introduction of its General Data Protection Regulation (GDPR) on 23 May.

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Notes:

- *This blog post draws insights from the author's book The Independent Director: The Non-Executive Director's Guide to Effective Board Presence, published by Palgrave Macmillan.*
- *The post gives the views of its author, not the position of LSE Business Review or the London School of Economics.*
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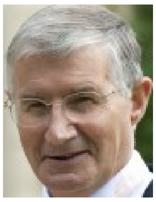

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