PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

DIGITAL MARKETS, COMPETITION AND CONSUMERS BILL

Second Sitting

Tuesday 13 June 2023

(Afternoon)

CONTENTS

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 17 June 2023

The Committee consisted of the following Members:

Chairs: † Rushanara Ali, Mr Philip Hollobone, Dame Maria Miller

† Carter, Andy *(Warrington South)* (Con)
† Coyle, Neil *(Bermondsey and Old Southwark)* (Lab)
† Davies-Jones, Alex *(Pontypridd)* (Lab)
Dowd, Peter *(Bootle)* (Lab)
† Firth, Anna *(Southend West)* (Con)
† Ford, Vicky *(Chelmsford)* (Con)
† Foy, Mary Kelly *(City of Durham)* (Lab)
† Hollinrake, Kevin *(Parliamentary Under-Secretary of State for Business and Trade)*
† Malhotra, Seema *(Feltham and Heston)* (Lab/Co-op)
† Mayhew, Jerome *(Broadland)* (Con)
Mishra, Navendu *(Stockport)* (Lab)
† Russell, Dean *(Watford)* (Con)
† Scully, Paul *(Parliamentary Under-Secretary of State for Science, Innovation and Technology)*
† Stevenson, Jane *(Wolverhampton North East)* (Con)
† Thomson, Richard *(Gordon)* (SNP)
† Watling, Giles *(Clacton)* (Con)
† Wood, Mike *(Dudley South)* (Con)

Kevin Maddison, John-Paul Flaherty, Bradley Albrow, *Committee Clerks*

† attended the Committee

Witnesses

Professor Jason Furman, Aetna Professor of the Practice of Economic Policy, Harvard University

Professor Amelia Fletcher CBE, Professor of Competition Policy, University of East Anglia

Professor Philip Marsden, Visiting Professor, College of Europe

Noyona Chundur, Chief Executive, The Consumer Council

Peter Eisenegger, NCF Board Member, National Consumers Federation

Tracey Reilly, Head of Policy and Markets, Consumer Scotland

Professor Geoffrey Myers, Visiting Professor in Practice, London School of Economics and Political Science

Graham Wynn, Assistant Director for Consumer, Competition and Regulatory Affairs, British Retail Consortium

Max von Thun, Europe Director, Open Markets Institute

John Herriman, Chief Executive, Chartered Trading Standards Institute

David MacKenzie, CTSI Lead Officer, Chartered Trading Standards Institute

Owen Meredith, CEO, News Media Association

Peter Wright, Editor Emeritus, DMG Media

Dan Conway, CEO, Publishers Association

Public Bill Committee

Tuesday 13 June 2023

(Afternoon)

[Rushanara Ali *in the Chair*]

Digital Markets, Competition and Consumers Bill

2 pm

The Chair: Good afternoon, everyone. I need to call the Government Whip to move a motion to amend the Programme Order agreed this morning. The purpose of the motion is to enable us to hear from the witnesses who were unable to give evidence earlier today.

Ordered,

That the Order of the Committee of 13 June 2023 be varied by the insertion of the following words at the end of the Table in paragraph 2—

Tuesday 13 June	Until no later than 4.45 pm	Chartered Trading Standards Institute
Tuesday 13 June	Until no later than 5.15 pm	News Media Association; Publishers Association; DMG Media

—(Mike Wood.)

The Committee deliberated in private.

Examination of Witnesses

Professor Jason Furman, Professor Amelia Fletcher CBE and Professor Philip Marsden gave evidence.

2.4 pm

The Chair: Good afternoon, everyone. Could each of the witnesses introduce themselves, please? One witness is in the room and two are joining us virtually.

Professor Fletcher: I am Amelia Fletcher, Professor of Competition Policy at the University of East Anglia. I should mention that I am also a non-executive director of the Competition and Markets Authority; I know you heard from our chief executive officer this morning. I am very much here, I believe, with my academic hat on and because of my role on what has become known as the Furman review, which kicked all this off.

Professor Furman: I am Jason Furman, Professor of Economic Policy at Harvard University; I am jointly at the Harvard Kennedy School and in the economics department. I was chair of the expert panel on digital competition, and I am thrilled to be with you—this morning for me, and this afternoon for you.

Professor Marsden: I am Philip Marsden, Professor of Law and Economics at the College of Europe in Bruges. I am deputy chair for enforcement at the Bank of England. I was a member of the panel here and was formerly inquiry chair at the Competition and Markets Authority.

The Chair: Thank you all very much for joining us. I call shadow Minister Alex Davies-Jones to kick off with questions.

Q30 Alex Davies-Jones (Pontypridd) (Lab): Good afternoon professors and thank you for joining us today. We have had a lot of chatter about whether the Bill will help or hinder the growth of innovation in the UK's digital market. What are your opinions about that and do you feel that the Bill goes far enough?

Professor Marsden: In the branch of legislation being considered internationally in this area, this is the only Bill with a pro-innovation approach written into it. That was our original intention in the Furman review—not to sacrifice any innovation by large tech platforms, but simply to unlock the opportunities for innovation from smaller, more diverse firms so that there were more ideas and more flow. I do not see any correct arguments at all that this will hinder innovation; if anything, it will do the opposite.

Q31 Alex Davies-Jones: Professor Fletcher?

Professor Fletcher: I fully endorse that. When we did the review, we spoke to a lot of firms that were seeking to innovate in the digital space but were struggling. We heard that they really needed access to a whole number of things such as data. They needed access to customers and to be interoperable with systems out there. They needed access to finance. They found, essentially—some of them, at least—that the way in which the biggest platforms were working was making all that very difficult. They were concerned that although there had been a huge amount of innovation, at that point—and still, I think—firms' ability to innovate was being gradually increasingly stymied by the conduct of the biggest tech platforms. We very much saw the Bill as a pro-innovation piece of regulation.

Professor Furman: This question is so fundamental. This legislation would have benefits for consumers in terms of price and choice, but far and away the most important benefit would be innovation. It was designed with that in mind; our recommendations, which the legislation took on, established firms with strategic market status. They would fall under these rules, which would give a lot of leeway to small and medium-sized UK businesses to really innovate and come up with their own models rather than being constrained. More competition would help innovation by the large platforms as well.

The other thing that is so important is that the speed in the digital sector is just so much faster than in other parts of the economy, so traditional anti-trust rules just take too long: by the time a case is settled or decided, everyone has moved on. Getting there at the front end and having something that is much more flexible and faster is critical in this sector.

Q32 The Parliamentary Under-Secretary of State for Business and Trade (Kevin Hollinrake): Thank you very much for your answers. Amazon has recently said the complete opposite of what you are saying. It has said that the Bill will stop it from innovating. It has started these new stores where you can go and shop and there are no staff—people just go in, take the stuff off the shelf and walk out. Amazon says that this Bill would have stopped it from taking forward that kind of innovation. What particular areas in the Bill is Amazon referring to? Do you recognise those as valid concerns?

Professor Fletcher: Amazon would have to be more precise about what it thought in the Bill would stop that. I think the Bill has trod a very careful, innovation-

focused line between stopping the biggest tech platforms from inhibiting innovation by third parties and facilitating them to innovate themselves. The Bill is designed to only address the very biggest platforms in the first place, but also only to address the elements of their business where they have very strong market positions and entrenched market power. I think that way is the right way. As far as I know, Amazon would not be inhibited by the Bill from setting up those stores.

Q33 Kevin Hollinrake: There is a forward-looking provision, is there not, for the CMA to look five years into the future and decide whether a company will have entrenched market power then? Is that what Amazon is referring to? Is that their concern, and would that be valid?

Professor Fletcher: I think the concern is to ensure that it is entrenched market power that we are addressing. The CMA recognises, as do we, that these are intrusive measures and you do not want to do them unless you are trying to address entrenched market power.

Professor Marsden: Personally, I agree that there is an aspect where the five-year period, which I find a bit too long, can be gamed by some of the potentially SMS—strategic market status—firms, but I understand why it is in there. I probably would have been more comfortable with a two or three-year period, because that is traditional for competition authorities and as far as they can look ahead in terms of crystal ball gazing. But I understand why it is there.

Q34 Kevin Hollinrake: How would they game the system, Professor Marsden? What do you mean by that?

Professor Marsden: They could game the system in the sense of one thing being done by just slowly walking backwards, for example—"We are introducing so many innovations and having so many thoughts and thanks from various small businesses." They could drown the CMA with a range of evidence that actually does not go to the point, which is: who is being excluded, who is being locked out and what are we as consumers and citizens missing by relying only on three or four types of seed in the environment, as opposed to a whole globe of seeds? That is the metaphor I would like to use.

Professor Fletcher: It is worth highlighting that if you compare the UK regulation with the equivalent in the EU, the EU has taken a less bespoke, less evidence-based approach. It basically gets a quantitative presumption, and that presumption is going to be relatively hard to shake. What we have done is much more evidence-based, bespoke and proportionate. Whenever you do that, it makes it slightly less administrable and slightly harder to actually make stick.

Again, I think a very delicate balance has been trodden, and it is the right balance. I think all of us would agree on that, and on the fact that Brussels has made it easier for itself, but it is arguably then not proportionate nor sufficiently bespoke. It is a very delicate thing, but I think it is in the right place.

Q35 Kevin Hollinrake: Professor Furman, I saw your hand up. Do you have any comments?

Professor Furman: Look at the tools that the Digital Markets Unit would have under these provisions; the conduct requirements, such as fair dealing and open choices, are not brand new inventions. They largely draw on existing roles under anti-trust measures. It is just that they would be more explicit and clearer up front, and enforced more quickly. To some degree, at least in terms of the conduct requirements, this is not about imposing some brand new set of rules; a lot of it is about taking existing things and ensuring that they can be enforced in a clear and transparent manner.

The Chair: I call shadow Minister Seema Malhotra.

Q36 Seema Malhotra (Feltham and Heston) (Lab/Co-op): Thank you very much for coming today. I want to pick up on the argument that the legislation will enhance innovation. In your excellent report, which underpins much of our work, you mention hearing from businesses that were finding it hard to innovate.

Some conversations that we have had have been more explicit about the increased costs of innovation, and the difficulties when there is no interoperability or access, and increased costs being passed on to customers. Is that consistent with your experience, and what are the likely economic benefits to businesses and consumers of this legislation? I will take Professor Fletcher first, and then we will come back to Professor Furman and Professor Marsden.

Professor Fletcher: That was exactly our experience. We heard about the importance of interoperability with systems, and access to data and consumers, and how all those things were not always effective. Some innovation was fostered by big tech and some was less fostered by it, but the point is that they were in control of what happened in a way that we felt was not right for a proper, innovative environment, and certainly not right if you want to see real, disruptive innovation coming through—and I think that is what we do want to see.

We also thought that interoperability, data portability and data access were all pretty intrusive interventions. Therefore—unlike what has been done in the EU, where they have particular rules that require interoperability and require data portability on a fairly widespread basis—we instead thought that that should not be part of the core code of conduct, and that the aim could be achieved via pro-competitive interventions that were evidenced, bespoke and really well targeted. Again, that has been taken through into the Bill's design, and shows that it is targeted at the barriers to innovation that we identified.

Q37 Seema Malhotra: Professor Furman, I would be interested to know whether you think the Bill strikes the right balance. Does it give the CMA too much power? Does it put the right amount of power in the new digital markets regime?

Professor Furman: The short answer is yes, I think it gets it right. It strikes what my colleagues have described—and I agree—as a delicate balance. It depends on who is the head of the DMU and who is the head of the CMA.

In general, my experience with the regulators in the UK is that they are very thoughtful in understanding the importance of markets, competition and taking evidence seriously. The legislation gives them a certain amount of discretion. As my colleagues have testified, that is unavoidable; in a market and an environment where things are changing very rapidly, it would be very

difficult to try to write into the legislation every single detail. This sets the standard for what the world should do. Frankly, part of the reason I agreed to do this project is that I would love to see the United States following legislation like this. I hope the UK serves as a model for the world in this regard, and I think it is doing so.

On innovation, I agree with Amelia that what we heard from businesses and reviewed in the academic research is that it is not just a question of how much innovation, but what type of innovation. Are you trying to innovate so you can be acquired by Google or are you trying to become the next Google? There is one thing that motivated us. It is very hard to see the future of this space, but four years ago we thought the next big thing would involve artificial intelligence and machine learning. Unlike the past waves of innovation—where IBM was dominant, and then it became about PCs so it was Microsoft, and then it was about the internet so it became Google, and we saw one wave after the next displacing the previous—we were very worried that because artificial intelligence required large amounts of data, it would not necessarily lend itself to a new upstart competitor, but would instead entrench the power of the existing ones. So far, what we are seeing with OpenAI and the role that Microsoft plays in it, and with what Google is doing in this space, is that it is largely playing out along the lines that we were concerned about. That is partly motivating us looking forward.

Q38 Seema Malhotra: Thanks for those responses. Professor Marsden, how much we will need some global leadership to ensure this legislation has the impact it needs to have? Some of these issues and the companies' operations do not stop at borders. To what extent are there tools in the legislation and more widely for the CMA to operate with sister regulators abroad?

Professor Marsden: Let me take your first point with respect to evidence related to economic benefits. We had a natural experiment before this, called open banking. You will have heard things about this before. No matter what hopes or disappointments people had about open banking, we seemingly had the power at the time to investigate a market that had competitive problems but no anti-trust violations, so there was nothing we could address with anti-trust law. We identified certain competitive structure problems, and there was an expectation on us perhaps to break up the banks, and we hear that with respect to some platforms.

That power is there in the Bill, but with the Furman review and this Bill, which has been kindly carried forward by the excellent civil servants, our emphasis is on the idea of opening up these markets with the same kinds of ex ante obligations on the larger platforms that we imposed on the big banks. Did we break up the banks? No. Did we see massive amounts of switching from one bank to another? No, but we have evidence that British people switch their spouse more frequently than they switch their bank.

What we want is more engagement. We want customers, users and small businesses to be engaged with their platform—with their bank—and that is what we will be seeing. We saw new offers coming in without the extensive capital requirements to bring in a full new entry, but there were new services offers in real intermediation and disintermediation of various products. If anything, open banking allowed consumers and users to—I hate this term—have affairs. It allowed them to check out where they could get the best mortgage, the best loan and those kind of things. That disciplines the incumbents, especially HSBC and Barclays, to provide competitive offers themselves. That is an example, to me at least, about how a pro-competitive, ex ante set of rules on very large platforms with a lot of data can help diversify the economy without harming the platforms. If anything, it puts a little bit of heat under them. I think that was a good achievement, whatever people think politically about it. It was supposed to be a balanced, gradual attempt to try to fix a market that had competitive structure problems, and I believe that is what the Bill does here.

In terms of global leadership, the UK is definitely still leading, despite a bit of a delay. It is the most bespoke, nuanced and balanced bit of legislation that has been proposed so far that I have seen, as we have already discussed this afternoon. At the same time—I completely understand your jurisdictional point—there is a real zeitgeist politically around the world to introduce measures like these of some sort. Of course, they depend on the economic, political and legal backgrounds of the society, but I cannot imagine like-minded authorities and Governments not trying to work hard or co-operate in this space.

We are seeing some examples of that already in the digital space. It is not really an area where there is a competition of competition laws; it is more that this is a regulated solution that we are putting forward in various jurisdictions through a democratic process. It does not depend too much on the discretion of the authority. It depends on the process that the authority undergoes to understand the markets and to then work with the tech platforms to find out which remedies would be available. That participative nature is a very important part of this, rather than an adversarial nature where we just chase after the companies after they have done something that is alleged to be wrong.

Seema Malhotra: Professor Fletcher and Professor Furman, do you want to add anything?

Professor Fletcher: A lot of jurisdictions around the world are looking at this space. We talked earlier about how some of what we will achieve through this is stuff that can be achieved through competition law, and almost all jurisdictions have competition law. In a way, the more jurisdictions that have regulation, the easier it becomes for other jurisdictions to achieve some of the same things through competition law, because it changes the costs and benefits for the firms to change their business model.

The firms have quite an interesting decision to make on a global basis anyway about how much they do the same thing globally as they are required to do locally. I think it will vary depending on what thing it is. If it is terms and conditions, they can easily change that on a local basis. If it is interoperability, it is quite hard or rather more hard to design a system so that it has different interoperability standards in different places. We may well see an extraterritorial effect—not a deliberate one—because of the cost considerations and reputational considerations of the firms themselves. That will have a

positive benefit in terms of providing a more consistent framework globally for the third parties that we are hoping to innovate. The more consistent global framework they have to compete upon, the better it is for innovation.

Professor Furman: The ideal thing would be if the whole world sat down and agreed how it was going to approach this problem and there was a single global system, or lots of countries co-ordinated and did the same thing. In practice, that is impossible, so what one should aspire towards is having essentially correlated actions in different countries, where different countries have similar rules and are looking at each other and learning from each other.

This puts the UK in a position to be a leader in that global process, and that, frankly, is the way mergers work already. It is not like there is a single global merger authority; there are merger authorities in economies around the world, but they use similar rules, are looking at similar evidence, come up with similar decisions and all, to some degree, talk to each other. That is what this is—an emerging correlation of approach.

We have seen in the United States in both the House of Representatives and the Senate legislation being put forward and in some cases being passed out of Committee that would accomplish some of the different pieces of what this legislation would do, frankly, more comprehensively than anything I have seen in the United States.

Q39 The Parliamentary Under-Secretary of State for Science, Innovation and Technology (Paul Scully): Thank you for coming before us. You are right: you cannot have a monopoly of monopolies commission. That would be wrong, but if we can have more regulatory certainty across the globe, that is good. There are three areas that I can see the different interests pushing on. There is the appeals system, whether it is judicial review or a full merits review, the final offer mechanism and the countervailing benefits exemption. On appeals, do you think judicial review is sufficient, proportionate and fast enough? That is what we are trying to do here—is it fair and fast to get that remediation? It would be interesting to hear your comments.

Professor Fletcher: I know this is something that Philip cares a great deal about. I will come in first and then let him have a go. We have talked about it being a delicate balance. I discussed the EU regulation, where they have gone very far towards ensuring administrability and enforceability by having the rules set out in the legislation with quantitative thresholds. That is how they have dealt with the need for administrability and enforceability.

We have tried to be more bespoke, as I have said, and more evidence based, but there is a real risk in terms of administrability and enforceability that we end up in the same place as we have been with competition law, whereby the cases get hugely burdensome and hard to bring to a conclusion within a sensible timescale, and there are insufficient agency resources really to do everything that is needed.

I think there is a real risk that if you play around with what might seem like tiny changes to the legislation, that could really threaten the administrability and enforceability of it, and we could lose the benefits of it over competition law and put us in a bad place relative to the EU—whereas at the moment I think we could show ourselves to be better in terms of getting the right balance by being more bespoke and evidence based. The appeals standard goes to that point. I strongly support the JR appeals standard because if we went for a full merit standard, it would be too far and would become inadministrable. I am sure the CMA would find a way to try to administer it, but I do not think it would be the right balance. I feel the same way about the customer benefits exception.

Paul Scully: Professor Marsden or Professor Furman, do you have any views on that? Professor Marsden, your screen has frozen. Professor Furman?

Professor Furman: That is unfortunate because everything I know about this topic has come from him. *[Laughter.]* I do not have anything to add.

Paul Scully: Okay. Thank you.

Q40 Dean Russell (Watford) (Con): Professor Fletcher, imagine I am a growing business: I am successful, I have an online presence, I am doing lots of great stuff and I am a challenger to the global big businesses. What does the Bill mean to me? What difference will it make?

Professor Fletcher: It would make quite a lot of difference, but quite small differences. It would depend on the business that you were in. You might be an app developer. First of all, at the moment we have categories of rules rather than specific rules, so I cannot say exactly what it would do. For example, it could give you fairer access to app stores. If you were a seller through Amazon, which we were talking about earlier, it could give you fairer access to your own data on your own sales. I could probably talk for a long time about all the things that it could do, but I will highlight that you are, in that role, exactly who the law is targeted at helping.

Dean Russell: Thank you. I notice that we have lost one of our witnesses, so I will go to Professor Marsden—I mean Professor Furman. My apologies; I forget my own name sometimes!

Professor Furman: Fair dealing, open choices, and trust and transparency are three of the main conduct requirements. They are all designed to make sure you could not have a search engine hiding searches from your business, and that you could not have them preferencing themselves and directing to themselves instead of to you. You might benefit from some of the interoperability and data access by being given access to the data or access to a system that you could operate on, which right now one of your bigger competitors is doing, so I think it is preventing harmful and unfair things being done to you, but also affirmatively opening up some options. By the way, all that is good not just for innovation but for the consumer, because it will make things easier and more streamlined for them.

Q41 Dean Russell: Excellent. If I may follow up and spin that question on its head, Professor Marsden—hopefully I have the right person. I was asking before about what difference the Bill will make to a small business or growing business, but what will it mean for big businesses—the global giants—especially those that work in the online space? What will it make them better at doing? What will it stop them doing that might be harmful to competition at the moment?

Professor Marsden: I will deal with that first, then I can go back to the appeal point, if you would like my views.

The Bill will make those big platforms compete, basically for the first time. You will hear a lot of guff about how they are in some sort of monogopoly competition with each other all the time, and some of that might be true, but they are not really—they really are not. We see that in the competitive structure of the market, in the profits and in the concentration levels and so on. We are not trying to reduce profits or anything like that; we are trying to allow others to have a chance. If anything, like with open banking, that will light a fire underneath some of the big platforms, which are telling you they are innovative, and they are, but they are usually innovative in a way that makes us more dependent on them. We are not that fond of dependence in such markets; we are fond of diversity, choices and allowing competition on the merits—for products to rise and fall based on their merits, rather than on whether they have satisfied the terms and conditions of a particular platform.

On appeal, briefly—I am sorry for cutting out; Zoom might not be a platform of strategic market status—I have heard many advisers to tech platforms that might be subject to the Bill argue that the appeal issue is not just a small thing in the legislation, but absolutely fundamental. I agree with them on two things: first, the Bill itself and the ex ante approach that we have been discussing are absolutely fundamental—that is the big change. Secondly, the change with respect to ex post enforcement—the review of the conduct requirements, the investigations, anything imposed on the platforms and so on—to me involves such an involved, open and participative process between the platform, the digital markets unit and other entities that it gives me a lot of comfort about due process. If anything, if there were a full appeal standard, we might as well move to a prosecutorial approach, where the DMU is a prosecutor and everything is adversarial, and takes 18 years in court.

That is kind of what we have now so, if anything, this is an opportunity really to understand the business models, to put in bespoke requirements, to test ably the remedies—that is an important aspect—and to release remedies if they are not working or if they need to be tightened up. That therefore shows internationally what the UK thinks about such practices, which might help with the global spread that Amelia was mentioning. However, I have to state firmly that I believe that judicial review takes a lot longer than a substantive appeal, and I think that if the Bill were amended to allow a substantive appeal or even a few years of substantive appeal, we might as well have not done the study at all and might as well not pass the Bill in respect of the digital prior arrangements, because it will just return us to what we have seen before, basically.

In contrast, the European Commission is allowing substantive appeal rights. If anything, I think that means that they will code for prohibitions. As Amelia said, the law is not as bespoke, so we are going to see: "Here's your general obligation. I don't think you are satisfying it." Then there will be an appeal to the Court and a wait of 18 years for Luxembourg to make a ruling. Here, those issues we hope will be dealt with at the administrative stage, and whether the authority of the DMU or the process itself was fair and reasonable is something that the courts should obviously review. We welcome that scrutiny. In fact, if I were involved in any of this, I would very much welcome that kind of scrutiny at the judicial review level, which is itself a very intense form of review, so it feels perfect to have this JR standard, but I appreciate that you will have already heard a lot against that and will in future.

The Chair: Thank you, professor. I have a follow-up from the Minister.

Paul Scully: No, that is fine.

The Chair: Okay. In that case, I will bring in Jerome Mayhew.

Q42 Jerome Mayhew (Broadland) (Con): I understand the evidence that you have given about the need under clause 194 to have a JR approach to the appeal process. What that does, however, is underline the power that the CMA has. Professor Furman, you mentioned earlier in evidence that it really matters who the leader of the CMA is. The area that I want you to comment on is whether you think that, under this process, there is sufficient political accountability for the decisions of the CMA. Such organisations are big, with the potential to have a huge impact on the economy of this country. Inevitably, they are deeply politically sensitive—or it is foreseeable that they will be—so are we not in danger of passing the buck too much to an arm's length organisation like the CMA? Perhaps we should recognise that the decisions are inevitably political and that we therefore need a greater sense of political accountability. Professor Furman, could you start off on that?

Professor Furman: Political accountability is very much the broad approach. It is important that you have a body that approaches this transparently and predictably. I have a lot of respect for the role that you all play in the political system. You think that you should set the goals for consumer choice, innovation and so on, but it is important that what ultimately gets done is done in a much more judicial, regulatory way so that it is predictable for all the parties involved and does not change dramatically over time. In that, there is obviously the appeals process that was just discussed. That is not a political appeals process; it would be within the legal system.

I confess that I am not familiar with exactly how things would work in the UK. In the United States, Congress would have the head of the Federal Trade Commission, or whatever body was charged with this, up to testify. Generally, Congress would not ask, "Why did you bring that case yesterday?" but "Why aren't you being more aggressive?" or "Why aren't you being less aggressive?" They would try to oversee things at a strategic level, while leaving each case, decision and regulation to the regulator. Something like that system—I do not know exactly how you would do it in the UK—would be ideal.

Q43 Jerome Mayhew: Professor Fletcher, you are nodding. Would you like to expand on that?

Professor Fletcher: I fully agree. I can see why there is concern about discretion, but the CMA has shown that it takes its responsibilities seriously. It also understands that it is answerable to the Government of the day on a strategic level, rather than on individual cases.

To follow what Philip said, JR is not a walk in the park. It is a pretty serious test, which the CMA has faced occasionally in the past. It is a very serious expectation on the CMA. I support the view that if you want investment and open and competitive markets, you must have a transparent, consistent framework, which has lots of legal certainty. I worry that too much political intervention risks undermining that.

The Chair: Thank you. We have time for one more question, so I call Andy Carter.

Q44 Andy Carter: Professor Fletcher, picking up on something that you mentioned earlier, I want to look at innovation and investment. You said that we are leading the world in the some of the work that we are doing. Can you quantify how that work will benefit UK plc? I am conscious that that is a big question, but has any work been done on our approach and the benefits to our economy that we might see?

Professor Fletcher: I have to confess that I am not aware of work that has specifically been done on that. It is worth seeing this as a global thing, and we are trying to play our part in creating a global environment that will foster global innovation. I think that by doing it here, we will set rules that foster much of that innovation and encourage it to come here. There will be people who have made estimates; my hunch is that most of them will be pretty back-of-the-envelope, but I confess that I have not seen them.

The Chair: Thank you very much. That brings the allotted time for this witness panel to an end. On behalf of the Committee, I thank you all very much for giving us your time.

Examination of Witnesses

Noyona Chundur, Peter Eisenegger and Tracey Reilly gave evidence.

2.45 pm

The Chair: We will now hear from our next panel of witnesses. We have Noyona Chundur, chief executive of the Consumer Council; Peter Eisenegger, board member, National Consumer Federation; and, via Zoom, Tracey Reilly, head of policy and markets, Consumer Scotland. May I ask you to introduce yourselves for the record?

Noyona Chundur: I am the chief executive of the Consumer Council.

Peter Eisenegger: I am the director of the National Consumer Federation with responsibility for the digital perspective in the consumer world. From the nature of our response, you will see that we have also commented a lot on the standards world, so I think it is appropriate that I indicate my background there: I have participated in digital standardisation in the UK through the British Standards Institution, in Europe through CEN and CENELEC, and internationally through the International Organisation for Standardisation. We do our best to represent the consumer voice in those arenas.

Tracey Reilly: I am head of policy and markets at Consumer Scotland.

The Chair: Thank you. I invite shadow Minister Seema Malhotra to start the questions.

Q45 Seema Malhotra: Thank you for coming to give evidence. Perhaps I could start with you, Ms Chundur, and then others may wish to come in. Do you think that this Bill will adequately address consumer detriment in digital markets? Are there areas where the legislation could go further?

Noyona Chundur: Thank you for the great question. Perhaps I can start with a little bit of context. We believe that confident consumers will drive competitive markets. There is a lot that the Bill does really well. It is great progress, and I commend the work of colleagues in the Department, as well as partners in the CMA and Tracey from Consumer Scotland for their input in getting us to this point. There are eight areas that could be strengthened or clarified. There is building consumer confidence. There is the potential risk of only the CMA having direct enforcement powers. It is around the supervision of enforceable standards, practice and conduct of businesses. It is the ability to add and remove—

Vicky Ford (Chelmsford) (Con): Slow down!

Noyona Chundur: Sorry, would you like me to step through each one? Would that be easier?

Seema Malhotra: You are going through them quite well, but could you go you through them slightly more slowly, because colleagues will want to write them down?

Noyona Chundur: The first thing for us is building consumer confidence as a priority, because prioritising consumer protection to build the foundations that create confidence in competitive markets will benefit both the consumer and the economy. We are looking at this through the prism of the cost of living crisis and through the heightened prism of vulnerability. In the packs that we provided, you can see that vulnerability has certainly increased in the last 12 months. The Consumer Council has dealt with over 33,000 consumers, and they are showing increasingly more complex and multifaceted needs. Income in Northern Ireland has—

Q46 Seema Malhotra: Sorry: your list of eight things was quite useful, so would you be able to go through those—as you were before, but just a bit slower?

Noyona Chundur: Understood. Did I get to adding to or removing from the list of banned practices in the Consumer Protection from Unfair Trading Regulations 2008?

Vicky Ford: I wrote down the first one.

Seema Malhotra: Could you start the list again?

Noyona Chundur: Okay. Building consumer confidence is a key priority for us. The second thing is the potential risk of only the CMA having direct enforcement powers. The third is perhaps expanding the Bill in some way to include the supervision of enforceable, standards, practice and conduct. The fourth is adding to or removing from the CPR list of banned practices.

Next is establishing enforceable minimum standards to alternative dispute resolution schemes. We welcome the mandatory accreditation as part of the Bill, but we would like to take it a step further. Then there is a question around better regulation of firms that exploit behavioural bias or nudge techniques for negative effect.

Finally, we recommend going further on subscription traps with opt-in clauses after the trial or end-of-contract period.

Q47 Seema Malhotra: Thank you—that was very helpful. On subscription traps, you will have evidence for recommending opt-in rather than opt-out. Could you talk us through the impact of the opt-out?

Noyona Chundur: The key thing for us comes from research that the Government have published. I think the Department for Business and Trade estimated that 81% of UK households signed up to at least one subscription last year, and consumers are spending £1.6 billion per year on subscriptions that they do not want. That is a huge amount of money that a lot of consumers do not have in the current cost of living crisis. Our own research highlights the lived experience. In the online detriment research that we carried out, one consumer told us that they signed up for a 30-day trial but it took them six months to get the subscription cancelled. In the light of that, I think that it is appropriate for us to recommend that legislating for opt-in clauses after the initial trial or end-of-contract period is reasonable. I also believe that that may deliver the most immediate and material benefit to consumers in the short term, given the vast quantities involved.

Q48 Seema Malhotra: Mr Eisenegger, are there any gaps that you would argue for, and what is your view on fake reviews and whether they are being sufficiently addressed in the legislation?

Peter Eisenegger: Our overall approach here, at the more strategic level, is that the Bill contains lots of good stuff. It is a significant step forward. What we do not want is, as has happened with the Online Safety Bill, for it to hang around forever and not enter law. Our view is that we can talk about improvements in some areas. You mentioned one—the way that fake reviews are handled. To delve into that detail, however, would just prolong the process of getting it into law. We recommend that the Bill gets enacted as soon as possible, that we recognise it as a step forward, and that the CMA and this Committee look at areas of improvement beyond it. There is something that would relate to online reviews in terms of whether the information being provided is accurate, but it is good enough. Let us press on and get it done.

That said, I have not heard a discussion about the role of standards and supporting regulation. We are in the digital world, and an awful lot of regulation is supported by standards. You will find that General Data Protection Regulation is leaning very heavily on work in Europe to adapt and put some final European tweaks on the work that has gone on at the ISO level, and similarly with AI. If you want to be a leading player in this area, particularly an innovative one, from our perspective—we play in international, European and UK standards—you have to be very well aware of, and participating in, all those arenas.

To make an innovation comment—having spent two thirds of my career in product management and innovation, I am now doffing the consumer cap and putting the real-life innovation one on—good innovation practice is to look at what other people are doing and pinch as many legitimate ideas as you can from them. Quite honestly, the fact that the EU has the same sort of intent but a slightly different approach is great. Just keep an eye on its members to see whether there is good stuff. To be fair, I will say the same to them, because I am participating in the AI standardisation at the moment.

Q49 Seema Malhotra: In the interests of time, I will move on to Ms Reilly. What is your view of how this will affect/benefit consumers in Scotland? Are there any other specific issues that we should consider in relation to Scotland?

Tracey Reilly: Broadly speaking, we welcome the Bill. As your previous panellists said, it has lots of good stuff in it. It should provide the CMA with more flexible powers, which can be used in a more responsive and timely way to prevent detriment. On how the Bill will affect individual consumers, we hope that it will lead to consumers experiencing lower levels of detriment and being less subject to unfair, misleading or aggressive trade practices so that if and when such practices occur, they can be stamped out more quickly and easily, and it is easier for consumers to seek redress through ADR systems that are appropriately regulated and standardised.

In terms of how the Bill will affect Scottish interests, in many ways the level of detriment experienced by consumers across the UK is similar. The consumer protection survey is UK-wide and the patterns of detriment for Scottish consumers are generally not hugely different from those experienced in the rest of the UK. That said, there are obviously differences between the two nations in the regulatory enforcement and judicial landscapes, and it is important that we understand and pay attention to them. Equally, I understand that the Department has been engaging with Scottish stakeholders. We welcome that and would obviously like that to continue through the implementation process.

Some markets operate differently in Scotland, either because they are entirely devolved because there are fewer providers and therefore lower levels of competition, or because consumers access services differently, for example, due to geography. It is important that, within the overall UK framework, the system can respond to those regional differences or local issues. We hope that the additional levels of flexibility granted to the CMA under the Bill will allow for a more flexible and targeted response, particularly if any local practices cause detriment. We look forward to liaising with the CMA on that. Noyona may wish to make additional comments, given that she is in Northern Ireland.

Q50 Kevin Hollinrake: Noyona, you mentioned that you felt that the CMA should not be the only enforcement body that oversees the legislation. Who else do you think has the experience and expertise to perform some of those significant obligations?

Noyona Chundur: There is a heightened risk, Minister, if the new direct enforcement powers sit only with the CMA. Ultimately, the purpose of those powers is to be much more agile, flexible and responsive to consumer detriment in the market. Is there a heightened risk that enforcement will default to the CMA because perhaps it may deliver a solution that is much more agile and responsive and much more in keeping with the pace of detriment in the marketplace compared with a courts-based

system? The sector regulators and trading standards could therefore have the same or similar powers. The question is about agility and responsiveness to detriment, which is exploding in the marketplace. We see it increasingly, particularly in digital markets, which evolve so quickly. That is our perspective.

Q51 Neil Coyle (Bermondsey and Old Southwark) (Lab): The Bill aims to protect consumers and challenge unfair competition online, but one significant disadvantage for British companies and consumers is counterfeit goods sold on platforms such as Amazon. For example, the British company that holds a licence to make Peppa Pig toys has the trademark and the patent, and meets the standards, including safety standards, but counterfeit goods, particularly those imported from other countries such as China, are dangerous and do not meet safety conditions. Will the Bill help end that situation for consumers and companies here? Is it an opportunity to do so or, if not, is it amendable to achieve that?

Peter Eisenegger: The Bill has clauses that allow us to address that in terms of, "Has the information put before the consumer been complete and accurate?" If something does not comply with safety standards, that has been omitted. It is a question of interpretation that we would have to nail down and make clear.

Q52 Neil Coyle: Would the Bill allow for a company here to say that? Amazon's excuse is that that is for the producer in China, for example, to do that, rather than for Amazon. Does the Bill address that gap or not?

Peter Eisenegger: This is an area where I have had a lot of conversation with Electrical Safety First, which is very concerned about it. We have started to outline, at a very preliminary stage, what constitutes an online market set of functionality for which people should be held responsible and—what do you know—Amazon fits that. We find that online retailers do not perform all the functions, but they perform enough to be reasonably interpreted as having a retailing responsibility in the traditional physical world. But they have to do the heavy lifting of getting stuck into the detail and mapping it out.

I am afraid I come back to the standards world, which tends to be set up to provide that level of detail for the regulation to lean on. There are standards for complaints handling, for alternative dispute resolution, for dealing with vulnerable consumers and for online reviews—all issues that touch on what we have said. They are there, and mainly my UK consumer colleagues in British Standards either instituted them or were very influential in getting them taken forward.

A personal expert view? Yes, I think it can be interpreted that people like Amazon have a retail responsibility. To provide the evidence and analysis to support that position, however, is work that we have started with Electrical Safety First, but we are a bit busy and neither of us has had the time to finish it off.

Q53 Neil Coyle: Thank you for your work. Perhaps the Government will pick up on some of that. Noyona, I think you were going to come in.

Noyona Chundur: May I add something? Electrical standards are not my area of expertise, unlike consumer expectations around standards generally, so I will make a comment about that. Consumers expect minimum standards, particularly in new markets. It is worth saying that when we are talking about new digital markets, everyone is vulnerable, so there is no "vulnerable consumer" per se.

An interesting point to make is that we did a joint project with the Utility Regulator for Northern Ireland on what consumer expectations might be of future regulation and decarbonisation. Consumers were very clear that, in addition to trusted accessible information and concerns about costs or financial health, they wanted absolute protection from safety fraud, obsolescence or mis-selling, but they also wanted clear and robust standards on certification, registration and standards for installers, and protection against damage and disruption during installation. That is moving away from something that is perhaps more price-led and economic to where we need to have a minimum enforceable standard that works for everyone, so that we bolster the safety net and create confidence in markets. The more that we do that, the more consumer spending we have in the economy, which is good for everyone.

Peter Eisenegger: May I make a comment about enforcement? A backstop is in action at the moment: the class actions that our law now allows for the consumer world. My colleague Arnold Pindar, the chair of the NCF, is part of an advisory group that is taking on Mastercard at the moment. Another colleague, Julie Hunter, is fronting the case against Amazon about the way it presents its own products unfairly in its online marketplace. These names are in the public domain; I would not mention them otherwise. To a certain extent, the powers being provided to the CMA to be a bit more responsive and active make sense where we have class actions, which really is a major "after the horse has bolted" situation. We hope that the CMA will prevent more horses from escaping. Thank you for the opportunity to comment.

Q54 Vicky Ford: Could you give us examples of where the industry has set standards in the digital space that have helped to address particular holes? You have given us a list of standards for online reviews and alternative dispute resolution, but can you give us a way to explain to our constituents why these industry-led standards help to underline good behaviour in this market, and why it is important that they are set in an international sphere for these players?

Peter Eisenegger: Okay. The industry-led—

Vicky Ford: Are they industry-led?

Peter Eisenegger: You only get good standards when you have proper stakeholder engagement—that is a comment that we address in our supporting paper. You need standardisation bodies that actually work hard at getting their stakeholders involved. BSI is good at that, and the European system is pretty good. In the digital area, because there are so few of us with the right background and expertise, you find that the consumer voice is not getting through. I have two consumer colleagues who are on the BSI mirror committee for AI; they feel that the international standard is not reflecting what they are trying to input, because we do not really have anyone effective at the international level on the consumer side.

You need very careful insight into where there is decent stakeholder engagement and where there is not. Where there is, you are quite right: I have worked on a number of committees where the good guys and gals from industry have just been saying the right thing, and you end up just tweaking a little of what they already understand in their industry is good practice. There is no problem with working with the good people in industry, but—particularly in the digital space—you do get the big players coming in and influencing things, whereas the small and medium-sized enterprise stakeholders are not as fully represented. When a standard is put forward, careful understanding is needed of who the people are who are really contributing to it.

Q55 Vicky Ford: I think you said that you sometimes see the standardisation process in the digital world being used by larger players to put barriers in the way of smaller players getting involved.

Peter Eisenegger: Exactly.

Q56 Vicky Ford: Can you give an example where you have seen that?

Peter Eisenegger: Yes, I can. It was a consumer-initiated standard on complaints handling. If you want the number, I can blind you with it: it was ISO 10002. It was initiated by the consumer side of ISO. It is clearly written for the big company: it has lots of good practice where you divide all the responsibilities, the analysis of the complaints and things like that. There is an annex for SMEs. I have been through the main part of the document and counted the number of requirements: there are more than 250. For the SMEs, there are eight.

Where you look at the consumer and it is your small local trader, you go, "That's fine," because they know you personally—you know where they live, basically, and that changes the whole local relationship. But you do not really see that many standards where the practicalities for the smaller company are reflected. I am quite pleased that the consumer world did a decent job for the SMEs there, because they are very important to us in terms of local service and providing competition to the big guys.

Q57 Seema Malhotra: I want to come back to some areas that we have picked up on in previous evidence sessions. Schedule 18 to the Bill sets out a list of commercial practices that are to be considered unfair, but a number of arguably unfair commercial practices are not included. Examples might be drip pricing or misleading green advertising, which is an increasing consumer concern. Do you consider those omissions to be something that needs more attention during the passage of the Bill so we do not miss this opportunity?

Peter Eisenegger: Do as much as you feel you can make time for, while getting the Bill implemented as quickly as possible. I come back to the key clauses that relate to the appropriateness of the information provided. Is it complete? Is it misleading? As a charity, we have looked at how heat pumps are being advertised at the moment. About 80% of the online information did not provide the right contextual information for your heat pump decision; some did not even mention it at all, and a few hid it away behind several layers of interaction with the website before you found it out. That would fall under the incompleteness clause, but again, you are going to come back. The CMA would be able to apply an interpretation, which would probably go through some sort of intense dialogue with the industry people concerned, but if you do not have time to cover all those other aspects as explicitly as you would wish in the Bill, I think there is a clause that gives the CMA some capability for addressing it.

Noyona Chundur: Maybe I can add to that. This talks to the point in the earlier session on how quickly or whether fake reviews should be automatically added to the list of bad practices, or should we go through full consultation. In all these things, we need to have appropriate consultation and the appropriate due diligence carried out. It needs to be done as quickly and thoroughly as possible so there is no doubt. I am completely supportive of what was said earlier today that there is a lot of detriment as a result of fake reviews, and the sooner that is resolved, the better. None the less, we need to be careful about setting the right precedents. We need to have consistency in procedural application. For all those things—I believe we are all in agreement that drip pricing is of huge concern, as are misleading green claims—we need to follow the right process and get through it as quickly as possible.

Seema Malhotra: I think Ms Reilly wants to come in as well.

Tracey Reilly: I simply want to endorse much of what Noyona said. There are issues around fake reviews, drip pricing and greenwashing that we all want to see addressed, and for that to happen as soon as possible. However, there is also a need to ensure that the definitions are right and the provisions are effective. We would hugely support the Secretary of State having the power, which is in the Bill, to amend the schedule by regulation. I realise that is a Henry VIII clause, which is not always popular, but in this case I think it is an acceptable use of that power, and it comes with appropriate safeguards in terms of the affirmative statutory instrument procedure and the requirement to consult first.

Touching briefly on greenwashing in particular, we acknowledge that existing regulators have powers to tackle that and that there are existing programmes of both education and enforcement. However, greenwashing claims are hugely prevalent and there is a lot of work to be done. It is an issue that, for us, has real risks associated with the net zero transition, because we are going to get consumers to make quite different choices around what they eat, what clothes they buy, how they heat their houses and what vehicles they drive. Some of those are quite big-ticket items in terms of cost, so there is a real risk for consumers and a real need for them to be able to trust the information they are given, which links back to the points my colleague Noyona was making about consumer confidence.

Q58 Seema Malhotra: In relation to support for consumer organisations, how do you think the CMA and the Government can better support consumer organisations that are supporting consumers on the frontline?

Tracey Reilly: Just a couple of quick points. There is a need to produce very clear guidance on the new plans and have very clear referral processes to the CMA for

the use of those plans, so that advocacy and advice bodies have almost a direct line, if you like, into the points of contact. Essentially, it is about pathways and signposting, and ensuring that the routes from an individual consumer experiencing detriment to those who are able to take action on it are as quick and flexible as possible.

Noyona Chundur: From my perspective, I would ask for two things. The first is greater connectivity across the ecosystem. We all have a lot of data; we all have a lot of intelligence; we all have a lot of on-the-ground insights that should be shared and published in a more connected and co-ordinated way. Ultimately, that is more holistic, but it gives the level of granularity we need on a four nations basis. The other is greater focus on the broader issues of online behavioural bias and the exploitation of behavioural bias—you know, nudge techniques—to negative effect. To my mind, the Bill does not adequately cover that, so I believe this is an area of potential development.

As has been touched on already, vulnerability is not just about personal characteristics or social circumstances; the behaviour of organisations can cause harm and put you in a vulnerable position. That is a key area that we would love to see explored in more detail as the Bill passes through scrutiny.

Peter Eisenegger: In terms of support, having mentioned standards, there is a Government mechanism for providing the consumer arm of BSI with money to support its experts. Keep a careful eye on that, and work with BSI and its consumer arm to ensure that that is suitable for the level of really important issues we need to address.

There is another area of the consumer world, which is about the smaller, really voluntary charities, such as ourselves and the Child Accident Prevention Trust, which have no regular income and live hand to mouth. We have been on the brink of extinction every now and then, and although we have managed to haul ourselves back, it is a very precarious position. When we and others in a similar position contribute to this sort of arena or talk to regulators, our voice is valued and has something to offer, but we are very precarious. If Parliament looks at the people who really represent the grassroots and different perspectives and are without a regular income, and if something can be done, that would be extremely useful. Some of these voices drop out.

Q59 Vicky Ford: I want to come back to schedule 18 and ensure that I absolutely understood what Tracey said. This morning, I think Which? said that they thought fake reviews should now be put in schedule 18. I have had constituents who have suffered from fake reviews for services they have given, and the fake review has been very damaging to their business. We all know about fake reviews on books, which can be very damaging. Are you saying, Tracey, that we need to ensure we get the wording of how it goes into schedule 18 right—have the consultation and get the wording right—but let the Government introduce it through Henry VIII powers later, rather risk delaying the Bill by trying and maybe not getting the exact wording right now?

Tracey Reilly: I think that is a very difficult question. Without remotely passing the buck, I think that ultimately it is a judgment for your Committee to take as to whether it considers there is sufficient clarity in the definitions proposed during the amending stages to allow for those decisions to be made now. If the Committee is confident that there is sufficient clarity, and the soundings you are receiving from stakeholders indicate that they are content, it is a matter for the Committee to decide. Ultimately, our position is that we want to see it as soon as possible, but we also want to see it done correctly, because as we all know it is very difficult to amend primary legislation once that is in place.

Q60 Vicky Ford: So "get it clear" is what you are saying to us.

Tracey Reilly: It is a very complicated area, not just in terms of how you define fake reviews but in terms of the precise powers that regulators need in order to determine where, how and when fake reviews are occurring. AI will make that an even more complicated picture, so it is important to get that right.

Q61 Jerome Mayhew: Ms Chundur, you gave a very interesting stat earlier: £1.6 billion per year is spent on subscriptions that people do not want. One of your eight areas of concern is an opt-in clause for the subscription trap issue. You are in good company, because Citizens Advice came up with the same recommendation in this morning's evidence session. However, we will hear later today from the News Media Association, which expressed exactly the opposite view in its written evidence: that the current wording of clause 252(1), which is essentially that you should be able to unsubscribe with one click without any unreasonable additional steps to go through, "may hinder the provision of improved subscription offers that are in the best interest of the consumer". Can you comment on that? I will test the NMA if no one else does regarding what exactly it meant by that, and ask for examples of how it might hinder improved consumer engagement, but if the NMA can substantiate that, would you accept that it has a point?

Noyona Chundur: Perhaps, but I agree with what Citizens Advice said this morning: if your product is good enough and consumers want it, they will seek it out. Another point made this morning was that the consumer journey sits across multiple markets and is quite complex. That is where we are coming from. We are looking at the end-to-end consumer journey. In that context, consumers also want minimum standards. If you do not have minimum standards—if the default position is that you are just rolled on to another contract, and there is no opportunity to review whether that contract is the best for you, has the best price, is the best product or suits your particular circumstances—I am afraid that that does not necessarily give the consumer the best deal from a price or quality perspective.

Q62 Jerome Mayhew: Do you also recognise that there are people like me out there who signed up for a contract, and to be asked every single time, "Do you want to renew it?" when it is a core level of services that I benefit from, year in, year out, would be less constructive for my wellbeing? That is poor English, but you know what I am trying to say.

Noyona Chundur: Respectfully, I would say that most people will want the reassurance that the deal that they are getting every year is the best deal possible, is coming at the best price, is being delivered with the best service in mind and meets their needs, rather than the assumption that an algorithm or someone else has made that decision for them. Certainly the consumers we speak to want

transparency, accessible communication and more choice. This is one way of giving them exactly what they want. I echo the sentiment of what was said this morning: if the product or service is good enough, people will sign up to it. It is nothing to fear, but it will raise standards and make for better competition and a more sustainable economy. Those are all good things, because they are being viewed through the prism of consumer accessibility and affordability.

Q63 Andy Carter: Tracey, you mentioned in your opening statement that a number of markets operate differently in Scotland. I wonder whether I could ask you to expand on that a little. What particularly were you referring to, and where does the Bill need to be amended to accommodate those markets operating differently?

Tracey Reilly: I probably had two or three examples in mind. One would be legal services, which are entirely devolved, so they are regulated entirely differently. Key parts of that market around complaints are regulated differently. Another would be one that we share in common with Northern Irish colleagues: the prevalence of off-grid heating systems. There may be ones where how you access services is simply different according to where you live; for example, there is the perennial issue of postal delivery in Scotland and Northern Ireland. Those were the types of thing that I had in mind.

We have regular and very constructive dialogue with the CMA about local issues, and about regional and sub-national issues. We hope that the Bill's provisions will enable the CMA to deal flexibly and responsibly with those concerns. The framework that they operate, as with any body that has limited resources, makes prioritisation decisions on a UK-wide basis. We would like to ensure that regional and national differences, and differences for specific communities within the nations, can be dealt with as part of that. I think Noyona would probably welcome coming in on that point.

Q64 Andy Carter: Do you want to pick up on that from a Northern Ireland perspective?

Noyona Chundur: Absolutely. A key regional difference, both for Tracey and for me, is the microbusiness economy. In Northern Ireland, 89% of our businesses employ 10 people or fewer. We are absolutely a microbusiness economy. We know that the experiences of many consumers and of many small businesses and microbusinesses mirror each other in multiple markets. Tracey's point is about ensuring that the prioritisation principles, or the applications of how the Bill is operationalised on the ground, need to be mindful of the diverse experiences that can happen among the four nations.

Q65 Andy Carter: I have one further question. You touched on nudge techniques. Can you expand on that and on what action you think needs to be taken?

Noyona Chundur: It is when you are pressurised into purchasing a product or service without even knowing that it is being served up to you because of an algorithm.

Q66 Andy Carter: Can you give me an example of where that is happening?

Noyona Chundur: It can happen in retail; it can happen in any digital market; it can happen in telecoms. It is a technique that is growing, and there needs to be further investigation and exploration of what that means for regulation. That is not just the job of the CMA; it will need sector regulators to play a part. It needs the whole ecosystem to coalesce, but also trading standards and trading standards in Northern Ireland.

Q67 Andy Carter: Sorry to pressure you on this, but I want to understand what you mean by a nudge technique. If I go on to a website and then I get an email afterwards, is that a nudge technique? What do you mean?

Noyona Chundur: That is probably an algorithm. A nudge technique is perhaps a little bit more sinister than that: it is where you are being prompted to purchase products and services that you never thought you might need, based on your previous purchasing patterns and purchasing decisions. That may not come at the best cost or the best specification, and it certainly may not be the best offer to use.

Andy Carter: That is really helpful. Thank you.

The Chair: I call Dean Russell to ask a brief question.

Q68 Dean Russell: I have two, but they are really quick. First, will the consumer be expected to do anything in order to see benefits from the Bill, in your view? Will they benefit from all the wonderful things we have talked about, or will a communications campaign be needed alongside the Bill to tell them what their new rights are so that they can report back and make complaints, as it were?

Noyona Chundur: A communications campaign is fundamental. The language that is used, how the messaging is framed and how it is targeted to the various consumer groups will be key, as will consistency of messaging across the regions, not just from a UK perspective. It needs to be mindful of how consumers absorb information and who they engage with, as well as being mindful of communities. Consumers want clear, transparent information in plain English, so we need to make it simple for them. We need to be careful not to just push the onus on consumers to make decisions. The job of the Bill, and of Government, is to make lives better, so that is what we want to do.

Dean Russell: I will leave my second question, because I am conscious of time.

The Chair: Thank you.

That brings us to the end of the time allocated for this witness panel. On behalf of the Committee, thank you all very much for taking the time to give evidence.

Peter Eisenegger: Thank you for listening.

Examination of Witness

Professor Geoffrey Myers gave evidence.

3.30 pm

The Chair: We will now hear oral evidence from Professor Geoffrey Myers, visiting professor in practice at the London School of Economics and Political Science. For the record, Professor, could you introduce yourself?

Professor Myers: In addition to my role at the London School of Economics, I had a prior 30-year career working for public authorities, competition authorities and regulators, particularly Ofcom, so I have hands-on experience of being a regulator. For full disclosure, I should say that I am one of the independent digital experts whom the CMA has appointed to assist it in preparing to take on the duties should this Bill become law. But I am representing my own point of view, not the CMA's.

Q69 Alex Davies-Jones: This is a question that we have been asking a lot of the witnesses today, but it is important to get your views on the record. Could you please outline whether you think the Bill will help or hinder innovation growth in the UK digital sector? Do you think the Bill goes far enough, or are there any omissions from the Bill that you would like to see included?

Professor Myers: I think on balance it will help improve innovation, and I largely agree with the comments made by the witnesses in the first session this afternoon, Professors Fletcher, Marsden and Furman. We need to think about innovation by big tech companies, which are the targets of the regulation here. They are likely to become the firms with strategic market status and to become regulated companies, but there is also innovation by their customers, by their competitors and by new starters.

On the innovation incentives and the ease of innovation, I think the playing field has been tilted a bit too far towards big tech and against the other set of players, so making it easier for that other set of players to innovate is very valuable. One of the tasks in implementing this regime, which I think is about the CMA doing its job well, is taking seriously potential concerns about deterring innovation from the SMS firms and making sure that the potential risks are minimised. I think that goes beyond what is on the face of the Bill and is really a task for implementation by the CMA.

Q70 Alex Davies-Jones: On omissions, do you think the Bill could go further?

Professor Myers: I think it strikes a sensible balance. As you have already heard, there are great advantages in having flexibility and future-proofing because of that flexibility. That implies a structure—a framework—that is laid out in this legislation, which will put quite a bit of onus on regulatory discretion to implement it, and then there are sets of regulatory capabilities and accountability that are needed to make that all work. But I think the Bill is a very good attempt at striking a good balance there.

Q71 Alex Davies-Jones: Comparing this Bill with other legislation that we are seeing—in the EU, for example—do you see it as positioning the UK as a world leader, which is the phrase the Government like to use, in this area?

Professor Myers: I think it does, because it heightens those points about flexibility and future-proofing. There is always a trade-off, so it is not that one system is uniquely better than another in every respect. The Digital Markets Act is more prescriptive and lays down specific dos and don'ts, whereas this approach—the UK approach, which I very much favour—does not. It sets the framework and objectives, and then it is for the CMA to develop specific regulations, both on conduct requirements and on pro-competitor interventions, in a way that is more tailored to the individual circumstances. I think that aspect is highly valuable.

Q72 Alex Davies-Jones: Finally, the other thing we have heard a lot around this Bill is the length of time it has taken us to get to this place. We had the digital competition expert panel set up in 2018, and the Bill's impact assessment now suggests that the provisions in the Bill will not be fully operational until 2025 at the earliest. Can our digital economy wait that long?

Professor Myers: I do not think I have seen that full timeline to 2025, but I guess what I would say in that respect is that, yes, this legislation has taken a while to come to fruition. At one point the UK looked like it was going to legislate before the European Union, but the CMA has done a lot of preparatory work, and I am sure that it recognises that it needs to hit the ground running as soon as this legislation is passed. It is doing market studies and other work now. It is a well-resourced regulator in this area. The digital markets unit is up and running and doing active work, and obviously my digital expert role is trying to assist them in that work. There will undoubtedly be a time for implementation, but the CMA is well aware of the need to get on with it.

Q73 Kevin Hollinrake: You may have heard my question earlier. Some of the firms that are likely to be designated as SMS might argue that this Bill will prevent them from innovating. Do you see any chance of that? Are there any areas within the Bill that make it likely that innovation will be inhibited?

Professor Myers: I do not think it is that likely. It would be interesting to hear specific examples. As for the one that was commented on earlier, I did not quite see why this Bill would prevent that, as Professor Fletcher outlined. It may be that I have not heard the full set of reasons as to why it might prevent Amazon's innovation in the very different area of retail outlets. The reason, which again goes back to the targeted and tailored approach in the UK, is that when the CMA designates specific digital activities where there is substantial entrenched market power and indeed a position of strategic significance, that is not going to include peripheral areas. It is going to be focused on what some people call the core areas of market power of the large tech companies, because that is where the market power concerns are largest. There is significant freedom outside that.

There are concerns about leveraging market power in the core markets into other markets, and it is appropriate for there to be an ability to address that through things like conduct requirements. However, you cannot introduce a new regulatory regime without some risk around how the incumbents—the regulated companies—are going to respond. Obviously you are looking for good responses, but it is almost impossible to avoid some undesirable effects. The way this Bill is set up, however, looks to minimise those adverse effects.

Q74 Kevin Hollinrake: I know you are an expert in ex ante regulation. Obviously the way in which people can appeal any intervention by the CMA or the DMU would be only by JR, rather than on the merits method. Is that the right standard?

Professor Myers: Again, I think the Bill strikes quite a good balance with the judicial review approach. To bring in some practical experience from my days at Ofcom, I have had a role as an expert witness in quite a number of appeals of Ofcom decisions, in front of both the Competition Appeal Tribunal and the High Court. At the Competition Appeal Tribunal, those have been under different standards: there used to be a full-merits review, but recently that was changed to a judicial review.

I think what matters, as well as the legal standard of review as laid out in this legislation, is the nature of the appeal body. In this case, it is the Competition Appeal Tribunal. Compared with the High Court, these are specialists—both judges and lay members—with specialist knowledge and experience of dealing with both competition and regulatory cases. They have a greater appetite to get into the detail and merit issues, to the extent that that is compatible with the judicial review standard, than the High Court would. Having appeared in front of the Competition Appeal Tribunal under a judicial review standard, I can say, as I think Professor Fletcher did, that that is not a walk in the park for the regulator. You get a thorough testing, and what the Competition Appeal Tribunal is looking to identify is clear errors of either law or reasoning. I think that that is an appropriate way to strike a balance here.

Q75 Seema Malhotra: I want to pick up on the answers you gave earlier when my hon. Friend the Member for Pontypridd was talking about the delays in reaching this point and the length of time it will take for the Bill to go through. If there are any further delays, particularly if we reach 2025 before this is operational, what do you see some of the risks being in the meantime?

Professor Myers: You heard some evidence earlier this afternoon about the relationship between jurisdictions in different countries. Clearly, the Digital Markets Act in the European Union is being implemented at the moment and the effects of that will come in. The longer the UK legislation takes, the more that will condition the context within which the CMA will have to operate in implementing this regime. That is probably the most likely thing. There are obviously some other countries that are looking into that, but that is probably the main issue I would point to.

Q76 Seema Malhotra: Would you be concerned that by the time it comes in, it will need amending again?

Professor Myers: I do not think that that kind of timeline of 2025 means it is all a waste of time and we should not bother; I think it will still be important. It is not a complete all or nothing. There are some digital services where the platforms will want to standardise globally, but there are others where they will be interested in making national variations. I think the CMA can influence things using its competition powers. An example of that at the moment is the competition case it has had about Google's Privacy Sandbox and the use of third-party cookies on Chrome. That is a Competition Act case where the commitments that Google has agreed with the CMA are actually influencing how it is operating Chrome globally, so there is still some scope for the UK to have a role even before this Bill comes in. Then when it does, obviously that will increase.

Q77 Seema Malhotra: I am interested, because you have such a depth of experience across these areas, in whether there is anything you feel has not been said in the evidence session that you would like to make as a contribution to the Committee's deliberations.

Professor Myers: Perhaps one of the few things I did not entirely agree with in the evidence room was when Professor Marsden talked about the participative approach which, again, is obviously not in the legislation, but is envisaged in how the CMA will operate. I do not think what you want out of that is a cosy relationship between the regulator and the SMS firms. You need to have a constructive relationship, but that is going to be adversarial. To expect it not to be adversarial to some extent is probably over-optimistic and, indeed, probably undesirable, but it is also very important for the CMA to build a wider set of relationships with the industry, consumers and smaller stakeholders, who are not so used to dealing with a regulator. It is important for the CMA as a regulator to have a good overview of a cross-section of all the views in the industry and not just be captured by the SMS firms, which they are inevitably talking to an awful lot.

The Chair: That brings us to the end of this session. On behalf of the Committee, I thank you, Professor, for taking the time to give evidence.

Professor Myers: Thank you very much.

Examination of Witness

Graham Wynn gave evidence.

3.44 pm

The Chair: We will now hear oral evidence via Zoom from Graham Wynn, assistant director for consumer competition and regulatory affairs at the British Retail Consortium. Graham, will you introduce yourself for the record?

Graham Wynn: I am Graham Wynn. I am assistant director at the British Retail Consortium, dealing with consumer affairs mainly and a number of other issues for some years now—about 20, I think. Today, I am representing the views of members.

Q78 Seema Malhotra: Thank you for joining us to give evidence. Will you outline what you see as the main consumer issues in the retail industry that you would want—hope for—the Bill to address? Do you see any gaps?

Graham Wynn: As far as the Bill is concerned, it is about 50:50. We would like the Committee to examine about 50% of the issues particularly carefully. Generally, we support the Bill—we think it does some useful things—but there are one or two matters of detail. On the other hand, we think that some omissions need to be looked at, whether in the Bill or elsewhere; they are necessary for the Bill to succeed.

We have some concerns about the enforcement landscape as a whole, the resources available to trading standards, and whether the Bill and its focus on the CMA will mean that trading standards go even more into the background. Members tell me they find that enforcement activity by trading standards has declined quite dramatically

over the years. The other day, someone said to me, "Online, it is the wild west out there." Although people try to comply with all the regulations, they find that many businesses—many of their rivals—do not do so, and that no one enforces anything. One of the issues retailers hope will be looked at is whether the whole regime, with the CMA's new powers, will lead to better enforcement to create a level playing field for consumers and for businesses.

We are concerned about fake reviews. We support the banning of them. We wish that what the Government propose for them was on the face of the Bill. It is also important that people understand exactly what a review or a website should and should not include. They should include both negative and positive reviews, but it is very difficult to define what a fake review is and to ensure that whatever we come up with is enforced. The key theme is enforcement. It is no good giving people protections if they are not enforced.

The other thing is the CMA's new approach to consumer issues and admin powers. We have a good relationship with the CMA. Members are more—let us say—acquiescent with the proposal to move towards an administrative-based regime. They accept that it has been debated over many years now, and that the Government are determined, so the key thing is to make it work. The real thing is to make sure that there is a good appeals system, independent of the CMA at the end of the day.

Another concern about what is missing from the Bill is the requirement for the CMA to accept primary authority advice. The CMA refuses to do that. When a business has been given primary authority advice—assured advice—that governs what other local authorities and trading standards do in the area, but that is not the CMA approach. We think that with its new powers, it is important for the CMA to accept primary authority advice, or indeed, to devise its own system by which it gives advice to businesses that is assured advice. It will do that in the competition area—on sustainability—but we think it would be very important in the consumer area as well.

There are other issues, of course. The review of the blacklist is another that I would pick out as one we are slightly concerned about. One of the dangers in all politics is a knee-jerk reaction to a political issue, and we think that one such danger is in adding to and subtracting from the blacklist in schedule 18 by statutory instrument, rather than right up front in primary legislation. We argued this in the EU when it first came out with the unfair commercial practices directive. We argued that successfully in relation to much retail and commerce across Europe. The point is that we want to make sure that anything that goes into or comes out of the blacklist is properly debated and analysed and so on, rather than going through virtually on the nod, which is likely even with affirmative resolution. Those are some of the things you might want to bring out, such as unit pricing, and you might want to ask about those.

Q79 Seema Malhotra: I just want to follow up on your point about trading standards and enforcement. Trading standards resources have dropped by 50%, and there is a wild west on our high streets and online, with products coming through porous borders at the moment.

Graham Wynn: Yes.

Q80 Seema Malhotra: In your view, should more powers be given to trading standards as well? I was not quite clear on where you saw a role for the CMA and trading standards together.

Graham Wynn: I think it is important that they co-operate and that there is a clear line of responsibility for each and a clear demarcation. The real problem with trading standards is not so much their powers but their lack of resources. One business with over 2,000 stores —not a supermarket—said the other day that the number of inspections and the number of times they see a trading standards officer has come down dramatically in the last few years. It makes it very difficult for those who are responsible for compliance in the business to persuade those who are responsible for, say, marketing and promotions to keep in line. The lack of trading standards activity makes that more difficult and also leads to a playing field that is not totally level. The problem is resources.

Q81 Kevin Hollinrake: Mr Wynn, you mentioned schedule 18 and not adding to the list without proper evidence. Is it your position then that we should not at this point in time add fake reviews to that list and that we should go through a proper process of consultation before we decide what to do about that?

Graham Wynn: The view is, as I said, that we do not want to see what I call knee-jerk reactions to *Daily Mail* items that are politically sensitive or are political problems. The obvious answer is to say, "Let's add it to schedule 18 as a banned practice." It really is important that the schedule and what is in it is clear, clearly understood and that we do not add or subtract from it just on the basis of needing to get over a political problem, for example.

You can make sure that you do proper consultation and all that sort of thing, but we can understand why the Government would want to be able to add to it more quickly—obviously, primary legislation takes a while. In Europe, we certainly argued against Governments or the Commission being able to add to it willy-nilly. We were keen to keep it as something that had to be put in the directive originally. On balance, we would rather it was debated fully and that it amended legislation. Alternatively, you could decide to make changes once a year, say, rather than as you go along. That might be an alternative answer to the danger of a knee-jerk reaction.

Q82 Neil Coyle: I want to see the wild west tackled. As the Bill is drafted, will the consumer detriment provisions be sufficient to tackle producers or suppliers of products that reach UK consumers via platforms such as Amazon, or do the platforms need tackling for responsibility and enforcement action?

Graham Wynn: I should say that Amazon is a member of the BRC, so I preface my comments with that. Amazon does tell me that it is using AI and other means of ensuring there are not fake reviews, and that it takes as much responsibility as it can for product safety on its sites and for illegal products. Clearly others have a different view and think that it would be possible to go further and Amazon should be legally obliged to take more responsibility.

Again, throughout the Bill, the issue will be resources for enforcement, as it is in general. Be it fake reviews, subscription traps or the responsibilities of marketplaces

and platforms, unless there is real, effective enforcement, people get the impression that something has been done without really having the rights that the Government say they have—when I say people, I mean consumers.

Q83 Kevin Hollinrake: On that very point, it is something that we are keen to tackle—and Mr Coyle is right to raise it, as he has done several times today. You have talked about an evidence-based approach to this. You will be aware that we will shortly launch the product safety review, which will tackle some of these issues, including the clarification of online marketplaces' responsibilities in terms of ensuring the safety of products. Do you think that is the right place to deal with this, rather than the Bill?

Graham Wynn: Yes. I think it needs to be done, but without committing us, we would expect it to be done in the context of a product safety review and how you are going to deal with product safety issues in the future. It needs a thorough examination, including the role of marketplaces, their general obligations and what is practical and proportionate. I would not add that to this Bill now, because it requires more of an assessment and consideration than would be possible.

Q84 Seema Malhotra: An area that we have not covered is much is alternative dispute resolution. Part 4 of the Bill would make accreditation of ADR providers compulsory unless an exception applies. How effective do you think that provision will in protecting consumers, and do you think it is the right approach?

Graham Wynn: ADR is not something that our members are exercised about in the same way as some other people are. Those who are responsible for selling high-value items tend to be members of ADR schemes. Their criticism of the current arrangement has been that they are not convinced that there is a full assessment of the ADR providers, so everything that is necessary to give them the confidence to use the systems. They believe that that perhaps has held back ADR schemes from really taking off in some places.

Those who sell high-value items—kitchens, some white goods and furniture items—generally are members of ADR schemes. Those who sell groceries, as they are generally called these days, including food and non-food, tend to feel that it is not really appropriate for them because of the cost. When dealing with something worth only a few pounds, it is much cheaper and much more sensible to just deal with the consumer and, ideally, give them their money back if there is a problem, rather than take everyone through ADR. It is not necessarily the best approach. However, the accreditation system and making sure that companies abide by what they are supposed to do in ADR is vital to have confidence in general.

The Chair: I am afraid that brings us to the end of this witness session. Thank you very much for your evidence.

Examination of Witness

Max von Thun gave evidence.

4 pm

The Chair: We will hear now from Max von Thun, Europe director of Open Markets. Max, would you introduce yourself for the record?

Max von Thun: Thank you for the opportunity to give evidence on this important piece of legislation. I am Max von Thun, the Europe director at the Open Markets Institute, which is a competition policy think-tank. We focus on the risks that arise from corporate concentration, and advocate for policies to tackle that. Prior to working at the Open Markets Institute, I spent several years in the private sector advising on competition and tech policy, and also here in Parliament advising MPs on economic policy. I have been following the UK digital competition debate for quite some time now.

Q85 Alex Davies-Jones: How important is it that this legislation is not watered down, as the Government's approach to the Online Safety Bill has been as that passes through the House?

Max von Thun: That is very important. We think the legislation as it currently stands is very strong. It very much represents the approach that has been recommended initially by the Furman review and then by the Digital Markets Taskforce, and will go a long way towards promoting competition in digital markets. There are a couple of areas where we have seen some campaigning—particularly from some of the larger platforms—including on the review standard, which a lot of people have talked about today.

There are a couple of other areas of the legislation that, although not necessarily designed to be loopholes, could have that effect. Other speakers have talked about the countervailing benefits exemption. You might want to see some changes to prevent that from being abused or from stymieing the enforcement of the new system. Similarly, I point to the five-year criteria that the CMA will need to use to establish whether a platform has entrenched market power. Although it makes sense to base market power not just on a platform's dominance in any one year, at the same time making it forward-looking with such a long timeframe will give platforms opportunities to put forward arguments as to why they should not be designated as SMS. For example, they might point to new technologies like generative AI and say, "We look dominant now, but there's all this disruption coming down the future, so you shouldn't designate us." That is another area you will want to make sure is fit for purpose. Overall, it is a strong Bill and the priority should be getting it through as quickly as possible.

Q86 Alex Davies-Jones: On the matter of getting it through as quickly as possible, we spoke to previous witnesses regarding the time that this will take to implement—2025 was mooted. It would be helpful to the Committee if you could outline some specific cases and instances of competition in digital markets that have been threatened up to this point, and any specific cases of detriment to the smaller market actors or to consumers.

Max von Thun: Sure. I mainly refer to some examples given by previous witnesses. I am thinking, for example, about issues we have seen with data in the digital economy, where dominant platforms such as marketplaces collect data on the sellers using their platforms and use that to compete against them or produce products that compete against them. The flipside of the coin is restricting data—sometimes generated by the users of the platform—by not allowing those users to use it to improve their business operations. Self-preferencing is another problem.

That can be everything from a large dominant firm pre-installing its own app on its operating system and making it hard for competing providers to get their app on to the system. You see interoperability restrictions—for example, where it can be hard for a third party or a competing platform to have access to the fundamental software or hardware it needs to produce a good product.

With those sorts of practices, which we have seen over the past decade or so, there have been lots of competition investigations, particularly in Brussels, to try to solve them, but we have not really seen much success or the introduction of much competition in the market. With the conduct requirements and especially the pro-competition interventions, hopefully the Bill will be able to address that and help smaller players to really compete in the market.

Q87 Vicky Ford: I did some market research with my 23-year-old son, who is much more of a digital consumer than I am, especially when it comes to online games. I want to ask you about where the dividing line is with in-game purchases. I, being very pro-market, would say that anybody should be able to sell these products once you are in the game, but my son was saying, "But wouldn't that put off the person who invested all the money in inventing that game in the first place and is getting some of his money back because of my in-game purchase? It's up to me whether or not I make that purchase." Where is the line, Max?

Max von Thun: Obviously if someone has produced a particular product or service that you can buy in a game, they should be entitled to profit from it. The main issue that we have seen with purchases from app stores, which are increasingly what people use to access these games through their phone, is that a small number of companies—basically Apple and Google—are using their control of the app stores to take a very big cut. They take up to 30%, which is not what you would be seeing in a competitive market. Sure, it is fair that they get a share of the proceeds, because they are putting in the time to maintain these app stores, but 30% seems quite steep.

Another issue is that it is hard for alternative payment providers to offer their services on these systems, because you will be forced to use Apple or Google's payment solution, for example. That also makes it easier to charge high commission rates. I think it is about allowing the large platforms to play their role, but making sure that they are not using that power to exclude people.

Q88 Vicky Ford: I get that, but let's say that an online game is like a shop. If I own the shop, I am not going to let anybody else walk in, put their products on my shelves and sell them, because I am paying the set-up costs and running the shop. If I have invented a game, should I let other people sell their products inside it?

Max von Thun: I would say yes.

Vicky Ford: Interesting.

Max von Thun: But you do have games where one company will provide the fundamental game—the world that you play in—but allow third parties to interact with it and sell you an outfit to wear in the game, a weapon or something like that. That kind of interoperability is very feasible, and you can have different companies co-existing.

Vicky Ford: Thank you—and sorry, colleagues, for the family discussions.

Max von Thun: I am not a huge gamer, but that is my take.

Q89 Andy Carter: Can I ask about the whole area of innovation, particularly for smaller start-up tech firms? What is your feeling towards the Bill with regard to the attitude that they might take to operating in the UK?

Max von Thun: Overall, I think it would be very positive for those types of firm. As others have said, this Bill is very targeted: the actual regulatory obligations apply to only a very small handful of dominant firms. It is not legislation like the Online Safety Bill or privacy regulation, where you are creating a compliance burden for the whole tech sector; it is very targeted at dominant firms.

As I mentioned earlier, if you look at what the Bill is trying to do, it is very pro-innovation. It is really about introducing contestability into the market. The combination of the conduct requirements, which are more about stamping out some of the problematic anti-competitive practices that we have seen over a long period, and the PCIs, which we think are a more significant tool because they allow you to inject competition into the market through interoperability and opening up data, will be very good for start-ups. I think it will give them more confidence to launch businesses that directly take on the dominant tech platforms.

At the moment, if you are a smaller firm, your strategy will often be to grow to a certain point and then get bought up. That is how firms design their business model, and investors will often look at it that way, but if through legislation you change the picture, you will change the incentives and create more opportunities for companies in the UK to scale up to a global level.

Q90 Andy Carter: You wrote an article in *The Times* recently about fast-growing British tech firms seeing acquisition by the US giants as a viable exit route. Do you think the Bill might change any of that?

Max von Thun: Yes, to an extent. The merger requirements for SMS firms are really just about reporting. They require SMS firms to let the CMA know if they are acquiring companies that meet certain thresholds. That will allow the CMA to avoid things slipping under its radar. Another part of the Bill is about what is called an acquirer-focused threshold, which is basically designed to prevent what have often been called killer acquisitions from taking place. Those are acquisitions that do not meet the UK's merger control thresholds when it comes to turnover or market share, because they are very small start-ups that do not generate much revenue but that often produce very innovative technology.

The tech giants buy them up either to prevent eventual rivals from emerging or to use that technology to extend their dominance into new markets. The Bill will prevent some of that. That means, to an extent, that in some cases involving very large platforms it will be harder to be bought up if you are a start-up. It is important to acknowledge that to an individual founder being bought up by a big tech firm can often be attractive. Big tech firms can pay a lot of money to acquire you. They can offer all sorts of technical and logistical expertise to

help you to grow, but if we look at the wider ecosystem, those deals can be very harmful, essentially by eliminating competition.

Think of what Instagram might have become had it not been bought up by Facebook. Rather than just being part of Meta's business model, it could be challenging Facebook. To take a more local example, DeepMind, a leading AI company, was bought by Google in 2014. Had it not been, it would be an independent AI company. That would have put the UK at the forefront of a lot of the development in general AI. Obviously, the UK is already doing well in AI, but now DeepMind is part of Google's empire and subordinate to Google's business objectives. Those are some of the reasons we should care about this.

Also, if you make it a little harder for these companies to buy up start-ups, the market will respond. The UK already has a lot of alternatives. It has a very healthy venture capital scene—I think the best in Europe. If it is harder for big tech purchases to take place, investors will partly fill that space. I am sure that there are things that the Government can do as well to incentivise private investment—maybe investing themselves in some cases, as they did with the Future Fund, and so on. There are a lot of other routes that, in the long run, are better for the tech sector than these types of deals.

Q91 Kevin Hollinrake: Thank you for your evidence. You probably heard my questions from earlier. We are very keen to ensure that innovation continues, not just in terms of the start-ups and scale-ups but with our big tech firms. Do you see anything in the Bill that will inhibit that?

Max von Thun: Honestly, not really. If I look at what is in the legislation, focusing on the conduct requirements and the PCIs that the large firms will have to comply with, what I see is something that says, "You're allowed to operate in the UK. You're allowed to grow in the UK. You're allowed to invest. You just have to play by the rules. You can't use your dominance to unfairly exploit small businesses or prevent rivals from emerging." It does not stop them investing lots of money in R&D or hiring top talent. We are seeing all the innovation that they are doing now, and I do not see anything in the Bill that will stop that.

More broadly, there is quite a lot of evidence, not just in tech but in other sectors, that more competitive and less concentrated markets are better for innovation because challengers invest a lot of money in trying to take on the incumbents because they believe that they can replace them. The dominant firms have to defend themselves, and they invest more to protect themselves. The Bill will have that effect.

Lastly, particularly since the whole debate around Microsoft and Activision, we have seen to an extent an attempt to conflate the interests of a small subset of dominant firms with the wider tech sector. That is often a mistake. What is good for a large majority of tech start-ups may not necessarily be good for big tech firms. It may be, but it is important to separate out the two.

The Chair: Are there any further questions? In that case, on behalf of the Committee, thank you very much for coming to give evidence.

Examination of Witnesses

John Herriman and David MacKenzie gave evidence.

4.15 pm

The Chair: Thank you all very much. We will move on to our next session to hear from John Herriman, chief executive, and David MacKenzie, lead officer, from the Chartered Trading Standards Institute. Could you introduce yourselves for the record?

John Herriman: I am John Herriman, chief executive of the Chartered Trading Standards Institute.

David MacKenzie: I am David MacKenzie. My day job is with the Highland Council on trading standards, in the sunny north of Scotland. I also have a role with the CTSI across the UK for free commerce and related issues.

Q92 Seema Malhotra: Thank you very much for coming to give evidence to the Committee. I know from your briefings that you have welcomed the Bill, but I wonder if you might be able to talk us through where you see gaps. Specifically, where do you think there should be, for the successful implementation and enforcement of the new regimes, a greater role for trading standards officers, and why?

John Herriman: Obviously, as you have heard, we have been very publicly supportive of the Bill. The key point, which I know others have made, is that in the online marketplace and the landscape, it feels like a bit of a wild west out there—I know that term was used this morning—and there has been a lack of protection for consumers and clarity for businesses. We have also seen that dramatic change in business and consumer behaviours, particularly during the pandemic, which is good for consumers, businesses and the economy. Trading standards absolutely sees that first hand. Trading standards plays a very unique role in this discussion; we are at that interface between the business and the consumer, so the lens through which we look at this is consumer confidence. Essentially, that is what we are really taking a perspective on.

We very much welcome the Bill and the new powers, particularly for the scope of the CMA, which we work with closely. We think it provides clearer legislation and changes to CPRs. We think it will enable quicker and stronger action, and we think it is very supportive of competition and innovation but, as you have alluded to, we do think there are some opportunities in the Bill where it could go further and where it would not impact on competition and innovation, and also where it would be more supportive of consumer confidence. We are happy to talk in more detail about those.

It is probably best to explain that we are both here because I can take that very strategic view and answer questions about that. David is our lead officer for the online marketplaces, so when we get into more of the technical detail he will be able to answer some of those questions. Essentially, in those areas around drip pricing, fake reviews, subscription traps and greenwashing, we think there are opportunities to go further or for some further discussion.

We also think the Bill addresses the national issues around the CMA's powers, but we do not think it is sufficiently robust in some areas to enable trading standards which, in the context of this conversation, does the

place-based and local regulatory enforcement and support for local businesses and enterprise. That national system does not work effectively if you do not have the local system working effectively alongside it, because they are mutually supportive of each other as part of that same system.

Q93 Seema Malhotra: Is that a point about greater powers that trading standards officers should also have alongside the CMA's role, or is it a question of resources?

John Herriman: It is a combination of both. David will be best placed to comment on the powers. Essentially, there are some issues there that we would like to consider, but it is also a factor of capacity. If I just focus on that, David can answer the second part of the question. From a capacity point of view, trading standards over the last 10 years or so—I think the National Audit Office reported back in 2021; it has also just done a very recent report—has been hit by about 50%. Relative to other regulatory services and local governments, regulatory services—according to the latest National Audit Office report—have been hit by about 25% cuts.

Trading standards has been hit exponentially harder than some of those other services. If we do not have enough capacity, we cannot do the enforcement activity. If we cannot do the enforcement activity, we cannot ensure that there is a level playing field for businesses. There is a definite capacity issue there. This Bill will make the legislation more robust, but we also need the capacity alongside that to make that system work effectively, because regulatory systems do not work effectively unless you have the right levels of enforcement capacity. David, do you want to answer the other part of that question?

David MacKenzie: We really welcome the strengthening of civil enforcement in the Bill. It introduces a range of potential punitive sanctions that can be imposed on businesses. That potentially strengthens our position, and we really welcome that.

At the same time, as John says, that is really dependent on our guys up and down the country being able to utilise that through civil enforcement, which is still a relatively newish thing for us. Our officers are very well versed, over many decades, in criminal law investigations and going for prosecutions. The civil law is relatively newer. Along with these new powers, there needs to be a bit of a campaign across the whole UK to ensure that local authorities have the skills and necessary legal backing to take these cases. I have certainly discussed that with the Department and will continue to do so.

Those are the good things in the Bill—giving us more powers and more sanctions. Our disappointment is what is not included: officers' powers. The way that I like to characterise it is that the existing powers are very good, but are they very good for a world that is changing all the time? They are essentially based on one of our officers being on physical premises, doing the work.

The powers are all really good: powers of entry, of inspection, to test, to get documents, and all that kind of stuff. But we increasingly find that, when it comes to the documents side of things, if somebody still has a filing cabinet with bits of paper in it, that is fine—we can get that and use it as part of our investigation—but, as we would all expect nowadays, even small business do not operate in that way anymore. The information will be in the cloud; it will be somewhere else that is not necessarily accessible from those premises.

Q94 Seema Malhotra: What happens in that situation? Do you just not get access to the data and the files?

David MacKenzie: The current powers do not give us direct access to that—they just don't. The Bill addresses that to a degree in that, in terms of entry under a warrant, as long as the files are accessible—again, from that physical premises—there is an extra power there. We welcome that. That is good progress. But it is important to realise that the vast majority of our investigations are done not under warrant, but using normal powers of entry, so the vast majority of situations are not covered by the change.

Even when the power is exercised through warrant, and we are able to use the new provision, that is only when the files are accessible from that premises, but we are increasingly finding that the local branch manager just does not have access to that information. I suppose that we are calling for a general power to access that information, in the same way as if it happened to physically be on those premises, and to be able to use it in all cases, including criminal prosecutions.

The other point that goes along with that is about online enforcement and takedown powers. I think it would really surprise the public if we told them that we do not have any formal powers of takedown at all for any online content. The only way we can do that is through ways and means—trying to get platforms to do the right thing and all that kind of stuff. It is long past time that we got a formal takedown power.

Q95 Seema Malhotra: Would that be specifically for websites where that may be misleading or scamming consumers?

David MacKenzie: Absolutely, yes. It could be a whole website, an account on a website or just a narrow bit of content. The Bill contains the concept of online interface orders that the CMA can apply to the court for, and we think that that should be applied to other regulators—particularly trading standards, from my point of view, but to other regulators as well. I think that if we are to be taken seriously in—

Q96 Seema Malhotra: Sorry, in the interests of time—we may have to go to a vote shortly—I have just one small question, and then I will hand over to colleagues. You said in your evidence that it is important that more is done, because there is nothing requiring online marketplaces and other collaborative platforms to make buyers aware of who the seller is—whether it is a business or a private seller—and that that has implications for consumer rights. Could you explain a bit more about what you think needs to happen that is not in the Bill?

David MacKenzie: Absolutely. A lot of the stuff in the Bill that replaces the consumer protection regulations is really good, and we really welcome it. There is still some stuff around the definition of "trader" that we think is a little bit of a missed opportunity.

There are two angles. When does a consumer become a trader? How many things do you have to sell in an online marketplace before you become a trader? That is a difficult judgment for us to make and we feel that some work should be done on that. The point you have made is equally important: the status of the seller in an

online marketplace. We think there should be a requirement for the online marketplace to declare whether the seller is a consumer or a business because that makes a massive difference to the consumer rights of the buyer and it also makes a difference to what we do.

If someone is a business seller, they have to comply with all consumer law; if they are a private seller, they do not really have to comply with anything, so this is for both consumers and for us. To be fair to other businesses that operate on the site, we think this is a necessary change that is not in the Bill.

Q97 Kevin Hollinrake: You make some important points that we seek to deal with in creating a fair and level playing field and protecting consumers at the same time. There is the whole point about whether an online marketplace is a distributor, retailer or whatever else. Do you think those questions are best resolved in this legislation or in the product safety review, which we have committed to do and brings in many other things that you have referenced already?

John Herriman: That was another point that we wanted to make. This is not the only legislation that impacts on the landscape: the product safety review is fundamentally important in this space. The key point there is being clear on where those boundaries are.

We will be contributing to the product safety review. It is fundamentally important that it should come out quickly, so that we can address it and respond to the consultation. We can then look at that in the context of this Bill and others that it might impact on as well. We think that some things would be best placed in the product safety review—anything to do with legislation there—and would not appear here. But it is important that those provisions work hand in hand over a similar period, so that we can make sure that there are not any gaps. Consumers will then be better protected and businesses will have the clarity that they need, which is really important for them.

David MacKenzie: I agree with everything John said, but if we leave all these issues to the product safety review, presumably that would apply only to unsafe products. There is a wider range of situations for which we need these take-down powers when it comes to fair trading—scams and so on.

Q98 Kevin Hollinrake: And the Online Safety Bill does not deal with that?

David MacKenzie: No.

The Chair: If there are no other brief questions, I bring this session to a close. I thank the panel on behalf of the Committee. This is perfectly timed as there will be votes shortly and we will be away for quite a long time. Thank you very much. We have spared you having to wait an hour or so.

Examination of Witnesses

Owen Meredith, Peter Wright and Dan Conway gave evidence.

4.30 pm

Q99 The Chair: Thank you all. Before we suspend the sitting for a vote, it is important to get you to introduce yourselves. We will start and see how much progress we make. Next we have Owen Meredith, the CEO of the News Media Association; Peter Wright, the editor emeritus of DMG Media; and Dan Conway, CEO of the Publishers Association. Will you introduce yourselves for the record?

Owen Meredith: Hi. I am Owen Meredith, chief executive of the News Media Association. We represent companies across local, regional and national news media in about 900 brands across the UK.

Peter Wright: I am Peter Wright. I am editor emeritus of DMG Media. We are a major British and international news publisher.

Dan Conway: Hello, everyone. I am Dan Conway. I am chief executive of the Publishers Association. We represent publishers of books, journals and educational materials of all shapes and sizes in the UK.

Q100 Alex Davies-Jones: Thank you all for being here this afternoon. My question is probably aimed at Owen and Peter. In your view, does the Bill go far enough in enabling journalists and media outlets to be empowered to negotiate fair deals with the tech platforms? Can you spell out why that is not the case at the moment?

Owen Meredith: First, it is important to welcome the Bill. As many people around the room know, alongside many other organisations across the economy we have been pushing for this Bill for some time, so it is pleasing to see it. It is in very good shape, albeit we will want some parliamentary scrutiny no doubt and the opportunity to tighten up some of the policy intent to ensure that it is fully reflected in the language on the face of the Bill.

Clearly, the imbalance of power that exists between news publishers and platforms is self-evident. It has been documented extensively from the Cairncross and Furman reviews through to various CMA reviews. At the moment, a handful of tech platforms are an essential gateway and a key discovery route for consumers to find news online. As consumers increasingly shift their consumption of news online, rather than from print—in the local market, north of 70%, and in the national market, north of 80% of consumers read news online—that is not fairly renumerated and rewarded back to the original investors and content creators of that journalism.

For society, we all understand the importance of that journalism, particularly in the online world combating mis and disinformation, but we just do not have a balance of power between those two players. On the one side, we have in particular smaller, local, independent news publishers, even up to large multinationals, but on the other, we do not have access to the right information or data about how our news is being surfaced and used on the platforms, including search and across social. We do not have an asymmetry of information to be able to negotiate fairly, so it is a take-it-or-leave-it approach by the tech platforms to how our content is used by them.

Peter Wright: You asked where the Bill possibly does not do the job. I would agree with Owen: it is a very good Bill and long overdue. I was on the Cairncross review five years ago, and it is great to see some of the things we were talking about bearing fruit.

One area you might want to look at is the final offer mechanism; there is a helpful table on page 38 of the explanatory notes. You can see it is a 13-stage process, and I think what to us might be the most important bit is information sharing, which comes at stage 8. If that process can be speeded up in any way, that would be immensely helpful.

The other thing that I would like to flag up and the thing that concerns most of us in the industry most of all is that you are likely to face concerted lobbying from the online platforms over the review process. From our point of view, that will not truthfully be about the justice of decisions made by the CMA; it is a delaying tactic. We hear that the platforms and the big City law firms will get together and to ask for a merits-based process, which would mean that every decision by the DMU is subject to appeals that are likely to involve weeks in court, with months or even years before decisions are taken.

If that happens, the whole purpose of the Bill—this whole structure, which we believe to be very good, and a great deal of work has gone into it; it is legislation that is likely to be copied around the world—will simply be nullified. It is vital that we stick with the judicial review process that is in the Bill.

Q101 Alex Davies-Jones: You answered my question, but are you concerned that by that point the tech companies will use this as a delaying mechanism, which will help proliferate disinformation and misinformation online by people who claim to be journalists? Provisions in the Online Safety Bill enable anybody to be a journalist, and will prevent that information or fake news—for want of a better phrase—from being taken down.

Peter Wright: The crossover between the two Bills is not that great. The real risk regarding fake news is that the most expensive news to produce is the high-quality public interest journalism that I am sure everybody in this room wants to encourage. If you cannot fund it, and at the moment it is a great struggle to fund it, the space will be taken by people who are not proper journalists and are not working for responsible news organisations with complaints procedures and people you can sue if you get it wrong.

The really serious danger is that because the online platforms have over the last 20 years sucked billions of pounds out of the news production in this country, the internet will be filled with conspiracy theorists and people producing cheap, easy-to-manufacture news, largely copied from other outlets.

Q102 Kevin Hollinrake: In your organisation's written evidence, you took a different view from some of our earlier witnesses, who think we are not going far enough in terms of making it easy for people to exit a subscription only to opt back in. Yours said that actually we should make it slightly more difficult, for example, by taking away the cooling off periods and making the exit subscription slightly different in terms of allowing people to take advantage of other offers, which might confuse the process of unsubscribing. I am interested to hear your views on that.

Owen Meredith: We broadly support the Government's policy and intent as I understand it in terms of helping consumers to manage subscriptions, particularly subscriptions that they are not aware they are in or for services they are not using. My concern and our organisational concern is that currently it is set out in the Bill too prescriptively, and there is a real danger that you end up in a situation where consumers are being bombarded by subscription notices and they become blind to them.

I would put the analogy out there of the cookie banner, which I think they are hoping to get rid of through different legislation before the House at the moment. There is a danger that consumers are just blinded by the amount of information they are being presented with as stand-alone notices, with the frequency and nature in which they have been spelt out in legislation. While I do not fundamentally disagree with the Government's policy intent, I do not think how it has been crafted in the Bill at the moment necessarily achieves that in the way we would need it to.

Q103 Kevin Hollinrake: I get that, but if you are in a situation where you are subscribed to just one service and there is not a forest of different emails coming in saying your subscription is ending, the effects of your suggestions would make it more difficult for people to exit contracts.

Owen Meredith: It would not make it more difficult for people to exit contracts; it would ensure that consumers still have access—

Kevin Hollinrake: The cooling off period was—

Owen Meredith: It would ensure that consumers still have access to the offers that would be available to them in the current system of processing. If you subscribe to a service that you are using and you wish to terminate it, there are multiple ways you can do that, either via online touchpoints for most of our subscribed services at the moment or via a call centre. If a call centre phoned you and said, "You've been using this service for 12 months. We can identify through data that you have been reading the content. Can we ask you what the reason for cancelling is and if we can retain you as a customer with the right promotion?", I think that would be in the consumer's interest.

Q104 Kevin Hollinrake: But the removal of the cooling off period would make it more difficult for some people to exit a contract, wouldn't it?

Owen Meredith: The removal of the cooling off period for us is a concern around how that technically applies and whether consumers have had benefit that they are then seeking to be refunded for, despite having engaged with and received the benefit.

Q105 Dean Russell: We live in an era where we talk about consumers, who might be consuming services or products—but they also might be consuming news. How will the consumers of journalism benefit from or be impacted by the Bill?

Peter Wright: They will benefit through the quality of the journalism they are offered. Every news organisation —we are no exception; we went through a period of redundancies earlier this year—is having to trim their editorial budgets, because you cannot make sufficient revenue in the present digital advertising market to support the scale of editorial resource that you would really like.

Commercial news publishers have seen revenues falling, despite inflation, over the last two decades. At some point, we need to have a mechanism that gives us—this particularly applies to smaller and regional publishers—a level playing field and levers we can pull to bargain with these vast companies. I have colleagues who work at not

inconsiderable regional publishing companies, who do not even have a telephone number they can ring at Google, so they just have to accept whatever terms Google offers. We are slightly more fortunate in that we can ring Google, but we do not necessarily get an answer.

Q106 Dean Russell: I am the MP for Watford. We have the *Watford Observer* and *My Local News*—those smaller regional organisations. Do you see this legislation benefiting them?

Peter Wright: Absolutely. I once worked as a local paper journalist in Watford. Tristan Garel-Jones was the MP then; he used to pop into our office once a week. He was very assiduous—I would recommend it! I do see this legislation benefiting them. It is more important to them than to anybody else.

The Chair: I will bring in Andy Carter to ask a brief question. I would like us to be able to wrap up soon to avoid detaining our witnesses for up to an hour. If everybody is agreed and there are no further questions other than Andy Carter's, I will call him to ask his question.

Andy Carter: It is a question to Dan. I am very conscious that you have sat here and not had an opportunity to say anything. Could you give us a broad overview of how the Bill might affect the publishing sector?

Dan Conway: Thank you for the question. I will keep it brief, as I am conscious of everybody's time. I am primarily here to talk about the role of Amazon in our area of publishing. Amazon has done great things to expand digital markets in books, has great partnerships with UK publishers and has got books into the hands of readers all over the world—and that is a great thing. But we firmly believe that we are now at a tipping point in terms of regulation with Amazon, as they have such entrenched market power in the book market that we need modern proportionate regulation to make sure that that entrenched market power does not lead to anti-competitive outcomes.

By our best estimates, Amazons sell over 50% of the print books in the UK market and about 90% of the e-books and audiobooks. That is monopoly power in selling print books and monopsony power as the sole buyer in retail books. It makes them a gateway company for my members; they are an unavoidable trading partner for any UK publishing company in the UK market, and we strongly support the Bill because we think it will help.

We think Amazon should be assigned strategic market status with the code of conduct that goes alongside it. We particularly support clause 20(2)(a) on trading on "fair and reasonable terms". It is our view that currently, because of Amazon's role in the market, publishers are not often able to trade on fair and reasonable terms. We heard from other witnesses about "take it or leave it" terms; effectively, if you are a small publishing business in the UK market, if you enter into a negotiation with Amazon, you are offered "take it or leave it" terms and you cannot negotiate with a retailer of that size.

Q107 Andy Carter: Can you write to us at some point and share those terms with us, so we can see the experience some of your members face?

Dan Conway: Yes, absolutely. As a trade association, we have to be one stage removed from that for obvious legal reasons, but our members have fed back to us on areas of concern, and we hear that Amazon is removing buy buttons, labelling products as out of stock, delisting products and refusing to stock products without reasonable cause—and all that is in the middle of a commercial negotiation. You have a major retailer that is able to use its size effectively to distort upstream competition through those kinds of tactics. I can absolutely look and see what we can write to you about that.

The Chair: Unless there is anything else, I will bring this session to a close. On behalf of the Committee, I am grateful to you all for the rapid responses you have provided. Thank you very much.

Ordered, That further consideration be now adjourned. *—(Mike Wood.)*

4.45 pm

Adjourned till Thursday 15 June at half-past Eleven o'clock.

Written evidence reported to the House

DMCCB01 NatWest
DMCCB02 NatWest
DMCCB03 Consumer Scotland
DMCCB04 GlobalCharge Limited
DMCCB05 Consumer Council
DMCCB06 Gener8
DMCCB07 Oles Andriychuk
DMCCB08 National Consumer Federation
DMCCB09 Trustpilot
DMCCB10 Radiocentre
DMCCB11 News Media Association