PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

DIGITAL MARKETS, COMPETITION AND CONSUMERS BILL

First Sitting

Tuesday 13 June 2023

(Morning)

CONTENTS

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not later than

Saturday 17 June 2023

The Committee consisted of the following Members:

Chair: Mr Philip Hollobone

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

Sarah Cardell, Chief Executive, Competition and Markets Authority

George Lusty, Senior Director for Consumer Protection, Competition and Markets Authority

Will Hayter, Digital Markets Unit, Competition and Markets Authority

Rocio Concha, Director of Policy and Advocacy & Chief Economist, Which?

Matthew Upton, Acting Executive Director of Policy & Advocacy, Citizens Advice

Public Bill Committee

Tuesday 13 June 2023

(Morning)

[Mr Philip Hollobone *in the Chair*]

Digital Markets, Competition and Consumers Bill

9.25 am

The Chair: We are now sitting in public and the proceedings are being broadcast. I have a few preliminary announcements that Mr Speaker has asked me to draw to your attention. *Hansard* colleagues will be grateful if Members could email their speaking notes to hansardnotes@parliament.uk. Please switch electronic devices to silent.

Today, we will first consider the programme motion on the amendment paper. We will then consider a motion to enable the reporting of written evidence for publication and a motion to allow us to deliberate in private about our questions before the oral evidence session. In view of the time available, I hope that we can take those matters formally, without debate.

Ordered,

That—

1. the Committee shall (in addition to its first meeting at 9.25 am on Tuesday 13 June) meet—

(a) at 2.00 pm on Tuesday 13 June;

(b) at 11.30 am and 2.00 pm on Thursday 15 June;

(c) at 9.25 am and 2.00 pm on Tuesday 20 June;

(d) at 11.30 am and 2.00 pm on Thursday 22 June;

(e) at 9.25 am and 2.00 pm on Tuesday 27 June;

(f) at 11.30 am and 2.00 pm on Thursday 29 June;

(g) at 9.25 am and 2.00 pm on Tuesday 4 July;

(h) at 11.30 am and 2.00 pm on Thursday 6 July;

(i) at 9.25 am and 2.00 pm on Tuesday 11 July;

(j) at 11.30 am and 2.00 pm on Thursday 13 July;

(k) at 9.25 am and 2.00 pm on Tuesday 18 July;

2. the Committee shall hear oral evidence in accordance with the following Table:

Date	*Time*	*Witness*
Tuesday 13 June	Until no later than 9.55 am	Competition and Markets Authority
Tuesday 13 June	Until no later than 10.25 am	Which?; Citizens Advice
Tuesday 13 June	Until no later than 10.55 am	Chartered Trading Standards Institute; National Trading Standards
Tuesday 13 June	Until no later than 11.25 am	News Media Association; Publishers Association; DMG Media
Tuesday 13 June	Until no later than 2.45 pm	Professor Jason Furman, Harvard University; Professor Philip Marsden, College of Europe; Professor Amelia Fletcher, University of East Anglia
Tuesday 13 June	Until no later than 3.30 pm	The Consumer Council; Consumer Scotland; National Consumer Federation
Tuesday 13 June	Until no later than 3.45 pm	Professor Geoffrey Myers, London School of Economics and Political Science
Tuesday 13 June	Until no later than 4.00 pm	British Retail Consortium
Tuesday 13 June	Until no later than 4.15 pm	Open Markets Institute
Thursday 15 June	Until no later than 11.45 am	techUK
Thursday 15 June	Until no later than 12.15 pm	Coalition for App Fairness; Geradin Partners
Thursday 15 June	Until no later than 1.00 pm	Match Group; Gener8; Kelkoo
Thursday 15 June	Until no later than 2.30 pm	XigXag; Paddle
Thursday 15 June	Until no later than 2.45 pm	Google

3. proceedings on consideration of the Bill in Committee shall be taken in the following order: Clauses 1 to 36; Schedule 1; Clauses 37 to 59; Schedule 2; Clauses 60 to 121; Schedule 3; Clauses 122 to 124; Schedule 4; Clause 125; Schedule 5; Clauses 126 to 131; Schedule 6; Clause 132; Schedule 7; Clauses 133 to 136; Schedules 8 to 10; Clause 137; Schedule 11; Clause 138; Schedule 12; Clauses 139 to 142; Schedules 13 and 14; Clauses 143 to 200; Schedule 15; Clauses 201 to 207; Schedule 16; Clause 208; Schedule 17; Clauses 209 to 217; Schedule 18; Clauses 218 to 247; Schedule 19; Clause 248; Schedule 20; Clauses 249 to 276; Schedule 21; Clauses 277 to 287; Schedule 22; Clauses 288 to 292; Schedule 23; Clauses 293 to 300; Schedule 24; Clauses 301 to 308; Schedule 25; Clauses 309 and 310; Schedule 26; Clauses 311 to 317; new Clauses; new Schedules; remaining proceedings on the Bill;

4. the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Tuesday 18 July.—*(Kevin Hollinrake.)*

The Chair: The Committee will therefore proceed to line-by-line consideration of the Bill on Tuesday 20 June at 9.25 am.

Resolved,

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—*(Kevin Hollinrake.)*

The Chair: Copies of written evidence that the Committee receives will be made available in the Committee Room and circulated to Members by email.

Resolved,

That, at this and any subsequent meeting at which oral evidence is to be heard, the Committee shall sit in private until the witnesses are admitted.—*(Kevin Hollinrake.)*

9.27 am

The Committee deliberated in private.

Examination of Witnesses

Sarah Cardell, George Lusty and Will Hayter gave evidence.

9.28 am

The Chair: Before we start hearing from the witnesses, do any Members wish to make declarations of interest in connection with the Bill? No.

We will move straight on then to hear oral evidence from the Competition and Markets Authority. This morning, we are privileged to have a trio of stellar CMA executives: Sarah Cardell, the chief executive; George Lusty, the senior director for consumer protection; and Will Hayter from the digital markets unit.

Before calling the first Member to ask a question, I remind all Members that questions should be limited to matters within the scope of the Bill, and that we must stick to the timings in the programme motion that the Committee has agreed. For this session, we have until 9.55 am. Could I ask our three witnesses, starting with the chief executive, to introduce themselves for the record?

Sarah Cardell: I am Sarah Cardell, chief executive of the CMA.

George Lusty: I am George Lusty, senior director for consumer protection at the CMA.

Will Hayter: I am Will Hayter, senior director for the digital markets unit at the CMA.

Q1 Seema Malhotra (Feltham and Heston) (Lab/Co-op): Thank you very much for coming today to give evidence. We very much appreciate your time. The CMA has supported this legislation, and there has been quite a lot of talk about how it provides a different approach to how the EU has taken forward legislation in this area. Do you think we have got the balance right, and why do you think a more flexible approach is helpful? You may have an example that you might want to use from your experience of a shadow digital markets unit.

Sarah Cardell: I will start off, and Will might come in with a specific example. We are talking here specifically about the provisions around digital markets in the Bill. What we have got with the design of the provisions here is exactly as you say—something that is really quite bespoke, quite targeted and flexible. I think that is really important. When we look at the issues that we are seeking to tackle in digital markets, there are many benefits that come from them, but there are real competition concerns. We see a concentration of market power. We see the characteristics of these markets, where there are substantial economies of scope and of scale, and the aggregation of data, and that results in potential harm, both for consumers, in terms of their ability to access a broad range of products and services, and for competing businesses that want to be able to compete and grow and innovate on a level playing field.

What does the Bill do? The Bill enables us to tackle those concerns in a very targeted way. That is critical. You asked about the comparison with the European Union's Digital Markets Act. In terms of the underlying concern, what we have in the EU is designed similarly—there is no fundamental difference there—but it is a more blanket approach, with a blanket list of prohibited conduct, whereas what we have here is a Bill that enables the CMA to designate particular companies in relation to particular activities, and then to design conduct requirements to manage their market power in relation to those specific activities. That is a much more bespoke system from the outset—it is targeted at the individual company and the individual conduct that is a cause of concern.

I think this Bill also has a greater degree of future-proofing. That is obviously critical in these markets, because they evolve so rapidly. The system in the EU is a slightly more static approach. You have a set of provisions that prohibit certain conduct as things stand at the moment. What we will have is the ability to bring in new conduct requirements if we see new concerns emerging, and to vary those or remove them when they no longer apply. That means that the system over time will be much more responsive and much more future-proofed. Will might want to come in with a couple of specific examples.

Q2 Seema Malhotra: We have quite a lot to get through, so let me just ask a follow-up question. There has been some criticism that the approach of regulating firms with strategic market status would be a discouragement to business investment and confidence in the UK technology sector. What would your view be?

Sarah Cardell: My view is that it is entirely the opposite. Competition and open competitive markets are the foundation of an economy that encourages investment, innovation and growth. We see that from a vast range of economic literature and economic research. The work that the CMA already does is very much tied to driving innovation, investment and growth.

So the starting point is that open competitive markets are good for innovation, good for investor confidence and good for growth. We then need to make sure that the design of the regime delivers that, and that the implementation of the regime, by the CMA, delivers that. I think the design does, for the reasons that I broadly outlined, and obviously the scrutiny is then, rightly, on the CMA to make sure that in practice we deliver the regime in a way that inspires that confidence.

I think we will do that in a number of ways. The first is to look at the outcomes that we deliver, which will ensure that businesses, large and small, are able to grow, invest and thrive in these markets. The second way is to make sure that we have really strong stakeholder engagement. This is not a regime where we want to operate behind closed doors. The whole design of the regime is a participative approach where we will engage with a broad range of stakeholders, businesses and consumers as we consult on designation, design the conduct requirements, and then enforce against them.

Q3 Seema Malhotra: The Government have not taken forward the recommendations from the CMA on tackling consumer detriment in the secondary ticketing market. Do you think that that was a mistake and that that should be in the Bill? Finally, huge new powers are going to the CMA. Do you think that the accountability mechanisms have the right balance? That will be a concern for Parliament. Mr Lusty and Mr Hayter might want to come in.

Sarah Cardell: If I quickly take accountability, George might come in on secondary tickets. Accountability is key. The Bill gives us greater responsibility and power, and with that must come greater accountability. That comes in a number of forms. Parliamentary accountability is critical. We are accountable to Parliament. We do that already through a number of appearances and engagement with Committees, but I am sure that there is more that we could do in the design of that, and we are very keen to work with colleagues in Government and across Parliament to ensure that that happens. Accountability for our decisions through the courts is another important element, and accountability to stakeholders, going back to the previous point, is key as well.

George Lusty: On secondary tickets, the CMA has taken a lot of action in this area. It has taken Viagogo to court. We found ourselves up against some of the inherent weaknesses in the existing consumer protection toolkit when we did that. We effectively had to initiate an attempt to start contempt of court proceedings to get Viagogo to comply with the court order that we had secured. We think that many of the changes in the Bill will address those weaknesses directly by giving us civil fining powers for the first time. We set out specific recommendations back in August 2021 about other things that we think could be done, but ultimately it is a matter for the Government to decide what they want to include in the legislation.

Q4 The Parliamentary Under-Secretary of State for Science, Innovation and Technology (Paul Scully): How will the enforcement powers accelerate your enforcement action in particular? Remediation needs to come quickly in digital markets, especially with the appeals process, which has been a topic of conversation. Why do you believe that judicial review is sufficient to give proportionatality for people to push back and for keeping the speed up?

Sarah Cardell: On digital markets, the design works very well, because you have an engaged approach where we will work with businesses to secure compliance with the conduct requirements. We hope that that will be a constructive engagement, and that much of that compliance will be achieved without any enforcement activity. That is the aspiration and the goal. Of course it is important to have enforcement as an effective backstop and that that enforcement happens rapidly for the reasons that you stated. The Bill envisages a six-month time limit for enforcement, which is important so that everybody knows that that timing is ringfenced.

On appeals, let me take a minute to talk through the JR standard and why I think that it is effective, because there has been a lot of debate about that. It is critical that the CMA faces effective judicial scrutiny for our work. That should go on the record. We think that the JR standard achieves that. The JR standard applies to much of our work already, including our merger control and market investigations. It applies to a number of regulators for their regulatory work already, so there is an established approach for JR.

What JR is not, certainly in our experience, is a very light-touch procedural review. It looks at process questions, but it also looks fundamentally at whether we have applied the right analytical approach, the kind of evidence that we have reviewed, how we have weighed that evidence, and the rationality—the reasonableness—of our decision making. Take the example of the Competition Appeal Tribunal review of our merger decision, which was a review of the acquisition by Meta of Giphy. We had 100-plus pages in that judgment, with 50-plus pages looking at our analytic framework, how we looked at the effect on competition, the kind of evidence that we took into account and whether we weighed it effectively. It was a very detailed critique of our assessment.

What JR does not do is start a full merits from first instance court process. It does not say, "Back to the drawing board—we are going to set the CMA's decision to one side and then conduct the process all over again." That is much more similar to the full merits review that we have at the moment on Competition Act 1998 cases. Our experience there is that it results in very protracted litigation—we often have cases that are in court for five or six weeks. But, fundamentally, it also changes the incentives to the parties that we are engaging with, because all eyes are on that litigation process. That means that, in our process and our own investigations, it is a lot harder to reach constructive, collaborative outcomes, because every point that we are investigating is thrown into an adversarial contest. It means that we have to turn every stone, check every piece of evidence and make sure that every point is covered, which means that our investigations themselves are more protracted and the litigation is much longer.

The benefit of judicial review in this process is that it provides absolutely robust and effective scrutiny, but it also supports an environment that is aligned with the aspirations of the Bill more broadly—to encourage engagement early on and to encourage constructive, collaborative outcomes. Then, of course, parties absolutely have the right to challenge and appeal our decisions and, where they do so, that is resolved effectively through a JR process.

Q5 Paul Scully: So you believe this is the right balance between being robust enough for those with strategic market status and being speedy enough for remediation for challenger tech.

Sarah Cardell: Absolutely.

Q6 Alex Davies-Jones (Pontypridd) (Lab): Good morning. We have talked a lot this morning about accountability to Parliament. That was highlighted quite heavily on Second Reading by Members from across the House. One of the other things that we have already discussed is the need for the CMA's strategic priorities to be directed and advised by Parliament. Could you expand on your thoughts on that point? Also, where do you see the priorities for the Digital Markets Bill? That is not intended to be a loaded question.

Sarah Cardell: I will give a high-level response, and Will might come in on some of the specific priorities for the DMU. It is really important to highlight the difference between accountability and independence. The CMA is independent when we take our individual decisions, but, as you say, it is absolutely accountable for those decisions, both to Parliament and to the courts. That is accountability for the choices that we make about where we set our priorities, accountability for the decisions that we take when we are exercising our functions, and accountability for the way that we go about doing that work. I think it is important to have accountability across all three areas.

On the strategic priorities, since I came into the role as chief executive and our new chair, Marcus Bokkerink, came into post, we have put a lot of focus on really setting out very clearly what our strategic priorities are, looking at impact and beneficial outcomes for people, businesses and the economy as a whole. We see those as a trio of objectives that are fundamentally reinforcing, rather than in tension with one another.

We also take account of the Government's strategic steer. That is in draft at the moment. You can see that there is a lot of commonality between our own strategic priorities that we set out in our annual plan and in the Government's strategic steer. That sets a very clear framework for our prioritisation.

Will might want to come in on how we will set the priorities for the DMU.

Will Hayter: We are obviously thinking very carefully about where to prioritise action under the strategic market status regime. We cannot jump too far ahead with that, because Parliament is going through this process now and we have to see where the Bill comes out, but, as Sarah says, we will be targeting our effort very firmly at those areas where the biggest problems and the biggest current harmful impacts on people, businesses and the economy are likely to be.

You can get a bit of a sense of what those areas might be from the areas we have looked at already, particularly the digital advertising market, search, social media, interactions between the platforms and news publishers, and also mobile ecosystems. We did a big study there, where we see a range of problems stemming from the market power of the two big operating systems.

We will continue to update our thinking as we go through the next year-plus, building on our horizon-scanning work and understanding of how developments in the markets are shaping up and what that might mean for where the problems are.

Q7 The Parliamentary Under-Secretary of State for Business and Trade (Kevin Hollinrake): First, thank you for the work that you do. You are obviously an independent body and you make difficult decisions. You receive more scrutiny than we have ever seen before, with the CMA's higher profile, and at times that must put you under quite a lot of strain. I appreciate the work that you do. You make the decisions as you see fit, of course, but those often come with criticisms, so thank you.

My question is about innovation. If you speak to some of those who are likely to be designated SMS—strategic market status—businesses, many of them might say, "Well, this will inhibit innovation from our businesses." I think part of that is about the power to look ahead at where this may take us. What do you say to that? If one of those platforms was opening a new type of supermarket, for example, it might be claimed that this would limit innovation. How would you respond to that?

Sarah Cardell: I have a couple of points, and Will might come in. The general point is that this regime is very much pro-competition and pro-innovation, both from the major platforms, which are likely to be designated in relation to some of their activities, and across the economy. It is important that we encourage innovation that supports competing businesses, large and small. You can have innovation that supports an incumbent by allowing that incumbent to offer additional services, but sometimes at the cost of entrenching their market position. We want to ensure that we have an environment that enables those major players to continue to innovate, sparked and incentivised by the competitive pressure that they are facing, but equally allows smaller competitors to thrive and innovate too. That is the broad point.

As we have said, it is a very targeted and bespoke regime. We will be focusing only on areas where there is substantial and entrenched market power already. Therefore, the principal point is that businesses, large and small, will continue to be free to innovate and to develop their products and services. Of course we want to ensure that that happens in a way that does not reinforce positions of market power. Will, you might want to come in on that.

Will Hayter: As Sarah says, this is all about creating a fertile environment for innovation, and you can think about that at at least three levels. First, it might be that those companies are innovating on top of the platforms that we are talking about here—in mobile ecosystems, through app stores, mobile browsers, and so on. Secondly, there are companies that are seeking to compete directly against some of the big platforms, and we want to ensure that there is a possibility that the current incumbents will be knocked off their perch by tomorrow's innovators. Finally, increasing competition should increase the pressure on the incumbents—the most powerful firms—to innovate further themselves, in a way that delivers the greatest benefits for people, businesses and the economy.

Q8 Kevin Hollinrake: Would you therefore say that those kinds of worries are ill-founded and that that is not something that would prohibit an SMS organisation from innovating?

Sarah Cardell: I do not think that there is anything in the Bill that prohibits innovation. The fundamental design, and certainly the way that we would intend to operate it, is entirely pro-innovation. We want to ensure that, as the designated companies continue to seek to develop and grow their businesses—of course they will want to, and that brings many benefits—that happens in a way that does not entrench their position, which is disadvantageous either to consumers or to competing businesses. That does not inhibit innovation, but it puts some guardrails around that innovation to ensure that the impact of that is beneficial and positive.

The Chair: We now come to a quick-fire round. We have six minutes left and four Members seeking to ask questions, so we want quick questions and quick answers.

Q9 Neil Coyle (Bermondsey and Old Southwark) (Lab): Do you have the resources to take on the new powers?

Sarah Cardell: The short answer is yes. We are well funded in terms of our budget. We are carrying out significant recruitment, and we have a good breadth of expertise, which is particularly important to developing our digital data technology expertise. We have done a lot of that already, but it remains a key focus.

Q10 Neil Coyle: Do you have an in-house legal team, or will you be taking on additional lawyers, given that it has taken legal action against some companies even to get to this point?

Sarah Cardell: We have very substantial legal resources internally. We have a legal directorate of around 150 people. We will be growing our resource by more than 200 people over the next two years, and growing substantially outside London, which will be key for us.

Neil Coyle: And—

The Chair: We will have to move on, I am afraid.

Q11 Vicky Ford (Chelmsford) (Con): I want to ask what success is and what it looks like. Is success giving my consumers greater choice and lower prices, and my businesses ensuring that the UK is an attractive place to

[Vicky Ford]

invest compared with other markets? If that is the definition of success, how do you measure it both domestically, compared with what has happened in the past, and internationally, compared with other markets?

Sarah Cardell: The brief answer is that in our annual plan we set out our measure of outcomes: benefits for people in terms of great choices and fair deals; benefits for businesses in terms of enabling them to compete, innovate and thrive; and benefits for the economy as a whole in terms of growing productively and sustainably. That applies across the new suite of roles, powers and responsibilities. If you are looking at outcomes for people, what is the impact on prices and choice? Can people access their data? Can they move between services more effectively? What is the impact on businesses? Can they get fair and reasonable terms when they are reliant on the infrastructure of some of these major players in order to innovate and grow? Are we seeing innovation coming from smaller businesses as well as the incumbents? When we look at the benefit for the economy as a whole, do we see the flow-through of greater competition, improving productivity and improving growth? We have our "State of UK competition" report, which reports on that, and that will continue to be an important metric.

We are taking on responsibility for an annual consumer protection study, again looking at areas of consumer concern and the impact of interventions we are taking. You mentioned international benchmarks; I think that is really important. Obviously, a lot of these issues, especially on the digital side, are international in nature. We want to see benefits in terms of changes in international trends—there is a real opportunity here for the UK to set the model for positive regulatory intervention in digital markets, and for that to be adopted by others—and real benefits for UK businesses in terms of their ability to grow and innovate, and the investment that that attracts from overseas.

Q12 Vicky Ford: Really quickly—will you be watching our market compared with what is happening in other markets?

Sarah Cardell: As one of our factors, absolutely.

Q13 Jerome Mayhew (Broadland) (Con): You say that open, competitive markets are good for growth. I totally agree, but we are one market among a global series of markets. Building on what Vicky Ford just said, where do you see this regulatory innovation sitting? You have referenced the EU and what it is doing, and there are other things going on in the US. Will this draw investment into the UK in this sector, or will it make people say, "Hmm, I'm not sure"?

Sarah Cardell: I firmly believe it will draw investment in. Will, do you have a couple of examples of people you have spoken to?

Will Hayter: You have app developers who are wanting to provide a service through these mobile ecosystems that have pent-up business—I think you are talking to one of them later—waiting to be invested in and to grow. There is also a UK-based search engine looking for opportunities to expand. Those are exactly the kind of businesses that are trying to grow and want this kind of regulatory infrastructure to create the conditions to do that.

Q14 Dean Russell (Watford) (Con): When I go back to my constituency in Watford tonight and speak to people on the street, what can I tell them will make a difference to their lives, in the simplest terms?

Sarah Cardell: It is opening up choice; it is opening up access to the fullest range of services. It is enabling them to have confidence that their data will be used in an effective way and that they can move between different products and services so that they do not get locked in. When we think about the consumer side, daily we hear and see so much about consumer detriment. We are working as hard as we can to address that, but the consumer reforms will enable us to take a massive step up in terms of the impact we can deliver, the speed with which we can tackle their concern,s and the effectiveness with which we can deliver improved outcomes for people.

Q15 Dean Russell: Will they see that happen, or will they need to be involved in the process to report where there are issues?

Sarah Cardell: Both. On engagement, we work very much with bodies such as Which? and Citizens Advice, which I know you are hearing from shortly, so we have a lot coming in. That is really important, because when we make the choices about the work we are doing, they need to be informed directly by consumer concerns, not be something that we just think is the right thing to do. We want to deliver that visible impact.

George Lusty: I think your constituents will see the CMA directly taking decisions. When we find that something has broken the law, they will find that we are taking direct orders to get their money back for them, and we will be imposing deterrent fines on the firms that do not do the right thing.

The Chair: I thank our three stellar witnesses very much indeed for their time this morning. We wish you continued success at the CMA.

Examination of Witnesses

Rocio Concha and Matthew Upton gave evidence.

9.55 am

The Chair: I welcome Rocio Concha, director of policy and advocacy and chief economist at Which?, and Matthew Upton, acting executive director of policy and advocacy at Citizens Advice. Thank you for coming this morning. Would you be kind enough to introduce yourselves to the Committee for the record?

Rocio Concha: I am Rocio Concha, the director of policy and advocacy, and the chief economist at Which?.

Matthew Upton: I am Matthew Upton. I am the acting executive director of policy and advocacy at Citizens Advice.

Q16 Seema Malhotra: Thank you for coming to give us evidence today. I have a couple of questions. First, will you outline how you see the Bill delivering consumer benefits, and how you will seek to measure that impact? Secondly, the Government announced with much fanfare that the Bill would tackle the practice of fake reviews, but they are not mentioned in the legislation; they are instead left to a delegated power. Do you think that

more action is needed on fake reviews, and how concerned are you that the Bill will not deliver on the changes needed?

Rocio Concha: Let me start by saying that we are fully supportive of the Bill. We think that it will modernise competition policy and consumer policy in the UK, and that it will deliver clear benefit for consumers, businesses and the economy.

We are very supportive of part 1 of the Bill, which you discussed with the previous panel and which is about the additional powers to introduce a pro-competition regime. That is very important and we think that the regime will be proportionate and flexible, and will deliver benefit to consumers by providing more choice and lower prices.

One thing to say is that it important to look at the regime in its totality. The CMA explained that the regime is very proportionate and consultative. For it to work, it is important that the appeal process is on a judicial review basis, which is what is proposed in the Bill. That should be maintained as the Bill goes through Parliament. Obviously, we are very supportive of the new powers for the CMA to fine directly companies that breach consumer law. Why? Because that is a stronger deterrent to those businesses that may decide to ignore the law.

We are also very supportive of the Secretary of State having the power to act on the practices set out in schedule 18 that are clearly unfair. Why? Because we need a flexible system, particularly in the digital space where things move very quickly. We need that flexibility in the system as we identify additional areas.

You mentioned fake reviews. We welcome the commitment to include fake reviews in the Bill, but basically the commitment is that that will be introduced by the Secretary of State. We do not think that we should wait. Clearly, fake reviews are harmful, so the buying, selling and hosting of fake reviews should be included in schedule 18. We think that drip pricing is another practice that is very harmful. There is a lot of evidence that that is the case, and it should be included on the face of the Bill.

How will we measure this? When we look at our work and at the areas we want to focus on, we do quite a lot on consumer detriment; we also work with the Government and the CMA to see what the big areas of detriment are. We expect to see changes in the behaviours of some companies that decide not to follow the law. With the previous panel, you talked about, for example, the measures that the CMA took in the past on secondary ticketing companies, such as Viagogo. That took six years—six years of harm for consumers. We expect that, after the Bill becomes an Act, we will see action and that all those crimes that do harm will be resolved more quickly.

Q17 Seema Malhotra: Thank you very much. This question may be more for Mr Upton. The Bill goes some way towards tackling the problem of subscription traps, but it does not go as far as what Citizens Advice has called for, or indeed the Labour party's policy of making subscription renewals opt in rather than opt out. Why do you think that the legislation needs further safeguards? Why, in the light of your experience, is that important for protecting consumers from harm?

Matthew Upton: We have been asking for action on subscription traps for a long time. Any action is positive, but we are seeing this in the context of a cost of living crisis, where anything that takes cash out of people's pockets stops them getting by from day to day. To be honest, we think that the intent is right, but this is potentially a huge missed opportunity for action on subscription traps. We have to understand how high the incentive is for firms to trap people in subscriptions. There is a huge amount of money to be made, to the extent that it changes the whole incentive structure so that for many firms, rather than thinking about how to provide a quality subscription, the rational thing to do is think about how to design the worst possible customer journey and to trap someone, whether through an online process that makes it difficult to cancel something—you will all have experience of this—or, to give a slightly facetious example, a process whereby you can cancel only when you ring between 2 and 2.30 on a Tuesday and you have wait for 45 minutes in the queue.

Obviously, we want to change that incentive structure so that we have a flourishing subscription economy, which should be encouraged, where consumers want to stay in subscriptions and firms focus on providing quality subscriptions. We do not think that the Bill as it stands will do that. For example, it says that exit has to be timely and straightforward. We do not think that that will work. We have been here before, if we think back to utility bills four or five years ago, when there was a big push to stop people rolling on to expensive contracts and to get them to switch. Regulators were focused on trying to dictate what went into letters to consumers about their renewals. Firms could make so much money by obeying the letter but not the spirit of the regulation that they would find ways round it, and switching rates did not go up. We think that the same will happen here.

The specific change that would make a huge difference and is legislatively straightforward is to provide that, at the end of an annual trial subscription, the default is that the consumer opts out. That is not about things like car insurance, where there is a detriment to people opting out, but for basic subscriptions, opt-out should be the default. That would allow firms to use all their ingenuity, power and influence to persuade consumers to stay in. They could go for it—send as many reminders as they wanted; that is absolutely fine. If the subscription is good, a consumer will stay in. That change will make the difference. We have done some polling on this and about 80% of people agree that that should happen. We think that it will put millions of pounds back in people's pockets, that it is proportionate and that it will encourage a flourishing subscription economy.

Q18 Kevin Hollinrake: Rocio, on your point about including fake reviews on the face of the Bill, our intention is to legislate in this area. I do not know whether you have seen the evidence from Trustpilot, which was submitted as written evidence. It rightly points to the fact that most of the discussion around fake reviews thus far has been about products rather than services. Does not that illustrate that we need to consult properly about that to ensure that we get the legislation right? Isn't there a risk that we could get it wrong by rushing to stick this on the face of the Bill?

Rocio Concha: A provision on fake reviews in the Bill should apply to both products and services. There is evidence to show that fake reviews also harm services. I

do not think that there is a major risk. We and the CMA have produced a lot of evidence about how fake reviews are endemic on some sites. We have demonstrated the harm that they cause. It is clear what is needed. We know that we need to look at selling, buying and hosting. I do not see a risk to including such a provision on the face of the Bill. Then, in secondary legislation—

Q19 Kevin Hollinrake: Even though there might be some things we have not thought about at this point in time. That would be a good example in terms of Trustpilot's evidence.

Rocio Concha: If there is something that needs to be improved, you can always do it with the Secretary of State's power later. There is quite clear evidence to provide a clear steer on what is an unfair practice. Obviously, as with anything in schedule 18, you have that power to modify, to add to the practice as more evidence comes in. We will provide enough evidence to the Committee to show that it can be introduced on the face of the Bill.

Q20 Kevin Hollinrake: Sure, okay. Mr Upton, on subscription traps, do you not feel that the powers that the Bill affords the CMA on civil penalties will address some of the concerns you highlight of people trying to get around the rules, for example? Would that not be something it could act on when it sees gratuitous behaviour such as what you describe?

Matthew Upton: I think it could, but we worry that it will not in reality. It is quite difficult to decide, for example, what constitutes easy and timely exit from a contract. You cannot necessarily measure it incredibly specifically, and I could imagine enforcement being really complicated. I could imagine firms dragging their feet, despite the way powers would speed up the ability of the CMA to act, as I say, because the incentive structure is so great.

One reason for the growth of the subscription economy is that it is a great way to provide services, but another is that it is such an easy way to make money by trapping people in. That is our firm belief and what our evidence shows. I just think a simple default would be much more effective than basically having the CMA chasing its tail and chasing firms. It would not be of any detriment to good firms who want to provide really solid subscriptions that people should want to stay in.

Q21 Richard Thomson (Gordon) (SNP): The EU has a right to redress for consumers, and there is a schedule in the Bill that would allow the Secretary of State to introduce that again in future through secondary legislation. Do either of you have any sort of sense of the extent to which UK consumers might be at risk of being at detriment compared with their EU counterparts while that secondary legislation is not in place?

Rocio Concha: Our view is that it should be on the face of the Bill. We do not know why the right to redress has not been transposed into the Bill. From our perspective, we do not want to leave it for the Secretary of State to decide once we have an Act. It should be included.

The other thing is that the right of redress does not cover all the practice in schedule 18, only misleading practice and aggressive practice. It does not really cover all the list of unfair practice in schedule 18. I think that the right to redress should also cover that.

Q22 Richard Thomson: On fake reviews, the challenge that came up at Second Reading was about how we might define, judge and act on them. How do you think it is best to tackle the problem of fake reviews? Have you any suggestions while we are engaged in this consultation?

Rocio Concha: You mean how—

Richard Thomson: How could we legislate create the framework by which the problem of fake reviews could be best addressed?

Rocio Concha: I think it needs to be in the list on schedule 18, and there is a very simple way to draft that amendment. We are going to suggest an amendment to help you with that, so I do not think that it is a major difficulty to include it on the face of the Bill.

Q23 Dean Russell: You are both at the coalface for consumers in terms of the challenges around all the issues addressed by the Bill. Can you briefly share some real-life examples of why the Bill is so important and what difference it will make to consumers?

Rocio Concha: I can give you some examples from the past so that you can see what consumers face. I already talked about the secondary ticketing problem, but I will give you another example. During covid, there were a lot of issues about people getting their refunds that they were entitled to by law. Many people could not really get them. I will give you another example on the digital side—that was on the consumer side.

At the moment, as you have heard from the CMA, digital advertising is basically controlled by two companies, Google and Facebook. Google has doubled its revenue from digital advertising since 2011 and Facebook used to make less than £5 per user—more recently, it has been around £50 per user. Google charges around 30% more for paid-for advertising than other search engines. All that cost translates into the products that we buy. We expect that once this pro-innovation, pro-competitive regulatory framework is put in place we will see it translate into prices.

We will also see it translate into more choice, in particular on data. At the moment, it is very difficult for consumers to have a choice on how much of our data is used for targeted advertising. You will have seen examples of that. When we talk to consumers in particular on the issues surrounding data, they feel disempowered. When we talk to consumers about the problems that they face in some of the markets where there are high levels of detriment, they also feel disempowered.

Matthew Upton: To be clear, there is a lot of good in the Bill. I echo Rocio's first comments that there are a lot of positives. It has been a long time coming, and is a testament to the civil servants in the Department who have stuck with it. The main lens through which we see the impacts of the potential changes in the Bill is the cost of living. It is not exactly headline news that people are struggling with their bills. One of the main measures that we look at is whether one of our clients is in a negative budget: whether their income meets their essential outgoings. About 52% of our debt advice clients can no longer meet their essential—not desirable—outgoings with their income.

There are two areas where the Bill can make a real difference. One of the frustrations is that a debt adviser will go in detail through someone's income and where

they spend their money, helping them to balance their bills, and so on. You see the impact of other Government interventions, such as energy price support, putting money in their pockets and uprating benefits. You are combing through their expenditure and you find something like a subscription trial taking £10 a month—a huge amount for a lot of our clients—unnecessarily out of their account. They did not even know that it was there. Often, it is people who are not online, are not savvy, and are not combing their bills every month because they have a lot on. That is hugely frustrating, and things like this, especially if strengthened, could tackle that.

You will see similar things where people are just about balancing their monthly income with their expenditure and they get hit by some big scam bill or are let down by a company. Such companies are too often not held to account in the right way. It is a bit of a tangential example in some ways, but the hope is that the CMA's increased ability to act and, in effect, to disincentivise poor behaviour towards consumers will lessen such instances as well.

The Chair: We have 12 minutes left, and five Members are seeking to ask questions, so we need to increase the pace.

Q24 Neil Coyle: Electrical Safety First and the British Toy & Hobby Association have described Amazon and other online platforms as a bit of a wild west when it comes to product safety for consumers. I appreciate that you both support the Bill as a step forward, but what is missing for consumers when it comes to product safety? Is it a new sheriff for the wild west?

Rocio Concha: Definitely. Legislation is required to ensure that online platforms take responsibility for the products that they sell on their platforms. We have done lots of reviews and gathered evidence that shows that consumers in the UK can buy very unsafe products on those platforms. Online platforms should be doing more to tackle that issue. The issue probably requires separate legislation, but I want to make it clear that we need legislation, and we need it now.

Q25 Neil Coyle: So this is a missed opportunity. There is nothing within clauses 67 to 82 on the investigatory powers that would allow for sufficient tackling of unsafe products, including toys reaching children.

Rocio Concha: No, I do not think that what is in the Bill will really tackle the issue.

Neil Coyle: That is disappointing.

Matthew Upton: I have nothing to add.

Q26 Jerome Mayhew: Mr Upton, I want to come back to you about subscription traps. You are saying that the requirement in the Bill that subscription cancellation should be a timely process is not sufficiently detailed. I declare an interest: in a former life, I used to help write European regulations. Is it not an absolutely basic tenet of writing regulations that you design outcomes—you do not list processes unless you absolutely have to, because things change? Given that point, are the Government, or the drafters of this Bill, not correct to focus on the outcome required and leave the process alone?

Matthew Upton: In a sense, I disagree with you because I agree with your point about it being outcomes-focused. In a sense, you are right; it leaves it fairly open, which gives some space for people to interpret, but I think what will end up happening is that firms will get around those provisions in various ways. They will tweak the subscriptions to find other ways to find people to step in. We will have a game of whack-a-mole, where we chase around trying to clamp down, a little bit like we had in the utility-switching space of four or five years ago. Ultimately, whether people agree or not, that led to much heavier intervention in the market.

Just taking one step to move towards opt-out—in a sense, you are right; it is a process step—is incredibly simple in terms of aligning the incentives. I think that would mean you would have to do less of the tweaking, constant interventions and prodding of firms. It just sets up the incentives in a much more simple way.

Q27 Jerome Mayhew: Is the intervention not actually the exact opposite of what you are suggesting, in that, if you have a stricter requirement within the regulations, people find ways to get round that strict interpretation, but if you have an outcomes-focused statement as is currently in the Bill, the onus is on the companies to demonstrate compliance, and the CMA, with the fining power of 10% of global turnover, has the stick with which to enforce it?

Matthew Upton: I disagree, because I think the simplicity of simply saying, "You opt out at the end of a period" gives clarity. I think it is easier for firms to interpret. In reality, under the current set-up, I do not think you will see a lot of firms thinking in a positive way about how to interpret it. I think they will think about how they can push as far as possible.

Customer journey design is so complex—this is the challenge of emerging digital markets. It is not a case of being able to say, "You have two click-through screens versus three," so that constitutes easy or hard. There are incredibly subtle ways to make it difficult. I think a lot of firms would continue to put their efforts into thinking about how they can stay as close as possible to the law to avoid CMA sanctions, while effectively still making it psychologically and in reality difficult for consumers. An opt-out would just simplify it, and would take that thought process off the table for firms.

Q28 Alex Davies-Jones: You mentioned schedule 18 already and some of the missed opportunities that you see there. Some things that have been highlighted are drip pricing and misleading green advertising. Can I push you a bit further on the missed opportunities in schedule 18?

Rocio Concha: In what respect? On why we want them there?

Alex Davies-Jones: Yes. What you would like to be in there.

Rocio Concha: As I said, we would like to see fake reviews and drip pricing included, because there is clear evidence on them. There is also this issue of greenwashing. That should also be considered to be put in schedule 18—we feel that we know enough to include it there. We have not done as much work in that area as we have on drip pricing and fake reviews, but we would be very supportive of including it in schedule 18.

Why do we want these areas in the Bill, versus them being included later under the Secretary of State's powers? If they are not in the Bill, they will not be criminal offences, and they should be, because that will be a more credible deterrent for stopping these practices.

Q29 Vicky Ford: When the CMA was answering Dean Russell's question about how consumers will feel the benefits, one of the things it pointed to was its greater powers to fine companies that are misbehaving. Do you not think that the threat of fines on companies will have a trickle-down benefit to the consumers, and that it will mean that companies will think harder about not acting in ways that are to the detriment of consumers?

Rocio Concha: Absolutely. That is one of the powers of that power. Basically, companies will know that they will not be able to drag the system for years, as happened with Viagogo and some anti-virus subscriptions. They will know that the CMA will be able to act directly. Hopefully, that will make businesses that do not want to comply with the law think twice.

Matthew Upton: I really agree. I cannot share a specific example, but we have had a lot of conversations with regulators and competition authorities after we have uncovered bad practice. We have said, "Listen—go after them." We were met with a frustrated shrug of the shoulders—"There's no point because they will run rings around us for a huge amount of time and we will end up with nothing. We have to use our powers where we can more clearly have impact." As you say, that should now end. In a sense, we are more positive about the disincentive for poor behaviour than the fines themselves.

Rocio Concha: There is an opportunity in the Bill to make that deterrent even stronger. At the moment, in part 1 of the Bill there is the opportunity for private redress, which will allow businesses or consumers to apply to the court for compensation from companies that have breached the conduct requirements in part 1. It is very unlikely that consumers like each of us or a small business will use that power in the courts. But if we allowed collective redress—the co-ordination of consumers and businesses to get redress—that would be for those companies a credible additional deterrent against breaking the law. That is in part 1, in relation to competition.

There is also the opportunity to include a provision within the breaches of consumer law. At the moment, collective redress is allowed for breaches of competition law, but not for breaches of consumer law.

Anna Firth (Southend West) (Con): You have given us a simple, practical way to end subscription traps through the opt-out. Do you have any other simple, practical amendments in the locker that would help better protect my consumers in Southend-on-Sea?

Matthew Upton: I have a very simple one, which echoes what Rocio said earlier: to add drip pricing to the list of banned practices.

Rocio Concha: For me, it would be fake reviews. As I said, we will suggest the drafting of amendments, to make that easy to include in the Bill.

The Chair: I thank our witnesses very much indeed for your precious time this morning; we appreciate it.

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

10.23 am

Adjourned till this day at Two o'clock.