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GENERAL COMMITTEES

Public Bill Committee

DIGITAL MARKETS, COMPETITION AND CONSUMERS BILL

Fifth Sitting

Tuesday 20 June 2023

(Morning)

CONTENTS

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Saturday 24 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

Public Bill Committee

Tuesday 20 June 2023

(Morning)

[Dame Maria Miller *in the Chair*]

Digital Markets, Competition and Consumers Bill

9.25 am

The Chair: To avoid anybody expiring, please remove your jackets, if that would help. Please ensure that electronic devices are in silent mode. No food or drink is permitted during the sittings of the Committee, except for the water provided. *Hansard* colleagues would be incredibly grateful if Members could email their speaking notes or pass their written speaking notes on to the *Hansard* colleague in the room.

Today, we begin line-by-line consideration of the Bill. The selection list for today's sitting is available on the table in front of me. It shows how the selected amendments have been grouped together for debate, and I urge colleagues to examine it carefully, because some clauses are grouped together, which will make things a little more complicated as we move forward. Amendments grouped together are generally on the same or a similar issue. Please note that decisions on amendments do not take place in the order they are debated, but in the order that they appear on the amendment paper. The selection and grouping list shows the order of debates.

Decisions on each amendment are taken when we come to the clause to which the amendment relates. Decisions on new clauses will be taken once we have completed consideration of the existing clauses of the Bill. Members wishing to press a grouped amendment or new clause to a Division should indicate when speaking to it that they wish to do so. If colleagues want to speak to an amendment or take part in a stand-part debate, they should indicate that to me in the normal way, so that I can ensure that everybody who wishes to participate does so.

Clause 1

Overview

Question proposed, That the clause stand part of the Bill.

The Parliamentary Under-Secretary of State for Science, Innovation and Technology (Paul Scully): It is a pleasure to serve under your chairmanship, Dame Maria, and to address the Committee today. I thank all its members for volunteering to serve on this Committee, and I look forward to our discussions over the coming days and weeks.

Part 1 of the Bill provides for the pro-competition regime for digital markets. This is a targeted regime that will establish new, more effective tools for the Competition and Markets Authority and, in turn, the digital markets unit. That will allow them to proactively drive more dynamic digital markets and prevent harmful practices.

Clause 1 is purely introductory and provides an overview of part 1. I hope that hon. Members agree that this clause will therefore assist readers to navigate this part. I will briefly explain some of the language I will use in this series of debates. First, the Committee will hear me referring to the digital markets unit, or the DMU, which is a new administrative unit of the Competition and Markets Authority—the CMA. While the legal functions of the regulator under part 1 of this Bill remain those of the CMA, in practice it is likely that most of the responsibilities under part 1 will be carried out by staff within the DMU. Therefore, for consistency and ease, I will be referring to the DMU throughout the debates. The exception to that is the merger functions in chapter 5 of part 1, which will generally be carried out by those staff who deal with mergers more broadly.

Secondly, I will use the words "firm" and "undertaking" interchangeably. "Undertaking" is the word used in this part of the Bill and is an economic concept that is already used in the Competition Act 1998. The concept of an undertaking covers any person engaged in economic activity, regardless of its legal status and the way in which it is financed. "Persons" may be corporate bodies, and an undertaking may encompass multiple corporate bodies when they form a single economic unit under competition law. The Government's view is that an undertaking will often encompass the entirety of the relevant corporate group, but it may sometimes be a smaller subset of the corporate group.

I hope that that helps to clarify the language that the Committee will hear over the coming days.

Alex Davies-Jones (Pontypridd) (Lab): It is a genuine privilege to serve under your chairship, Dame Maria. I look forward to the weeks ahead. I imagine that the debates will be healthy but, in a real rarity for this place, relatively collegiate too. With that in mind, I will keep my comments on this clause brief. We all agree that this is an important that we will not seek to delay. Competition is vital to encourage innovation, and consumers deserve the best possible protections and value. We all want to get this right, and the Minister knows that. I want to say clearly that the Opposition welcome the Bill in principle. However, it will come as no surprise that we have some concerns that the Bill is lacking in some areas and could go further. We will explore those concerns in the hours and weeks ahead, and I look forward to debating the Bill further.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

Clause 2

Designation of undertaking

9.30 am

Alex Davies-Jones (Pontypridd) (Lab): I beg to move amendment 55, in clause 2, page 2, line 25, at end insert—

> "(5) An SMS investigation in subsection (4) may take account of analysis undertaken by the CMA, on similar issues, that has been the subject of public consultation, within the five years prior to Royal Assent of this Act."

This amendment and Amendments 56 and 57 ensure that the CMA is able to draw upon analysis and consultations that took place before the passing of this Act.

The Chair: With this it will be convenient to discuss the following:

Amendment 56, in clause 13, page 7, line 18, at end insert—

"(3) Consultation on matters relevant to a decision under section 14(1) undertaken before this Act is passed is as effective for the purposes of subsection (1) as consultation undertaken after it is passed, unless the CMA considers that there has been a material change of circumstances."

See statement for Amendment 55.

Amendment 57, in clause 47, page 26, line 10, at end insert—

"(3) Consultation on matters relevant to a decision under section 14(1) undertaken before this Act is passed is as effective for the purposes of subsection (1) as consultation undertaken after it is passed, unless the CMA considers that there has been a material change of circumstances."

See statement for Amendment 55.

Alex Davies-Jones: With your permission, Dame Maria, I will make some general points about clause 2 before turning to the amendments. Clause 2 gives the CMA the power to designate undertakings, as defined in clause 115, as having strategic market status in respect of a digital activity. Of course, only those undertakings designated with SMS will be subject to the digital markets regime.

The clause is vital in establishing the CMA's new functions that will allow it to regulate digital markets. We welcome efforts to put the previously established digital markets unit on a statutory footing, and we see it as a key step in establishing the CMA's responsibility for overseeing digital businesses of a certain size and status operating in the UK. As colleagues will note, this part of the Bill is seen by many as the UK's version of the EU Digital Markets Act as it has many similarities to it. For an undertaking to be designated as having SMS, the following conditions need to be met: the undertaking carries out a digital activity, which means either providing an internet service or digital content; that digital activity is linked to the UK; and the undertaking must have substantial and entrenched market power. The latter condition requires the CMA to look five years ahead and imagine future developments. The undertaking must also have a position of strategic significance in that it generates £25 billion in global turnover or £1 billion turnover in the UK.

We see those as sensible barometers for SMS status, but I want to take this brief opportunity to press the Minister further on the CMA's ability to look to the future. He will know—and, I am sure, agree—that the sectors we seek to regulate are often incredibly fast moving. We will debate this further shortly in clause 5, but I would be grateful for the Minister's thoughts on this particular point, especially around his assessment of the CMA's capacity and ability to essentially predict how changes across industries will emerge.

Amendments 55 to 57 would ensure that the CMA would be able to draw on analysis and consultations that took place before the passing of this Act. The amendments are critical to ensuring that the CMA is able to draw on the work that it did in shadow form once the Bill lands on the statute books. We cannot risk further delay to implementing this regime when we already know that the lack of competition regulation is having a significant impact on both consumers and businesses.

Last week we heard evidence from Professor Myers, who is a visiting professor in practice at the London School of Economics and Political Science. He had some interesting comments to make on the timeline for the Bill so far which I feel are worth reiterating here. Professor Myers said that

"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."—[*Official Report, Digital Markets, Competition and Consumers Public Bill Committee,* 13 June 2023; c. 46, Q72.]

That is why the amendments are so important, because they would allow the CMA to reflect on the lessons learned in the various consultations and analysis that it has already undertaken. I hope the Minister can see that these simple amendments would make sense for all involved.

The Chair: Before we proceed, I note that the shadow Minister has efficiently covered clause 2 stand part, so perhaps the Minister could also do so in his response, in the interests of time.

Paul Scully: Amendments 55 to 57 relate to ensuring that the DMU will be able to use, in its digital markets investigation, evidence that was gathered and consultations that were undertaken before the Bill becomes an Act. I am grateful for the opportunity to explain this really important aspect of the regime.

To provide some context, clause 2 will give the DMU the power to designate undertakings with strategic market status with regard to a specific digital activity. It sets out that, to designate a firm with SMS in respect of a digital activity, the DMU will need to be satisfied that a number of conditions detailed in clauses 3 to 8 are met. SMS designation is the gateway into the digital markets regime. Only the very small number of firms that are designated will be subject to the rules of the regime. The DMU will only be able to designate a firm following an evidence-based SMS investigation, which must include a public consultation that allows the firm itself and wider stakeholders to provide input on the designation decision. I explained earlier that I would use "firm" and "undertaking" interchangeably. Accordingly, when I say a "firm with SMS" or an "SMS firm", that is the same thing as a "designated undertaking".

Turning to amendment 55, I strongly support the point that the CMA should not have to repeat work that it has already done. It is for the DMU to decide what is and is not relevant analysis to its investigations, and it should be able to draw on insight from previous analysis or consultations when carrying out an SMS investigation where it is appropriate and lawful to do so. I am happy to confirm that the Bill does not prevent the DMU from doing that, provided that it acts in accordance with general public law principles, which would, for example, require it to ensure that evidence remained relevant. As such, I do not believe this amendment is necessary to ensure the DMU can reflect its existing evidence, understanding and expertise in its designation investigations. Further, the amendment could restrict the DMU's ability

[Paul Scully]

to draw on analysis that had not been the subject of consultation, even if the DMU considered that analysis to be relevant to an investigation.

Amendments 56 and 57 relate specifically to consultations on proposed decisions as part of the DMU's SMS and pro-competition intervention investigations respectively. The DMU can launch PCI investigations into suspected adverse effects on competition. We will return to PCIs when debating the clauses in chapter 4.

Consultation is a fundamental feature of the regime. It ensures that the decisions are based on the best available evidence and that the regime is transparent. For SMS and PCI investigations, the DMU must consult on the specific decisions that it intends to take at the end of its investigation. That will ensure that all relevant parties have an opportunity to feed in views and perspectives on what the DMU is proposing on the decision at hand, not simply on the general operation of the market.

As I have highlighted, it is absolutely right that the DMU will be able to draw on broader knowledge during the course of its investigations, but it should not be able to do away with the consultations entirely. The consultations are a necessary part of the procedural safeguards that ensure good decision making. I know that the Coalition for App Fairness said that it would raise that in its evidence. I am grateful for its evidence. I totally agree with it that the consumer should not start with a blank piece of paper, but I do not think that it is necessary to amend the Bill in order to be able to be able to use that existing analysis where it is there.

I will now turn to clause 2, which will give the DMU the power to designate undertakings with SMS with regard to a specific digital activity. To do that, the DMU will need to be satisfied that a number of conditions are met. The concept of "digital activities" is detailed in clause 3. To be in scope of the regime, the turnover condition must be met. That is explained in clauses 7 and 8.

The DMU must also consider that the digital activity is linked to the UK, and that the undertakings meet the SMS conditions in respect of the digital activity. That is to say that the firm has, in respect of the digital activity, substantial and entrenched market power, and a position of strategic significance.

Jerome Mayhew: It is a pleasure to serve under your chairmanship, Dame Maria. I will deal first with whether clause 2 should stand part of the Bill. It is of course axiomatic. Right at the heart of the purpose of the Bill is the designation of undertaking. Importantly, it references clause 7, which deals with the turnover of an undertaking. I am looking forward to what the Minister has to say about clause 7, particularly with reference to the levels of revenue or turnover for an undertaking. The Minister has given definitions for "undertaking" and "firm". I look forward to his further comments about those definitions, particularly when it comes to the classification of worldwide turnover and the revenue being undertaken within the United Kingdom. I am straying slightly into clause 7, but because there is reference to it in clause 2, I hope that is acceptable.

I am just flagging that there may be consideration under clause 7 as to the possibility of the manipulation of turnover where there is a global undertaking with global turnover of less than £25 billion, but where the turnover associated with the United Kingdom is approaching the £1 billion mark. It is foreseeable that we could start to have economically significant manipulation associated with the definition of turnover—I flag that because it is referred to in clause 2. Of course, the main body of clause 2 is right at the heart of the Bill. I welcome the constructive opening comments from the hon. Member for Pontypridd, and I look forward to engaging with her and the other Members of the Committee on that basis over the coming days and, I am afraid to say, probably weeks. *[Laughter.]*

I turn to amendment 55. This Bill is already hundreds of pages long, and it was often noted in my former career at the Bar that legislation gets longer and longer as it seeks to become more and more specific. However, there is a risk with seeking to list all the elements that we wish to cover. By having a list, we encourage exemptions and the seeking out of elements that are not quite on the list. Through that mechanism, undertakings can avoid the intention while complying with the letter. In my submission, the approach taken by the Government in the current drafting of clause 2 is the right one, because, as the Minister has already mentioned, it gives the DMU the wide scope it needs to take account of work that has already been done without constraining it by having a specific list, as amendment 55 would require. Proposed subsection (5), which the amendment would insert, says that an SMS investigation

"may take account of analysis undertaken by the CMA, on similar issues, that has been the subject of public consultation, within the five years prior to Royal Assent of this Act."

Who could object to that? However, the Minister made the point that it is already encompassed within the powers of the DMU under the current drafting of the Bill. If we say that this is specifically included in the body of text, it prompts the question: what if someone is just outside that but would otherwise properly be within the consideration of the DMU? It raises arguments that will be explored via litigation, particularly by organisations that have substantial turnover and considerable economic interests to defend, as we heard in oral evidence over the past week.

The last thing we want is to have legislation that invites clarification by the courts. Although I and the Minister are very sympathetic to the intentions behind amendment 55, I fear that it might have the unintended consequence of increasing the chances of prolonged litigation as we seek to explore what exactly is and is not within scope of the DMU. For that reason, I do not support the amendment.

Alex Davies-Jones: I welcome the comments from the hon. Gentleman and the Minister, but we would like to press the amendment.

9.45 am

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 8.

Division No. 1]

AYES

Coyle, Neil	Malhotra, Seema
Davies-Jones, Alex	Mishra, Navendu
Dowd, Peter	Thomson, Richard

NOES

Carter, Andy	Scully, Paul
Ford, rh Vicky	Stevenson, Jane
Hollinrake, Kevin	Watling, Giles
Mayhew, Jerome	Wood, Mike

Question accordingly negatived.

Clause 2 ordered to stand part of the Bill.

Clause 3

DIGITAL ACTIVITIES

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clauses 4 to 8 stand part.

Alex Davies-Jones: We do not oppose clauses 3 to 8, on the basis that they set out what constitutes a digital activity for the purpose of part 1 of the Bill. Clause 3 is an important clause with a number of subsections that clarify the exact definitions of digital activities and provision of services. These are all critical to empowering the DMU, which, if properly supported, has the potential to be a world-leading regulator and is ultimately the critical first step in modernising our competition policy.

We can all agree that the UK has the potential to be recognised as a global leader in technology and innovation, and capitalising on that is vital to our economic growth, yet the current situation, which sees a small number of firms dominate digital markets, is reducing competition for other businesses. Ultimately, it is consumers who are paying the price in the products and services we all receive.

This clause is crucial to defining exactly which digital activity will fall under the regulation, and it is welcome. After all, Labour has been clear and has long called for measures to regulate the digital space more widely. We specifically support the clause, as it gives us all clarity on how we can define digital activity.

Subsection (3), which outlines how the regime will give the CMA the power to treat multiple digital activities carried out by a single undertaking as a single digital activity, is particularly welcome. For different activities to be grouped together, they must either have substantially the same or similar purposes—for example, a social media provider offering a number of internet services under different brands with a common function, allowing users, such as advertisers and publishers, to interact and communicate with each other; or can be carried out together to fulfil a specific purpose—for example, services and products that are part of the same supply chain, such as services selling advertisements and the provision of an advertising platform. We all know the rapid rate at which companies can develop and expand, so it is particularly welcome to see this subsection.

Subsection (4), which sets out that where the CMA is required to give or publish a notice or other document under part 1 of the Bill, it may describe the digital activity by reference to the nature of that activity, brand names, or a combination of these, is also vital to the success of the regime. We clearly support the clause, which we regard as crucial to establishing the barometers of the CMA's regulatory powers, and we have therefore not sought to amend it at this stage.

Clause 4 sets out the ways in which a digital activity could be linked to the UK for the purposes of designation. We are pleased to see that the clause considers the number of UK users in its criteria, as we have all read the reports of tech firms threatening to leave the UK if other legislation places requirements on them in future. That is why, with regard to pro-competition law, the UK user base must be considered when it comes to implementing this regime.

Once on the statute book, the DMU will be empowered to oversee a new regulatory regime for the most powerful digital firms, promoting greater competition and innovation in these markets and protecting consumers and businesses from unfair practices. It is vital that UK-specific connections are established in the Bill. The clause is also an important opportunity to highlight the significant impact that inaction is having on our digital markets in the UK. As we know, these markets are characterised by having just a few big tech firms with entrenched market power and the ability to shape the market to the detriment of consumers and smaller businesses. The 2020 CMA market study said:

"Both Google and Facebook grew by offering better products than their rivals. However, they are now protected by such strong incumbency advantages—including network effects, economies of scale and unmatchable access to user data—that potential rivals can no longer compete on equal terms."

The current balance of power means the big tech companies often have an unfair advantage over their competitors and dominate key markets. For example, virtually all UK smartphones run either Apple or Google operating systems. In 2018, Google had a more than 90% share of the UK search advertising market, and Meta owns 50% of the UK's digital display advertising space. Thanks to their dominance, Apple and Google made in excess of £4 billion of profits from their mobile businesses in 2021. The CMA estimates that Facebook and Google made profits of £2.4 billion above what would be considered a fair return in the digital advertising market in 2018. On Meta's market dominance, the CMA noted:

"Facebook's average revenue per user in the UK has increased from less than £5 in 2011 to over £50 in 2019."

The consequence is worse outcomes for smaller businesses and consumers. That is why we welcome the clarity in the clause and support its inclusion.

Clause 5 requires the CMA to look at the next five years when assessing whether an undertaking has substantial and entrenched market power in respect of a digital activity. Specifically, it must be satisfied that the undertaking's market power and influence in the digital activity is neither small nor transient. Although we welcome that requirement—ultimately, none of us wants companies to be stifled to their detriment—I hope the Minister will flesh out exactly how he thinks the clause will work in practice. The CMA is clearly well placed to assess digital firms' plans for progression and development over the next five years, but we are concerned that the clause is broadly asking the impossible, given the rate at which technological developments and expansion can occur in this space. I would therefore welcome the Minister's assessment.

The clause further outlines that the CMA must take into account expected or foreseeable developments if it does not designate the undertaking as having strategic market status in respect of the digital activity to which

[Alex Davies-Jones]

the investigation relates. Again, that is the kind of welcome and balanced approach to designation that we would expect of a new regulatory regime, but will the Minister confirm how the Bill will ensure that such decisions and designations are made public so that the transparency of the regime as a whole is enhanced? It would be helpful for all of us—parliamentarians, firms, civil society bodies and stakeholders in the sector—to understand how designations are made, and transparency is central to that. I hope the Minister will address those points. We seek some assurances, but I am sure we will be happy to support the clause as it stands.

Clause 6 sets out the terms by which an undertaking has a position of strategic significance. It sets out a number of conditions, including size, scale and the role the firm plays in terms of digital activity more widely. We support the need for flexibility in the regime, so paragraphs (c) and (d) are particularly welcome. Paragraph (c) is intended to cover circumstances in which the undertaking can use its position in the digital activity to leverage or expand into a range of other activities. That is vital, because companies have to be agile to dominate a variety of markets, and they can abuse that. Paragraph (d), which is intended to cover scenarios where an undertaking's position enables it to determine or substantially influence how other undertakings operate—in other words, to set the rules of the game—is equally important.

It would, however, be remiss of me not to highlight our slight concerns about subsection (2), which gives the Secretary of State the power to vary the conditions set out in the Bill. The success of the regime relies on scrutiny and direction from the Government, but will the Minister clarify exactly what type of scenario would require the Secretary of State of the day to vary the conditions?

As I have said, we support an agile approach to regulation. After all, even across other jurisdictions, the idea of regulation and encouraging pro-competition across our digital markets is a complex process for legislation. We wholeheartedly support the need to get this Bill on the statute book—it is something Labour has long called for—but none of us wants the regulator to be undermined or constrained by the opinions of the Secretary of State of the day, so I would appreciate some reassurance from the Minister on that point before proceeding.

Clause 7 outlines the turnover conditions that must be met for the CMA to designate an undertaking as having strategic market status in respect of a digital activity. Subsection (2) sets out that the turnover condition is met if the CMA reasonably estimates that the undertaking's UK turnover in the relevant period exceeds £1 billion or that its global turnover in the relevant period exceeds £25 billion. We welcome the clarity that only one of these thresholds needs to be met for the turnover condition to be met and, if the undertaking is part of a group, the turnover of that pooled group should be considered, which is a matter we will come to when we debate clause 114.

I will take this opportunity to highlight the fact that while the £1 billion and £25 billion turnover figures may seem high, they show the sheer market dominance that certain firms have over our digital markets. Setting the conditions at the current rate will not act as a deterrent for growth, which, of course, none of us want to see. We particularly welcome subsection (5), which requires the CMA to keep the thresholds under review and, from time to time, to advise the Secretary of State as to whether they are still appropriate and proportionate.

It would be helpful for all of us in the room and those listening elsewhere to understand how the Minister envisions that this will work in practice. Will it be on an annual review basis, and when will we have clarity on that? Will the reviews be made public to ensure proper and appropriate scrutiny? These are small points, but given the lack of transparency around the regime as it stands, I would be grateful for the Minister's assurances. Despite that, again, we support the clause as it stands and do not seek to amend it at this stage.

Finally—thank you for your indulgence, Dame Maria—clause 8 makes provision about the value of an undertaking's or a group's UK or global turnover in the relevant period for the purposes of the turnover condition. We see this as a fairly procedural clause, which outlines the definition of global turnover by which the CMA will make its decisions on designation. We note that subsection (4) gives the Secretary of State the power to make regulations providing further detail about how the total value of an undertaking's or a group's UK turnover or global turnover is to be estimated for the purposes of the turnover condition. Again, we feel that this could be problematic, and I would welcome the Minister's reasoning as to why and in what instance the Secretary of State would need to make regulations to provide that further detail.

If the CMA is to be trusted to make reasonable decisions on a group's turnover for the purposes of the turnover condition, it seems odd to give the Secretary of State the power to provide further detail when the merits or even the content of such further detail is so ambiguous. I hope the Minister can provide clarity and expand on that point. That aside, we support the clause because the turnover point is crucial for designation. The clause should remain and it should stand part of the Bill.

Jerome Mayhew: I briefly made mention of clause 7 in my earlier remarks. I am interested in the Minister's view, particularly on clause 7(2)(b) and the definition of UK-related turnover being £1 billion or more. There is a legitimate question to be asked, because while that is a substantial amount of money, it is not that great in terms of global business. As I mentioned, I could foresee a situation whereby when a global undertaking's global turnover is substantially less than £25 billion and its UK-related turnover is approaching the billion-pound mark, there might be a perverse incentive to direct investment and activity away from the United Kingdom because of that cliff-edge definition. I would love to propose a better alternative—it is above my pay grade—but I highlight that as being an issue we might need to take into account.

Paul Scully: I will cover most of the points in my main speech, but the reasons for designation of SMS status will be published, so that will be public. I will cover the points on the Secretary of State and on turnover. Clause 3 sets out what constitutes a digital activity for the purposes of the digital markets regime.

Digital activities are defined as the provision of digital content, such as software, operating systems or applications; services provided by means of the internet, such as an e-commerce platform; and any other activity carried out for the purposes of providing digital content or internet services, such as background processes.

A firm can only be designated with SMS in respect of a digital activity. The restriction to digital activities is appropriate for the new regime, which responds to the specific characteristics of digital markets, such as network effects and data consolidation, which makes them extremely fast-changing as well as prone to tip in favour of a few firms. With all of this, the definition of digital activities has been designed so that our regime will be able to handle the complexities of different and fast-evolving digital business models, and that is reflected in the powers given to the Secretary of State.

Clause 4 sets out when the DMU will be able to consider a digital activity as being linked to the UK for the purposes of designation. As we have heard, the global nature of digital markets means that business actions in other countries can impact on consumers and businesses in the UK, so it is important to allow the DMU to address harm to competition in the UK, even when all or part of a firm's physical operations are located elsewhere.

10 am

Clause 4 will allow the DMU to do just that. The DMU will be able to designate an undertaking in respect of a digital activity, if the activity has a significant number of UK users, the undertaking carries on business in the UK in relation to the activity, or the digital activity or the way it is carried on is likely to have an immediate, substantial and foreseeable effect on trade in the UK. That is a proportionate approach, which is consistent with global practices.

Clause 5 requires the DMU to carry out a forward-looking assessment when considering whether an undertaking has substantial and entrenched market power in respect of a digital activity. The Government expect that, when considering whether a firm has substantial and entrenched market power, the DMU will consider whether a firm exercises significant influence in respect of an activity. That could be for a number of reasons, including where users of a firm's product or service lack sufficient alternatives or there are few other suppliers. The DMU's assessment will be evidence-based. The DMU will need to consider whether power is entrenched—that is, determining that it is not temporary and is likely to persist.

Clause 6 sets out what constitutes a position of strategic significance, which is the second of the two SMS conditions which the DMU must assess. The clause sets out the specific factors that the DMU must take into account when assessing whether a firm has a position of strategic significance. Those factors align with the challenges identified by reports such as the Furman review.

A firm has a position of strategic significance where one or more of the conditions set out in clause 6 is met. Those are: the firm has a position of significant size or scale in respect of the digital activity; a significant number of other firms use the activity in their business, such as where the firm operates an ecosystem on which others rely; the firm is able to leverage its position to expand into other activities, for example by bundling products together; and the firm's position allows it to determine or substantially influence how other firms operate, such as by setting the rules of the game, as it were.

It is important for the regime to be capable of adapting to change, such as the discovery of new technologies or changes to business models. That is why clause 6 also gives the Secretary of State the power to amend the conditions as necessary. The affirmative resolution procedure is the appropriate mechanism for the power, as the parameters of the DMU's power to designate firms will define the scope of the regime.

Clause 7 sets out the turnover condition. It ensures that the DMU cannot designate a firm as having SMS in a digital activity unless the DMU estimates that the firm's, or group's, global or UK turnover exceeds minimum thresholds. The clause also gives the Secretary of State the power to amend the turnover thresholds by regulations subject to the affirmative procedure. It ensures that only firms with a 12-month turnover of more than £1 billion in the UK or £25 billion globally are in scope of the regime.

Seema Malhotra (Feltham and Heston) (Lab/Co-op): The Minister may have explained this elsewhere, but I am wondering about the thresholds of £1 billion and £25 billion. Will those thresholds be assessed over time, because firms' turnover and so on can change from year to year? When is the point at which assessment is made, and will the threshold change subsequently if turnover drops?

Paul Scully: The hon. Lady makes a good point, which relates to what my hon. Friend the Member for Broadland said about fluctuation of turnover and what companies may do with their turnover. It might be a good time to tackle that.

First, the turnover of the whole corporate group needs to be considered. That approach will help to avoid complications in revenue allocation, which could result in firms avoiding investigation and designation by virtue of their corporate structure or accounting practices. The DMU will be able to consider the past two periods of 12 months, not just the more recent one when calculating turnover—that should cover fluctuations, which the hon. Member for Feltham and Heston asked about. Markets can fluctuate, and turnover is not the same as market power; it is just part of the definition. The flexibility will also reduce the likelihood of the figures being manipulated and circumvented for the purposes of the turnover threshold.

Importantly, the use of the turnover thresholds will provide certainty to the vast majority of firms that they cannot be in scope of the regime, as they will easily be able to determine that their turnover is below the thresholds. However, if a firm meets the turnover threshold that does not necessarily mean that it will be subject to an investigation. The DMU will also need to have reasonable grounds to consider that the firm meets the two SMS conditions in respect of a digital activity that is linked to the UK—that is, that it has substantial and entrenched market power, and a position of strategic significance in respect of that activity.

[Paul Scully]

Clause 7 will give power to the Secretary of State to amend those thresholds. That will ensure that they remain relevant as digital markets develop, evolve and grow over time. The DMU will be required to keep the thresholds under review and advise the Secretary of State whether they are still appropriate. The Government anticipate that the DMU may take into account factors such as inflation and currency fluctuation when doing so, using its expertise and while having its finger on the pulse of digital markets. As was the case for clause 6, the affirmative resolution procedure is the appropriate mechanism, as this is a significant power that would alter the scope of the regime.

Clause 8 relates to the turnover condition and sets out further details about the meaning of global and UK turnover. Any activity of the firm will be considered when estimating global turnover. Both digital and non-digital activities will be considered, making it easier for firms to know whether they are in scope without having to distinguish between different types of activity.

For UK turnover, any activity of the firm will be considered, but the turnover must relate to UK users or UK customers. The clause also gives the Secretary of State the power to make provision about how turnover should be estimated, including provision about amounts that should or should not be regarded as comprising turnover. That level of detail would not be suitable for primary legislation. We believe a negative procedure is most appropriate because of the technical and non-controversial nature of any regulations.

Question put and agreed to.

Clause 3 accordingly ordered to stand part of the Bill.

Clauses 4 to 8 ordered to stand part of the Bill.

Clause 9

INITIAL SMS INVESTIGATIONS

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clauses 10 to 18 stand part.

Paul Scully: Clause 9 relates to initial SMS investigations. It sets out the circumstances under which the DMU can start an initial SMS investigation. An initial SMS investigation is for circumstances in which a firm either is not designated at all or is designated but in a different digital activity. The DMU can open an investigation only if it has reasonable grounds for considering that the tests for designation may be met—that is to say, most importantly, the tests of substantial and entrenched market power and a position of strategic significance in respect of a digital activity. Clause 9 does not require the DMU to open an investigation as it should be able to prioritise investigations to ensure its resources are targeted at the most pressing competition issues.

Clause 10 relates to further SMS investigations—the other type of SMS investigation. A further investigation is an investigation into whether to revoke an existing designation or designate a firm again in respect of the same digital activity. A further SMS investigation may also look at whether to designate a firm in respect of a similar or connected digital activity. The investigation will consider whether to make provision about existing obligations, which I will say more about on clause 17.

It is important that a designation should not continue indefinitely. That is why the DMU must review any designation before the end of the five-year designation period. The DMU will need to open a further SMS investigation at least nine months before the end of the five-year designation period if it has not already done so. It will either revoke a designation, if the firm no longer meets the criteria, or decide to designate the firm again for another five-year period. The DMU will be able to open a further investigation at any point during an existing designation. For instance, if the DMU considers that a firm no longer has substantial and entrenched market power in the digital activity, then it is important that the designation can be reviewed and, if necessary, revoked early.

Clause 11 sets out the procedure that the DMU must follow for either an initial or a further SMS investigation. To ensure that the regime is fair and transparent, the DMU will be required to give the firm a notice when it starts an investigation, stating the purpose and scope of the investigation as well as its length. For initial SMS investigations, the notice must set out the DMU's reasonable grounds for considering that the designation tests may be met. The DMU must also publish a statement summarising the notice in order to make the wider public aware that it is opening an investigation. That notice will trigger the start of the investigation period.

Clause 12 sets out that the DMU may close an initial SMS investigation at any point before reaching a final decision on designation. It is important that that option is available to the DMU for initial investigations as there may be situations where flexibility is needed. For instance, unexpected circumstances may arise while an investigation is ongoing. The Government believe that in order to reprioritise resources if needed, the DMU should have the discretion to close an initial SMS investigation before reaching a final decision.

Clause 13 sets out that the DMU must consult on its proposed decisions as part of an SMS investigation. It is important that the firm under investigation, as well as all relevant parties, has an opportunity to feed in views and perspectives to the DMU's investigation process. That consultation is also important in providing for a transparent regime that builds on the best evidence available.

Clause 14 sets out what the DMU must do at the end of an SMS investigation. For a further SMS investigation, the DMU must decide whether the existing designation should be revoked or whether the firm should continue to be designated in the same activity. The DMU must also decide whether to make provision in relation to existing obligations. If relevant, the DMU must decide whether the firm should be designated in a similar or connected activity.

For an initial investigation, the DMU should also reach a decision when it has not closed the investigation early under clause 12. The DMU will need to give the firm a notice of its decision on or before the last day of the investigation period, which lasts up to nine months. It must also publish a summary statement. If for some reason the DMU does not give the decision notice to

the firm by the deadline, by default the firm is not designated, or is no longer designated, in the relevant digital activity.

Clause 15 sets out the requirements for decision notices when the DMU decides to designate a firm as having SMS in respect of a digital activity. The decision notice needs to be given to the firm. Among other things, the notice should include a description of the firm, a description of the digital activity, any provision made regarding existing obligations, per clause 17, and the DMU's reasons for its decisions.

Clause 16 sets out the requirements for decision notices when the DMU decides to revoke an existing designation following a further investigation. A designation will no longer be appropriate once a competitive environment has developed. The decision notice needs to be given to the firm, as set out in clause 14(2).

Clause 17 gives the DMU the power to apply transitional arrangements to obligations revoked as a result of the DMU's ending an SMS firm's designation in relation to a digital activity, but only for the purpose of managing impacts of the revocation on persons who benefited from those obligations, and only in a way that appears to the DMU to be fair and reasonable. That will help ensure a smooth transition for wider market participants.

Clause 17 also allows the DMU to continue to apply existing obligations, such as conduct requirements or pro-competition orders. That is for cases where the new designation is in respect of the same digital activity, or an activity that is similar or connected to the previous designated digital activity. The clause will ensure that existing obligations do not automatically end where they still remain appropriate following a further SMS designation. The power to continue to apply obligations will be subject to the DMU's ongoing duty to monitor and review obligations, which means that the DMU cannot continue to apply obligations that are no longer appropriate.

Finally, clause 18 sets out that a firm will be designated as having SMS in respect of a digital activity for five years, beginning with the day after the day on which the SMS decision notice is given. We believe that five years strikes the right balance between giving enough time for the regulatory interventions to have an impact on the one hand, and making sure the obligations on the firm do not last longer than necessary on the other.

Alex Davies-Jones: Labour broadly welcomes this grouping. I will make some brief comments about clauses 9, 10 and 11 before addressing my amendments, and will then come on to clauses 12 to 18.

As we know, and as the Minister has outlined, clause 9 concerns initial SMS investigations. We see the clause as an important start point that will allow the CMA to have clarity over exactly how it will begin the designation process for the regulatory regime. Subsection (1) sets out that the CMA may begin an initial SMS investigation where it has reasonable grounds to consider that it may be able to designate an undertaking in accordance with clause 2. We believe that that is vital and that the CMA is given the statutory powers to investigate fully. We agree that "reasonable grounds" are an important way to capture the beginnings of the process.

It is clear that the regime will apply only to firms with significant market dominance, as we have already discussed, but it is right that the CMA should use a logical approach to establish SMS firms from the outset. We also agree that it is right that where the CMA considers that the digital activity is similar or connected to a digital activity in respect of which the undertaking is already designated, it may instead begin a further SMS investigation.

Similarly, we agree with the wording of subsection (3), which clarifies that the CMA has the power to open a designation investigation in respect of a digital activity even if it has previously decided not to designate the undertaking as having SMS in respect of that digital activity. That would include circumstances where a previous designation had ended or where a previous decision had been taken not to designate the undertaking in respect of that digital activity. It is incredibly important that the CMA should not be restricted in terms of its designations, so this clarity is welcome.

10.15 am

Labour welcomes clause 10, which we see as central to providing the CMA with the statutory footing to ensure that its investigations and designations into SMS firms are thorough and suitable. We particularly agree with subsection (1), which sets out that the CMA may begin a further SMS investigation in relation to a designation at any time during the designation period. The CMA must be empowered to act rather than be restricted, although it must also be well resourced in order for these powers to be put to use in reality. Plenty of us are concerned about the significant workload that the regime could place on the CMA more widely; I would welcome the Minister's thoughts on that particular point.

In addition, we support subsection (3), which sets out the various matters with which further investigations are concerned. An important point worth clarifying for the purposes of this legislation is that further SMS investigation is an investigation into whether to revoke a designation or to designate an undertaking again in respect of the same digital activity. It is also concerned with whether to make provision under clause 17 in relation to existing obligations.

Similarly, subsection (4) sets out that a further investigation may also concern whether or not to designate an undertaking in respect of a digital activity that the CMA considers to be similar or connected to the relevant digital activity that is defined later on. That is a nuanced but important point. We all want to see the regime capture the far-reaching power that SMS firms have across different domains and digital activities. We therefore support the clause and have not sought to amend it at this stage.

As with previous clauses relating to procedural matters, Labour supports clause 11, although we have tabled some important amendments.

The Chair: Order. I ask the hon. Lady to restrict her comments to the stand part debate on clauses 10 to 18. We debate the amendments a little later.

Alex Davies-Jones: Yes, Dame Maria.

I turn to clause 11. We see the clause as important in establishing exactly how the CMA should carry out an SMS investigation. It is important for all involved—from the CMA to regulated firms—that there should be some transparency over exactly how the CMA will begin an SMS investigation, and under what circumstances.

[Alex Davies-Jones]

We particularly welcome provisions for investigation notices; it is important that all parties are given adequate time and notice in order for this regime to fully succeed.

As I have already noted, we particularly welcome subsection (5), which sets out that as soon as reasonably practicable after giving an SMS investigation notice, or a revised version of the notice, the CMA must publish a statement summarising the contents of the notice and give a copy of the statement to the Financial Conduct Authority, the Office of Communications, the Information Commissioner, the Bank of England and the Prudential Regulation Authority. That is an important point for transparency—a common theme, I am afraid, to which I will continue to return as the Bill progresses through Committee.

As we all know, there are certain aspects of digital markets that make them prone to creating tipping points, where very large online platforms have huge and entrenched market power. The lack of transparency is a particularly problematic issue, and one that the Bill must seek to address. For example, in online advertising a complicated bidding process may take place very quickly—advertisers may not able to scrutinise decisions about where their ads are placed and how much they cost. That has a knock-on impact by exacerbating other competition problems, as people and businesses are unable to make informed choices.

We see the transparency and publication of these investigation notices as an important part of the package around getting the regime right. We welcome the fact that the Financial Conduct Authority, Ofcom, the Information Commissioner, the Bank of England and the Prudential Regulation Authority will all have sight of such notices, but what assessment has the Minister made of making these notices public? Of course, Labour recognises that there is a difficult line to toe here in terms of publishing information that could impact markets and potentially cause detriment to companies' market share or worth. However, could a sensible middle ground be reached?

I move on to clause 12. Labour welcomes clause 12, which outlines the circumstances in which an initial SMS investigation may be closed without a decision. We recognise that giving the CMA that flexibility is important. None of us wants undue time limits to be placed on its decision-making and designation process. Central to the success of the regime is that the CMA should be empowered to take decisions within its remit. We all recognise that the CMA is a proactive regulator that currently seeks to use its soft power alongside its formal powers, but it is currently being hampered by its existing legal powers. That is causing a disparity between its ability to enforce competition and consumer law—a significant issue that stakeholders, including Which?, Citizens Advice and others, have repeatedly raised, including during our evidence sessions.

We see clause 12 as an important clause that gives the CMA the ability to work in an agile manner, according to workload and priorities. As with previous clauses, we particularly welcome subsections (2) to (4), which set out that if the CMA decides to close an initial SMS investigation, it must give the undertaking under investigation notice of the closure, including the reasons, and publish a statement summarising the contents of the notice. Labour supports the clause, and we have not sought to amend it at this stage.

Clause 13 requires the CMA to consult on any decision that it is considering making as a result of an SMS investigation. Subsection (1) requires the CMA to carry out a public consultation and bring it to the attention of such persons as it considers appropriate. Of course, there is a balance to strike here: public consultation is an important part of any regulatory regime, but none of us wants to see the CMA bound by delays and, as a consequence, unable to regulate effectively. I would be grateful for some clarity from the Minister on his understanding of the "appropriate" person, as outlined in subsection (1), which reads:

"The CMA must—

(a) carry out a public consultation on any decision that it is considering making as a result of an SMS investigation (see section 14(1)), and

(b) bring the public consultation to the attention of such persons as it considers appropriate."

I imagine the Secretary of State will be one such person, but will the Minister clarify who else he envisions will be privy to the public consultations? In addition, I would be grateful if the Minister again confirmed whether the public consultations will be published. Consultation is an important part of any regulatory regime, particularly this one, which aims to do a colossal thing in regulating our digital markets and, ultimately, to encourage competition. Labour recognises the extent of the challenge, and there is a fine balance to be struck between consultation and stifling action. We do not want to see consultations get in the way of the regime more widely. We have had enough delay as it is, and I am sure the Minister will not mind my highlighting just how many consultations the Bill has endured on its journey so far.

In 2018, the Government established a digital competition expert panel to examine competition in digital markets. In 2021, the DMU was set up within the CMA to oversee competition in the digital markets sector. Between July and October of that year, the Government ran a consultation on plans for a new regime. Almost a year on, in May 2022, the Government responded to the consultation, setting out the final position on a new regime. There has already been significant delay to getting the Bill to this stage, and we already know from its impact assessment that the regime is unlikely to be fully operational until 2025, so I would be grateful if the Minister could reassure us all that the CMA will not be delayed by consultations, as the Government seemingly have been. That point aside, we understand the value of the clause and will support it.

Clause 14 sets out what the CMA must do at the end of an SMS investigation. It broadly clarifies the actions and decisions that the CMA must take in deciding whether an undertaking will be designated as SMS in respect of its digital activity. Again, we welcome subsection (2). We also support subsection (5), which sets out that the CMA must publish a statement summarising its contents as soon as reasonably practicable after giving an SMS decision notice. This is an important clause, which we see as a practical outline of how the CMA will be empowered to act on concluding its initial SMS investigations.

Clause 15 sets out a requirement for SMS decision notices where the CMA decides to designate an undertaking as having SMS in respect of a digital activity. We

welcome the clarity afforded in subsection (2), which outlines on the face of the Bill the exact contents that the SMS decision notice must include. This ranges from a description of the designated undertaking to a statement outlining the designation period and the circumstances in which the designation could be extended.

It is also worth referring specifically to subsection (4), which clarifies that giving a revised SMS decision notice to provide for the designation of an undertaking does not change the day on which the designation period in relation to that designation begins. That is a welcome clarification, which I know will be useful for undertakings and civil society to understand as we seek to establish the regime in full.

Although Labour supports the clause, I am interested to know the Minister's thoughts on subsection (5), which states:

"As soon as reasonably practicable after giving a revised SMS decision notice, the CMA must publish a statement summarising the contents of the revised notice."

Again, that is rather vague, so will the Minister clarify what he considers to be "reasonably practicable"? Ultimately, companies and consumers alike would benefit from a timely and transparent approach to the regulation. Although I am reassured by the CMA's ability, we and many others have slight concerns about its capacity and resource, as I have previously outlined, so I would be grateful for the Minister's assurances on that issue.

Clause 16 sets out the requirements for SMS decision notices where the CMA decides to revoke an existing designation as a result of a further SMS investigation. There is no need for me to repeat myself. We support the clause, and it is important for the CMA to be empowered to act flexibly, particularly given the ever-changing nature of digital markets. Again, we welcome clarification that the CMA will provide for the revocation to have effect from an earlier date—for example, where the undertaking has already ceased to engage in the relevant digital activity. None of us wants to see overregulation, so we support the clause and have not sought to amend it. While I am all for a collegiate approach to legislating, I assure the Minister and my Whip that we do not agree with the Bill in full, as can be seen from the amendment paper. However, on the points covering designation, we welcome the progress and clarity of the clauses, which we see as fundamental to the regime's wider success.

Labour supports clause 17, which aims to define the nature of an existing obligation, which is any conduct requirement, enforcement order, final offer order or pro-competition order applying when a designation is revoked or another one is made after a further SMS investigation. We particularly welcome subsections (3) and (4), which set out that the CMA may apply any existing obligation in respect of a new designation, may modify that obligation in respect of a new designated activity, and may make transitional, transitory or saving provision in respect of that obligation. Again, we see that as standard procedure to allow the regime to operate in full and have not sought to amend the clause.

Finally—colleagues will be pleased to hear that—clause 18 establishes that where the CMA decides to designate an undertaking as having SMS in a digital activity, the designation period is five years, beginning the day after the day on which the SMS decision notice is given. We welcome other provisions later in the Bill on the circumstances in which the designation period may be extended or revoked. Labour recognises that assessing the regulatory regime in digital markets will take some time, so we believe a designation period of five years is a sensible approach. Given certain undertakings' market dominance, we think five years is a reasonable timeframe to allow pro-competition mechanisms to take effect and consumers to see that reflected in the options and prices afforded to them. We therefore support the clause and have not sought to amend it.

Paul Scully: On the two questions of what is reasonably practical and practicable in terms of time, we do not want to set an artificial deadline but want to make sure that the DMU can act as quickly as possible. As the hon. Member for Pontypridd rightly says, and we have said all the way through, technology and digital markets move really quickly. That is why we want to make sure that decisions are out of the door as quickly as possible, so that people can see what is happening as soon as possible. The decisions will go to the appropriate persons as described, which are relevant third parties and the SMS firms themselves.[1] It is for the CMA to determine who is a relevant third party, but that will clearly include any challenger tech companies that may be affected by the initial SMS designation.

Question put and agreed to.

Clause 9 accordingly ordered to stand part of the Bill.

Clause 10 ordered to stand part of the Bill.

Alex Davies-Jones: I beg to move amendment 46, in clause 11, page 6, line 36, at end insert—

'(6) The CMA must provide a copy of the SMS investigation notice to any person who requests a copy.'

This amendment and Amendments 47 to 52 aim to ensure access to information relevant to the regime is available publicly.

The Chair: With this it will be convenient to discuss the following:

Amendment 47, in clause 12, page 7, line 9, at end insert—

'(5) The CMA must provide a copy of the notice under subsection (2) to any person who requests a copy.'

See the statement for Amendment 46.

Amendment 48, in clause 14, page 7, line 36, at end insert—

'(5A) The CMA must provide a copy of the SMS decision notice to any person who requests a copy.'

See the statement for Amendment 46.

Amendment 49 in clause 26, page 14, line 19, at end insert—

'(3A) The CMA must provide a copy of the SMS decision notice to any person who requests a copy.'

See the statement for Amendment 46.

Amendment 50 in clause 28, page 15, line 20, at end insert—

'(5) The CMA must provide a copy of the notice to any person who requests a copy.'

See the statement for Amendment 46.

Amendment 51 in clause 30, page 16, line 13, at end insert—

'(4A) The CMA must provide a copy of the notice to any person who requests a copy.'

See the statement for Amendment 46.

1. *[Official Report, 10 July 2023, Vol. 736, c. 3MC.]*

Amendment 52 in clause 46, page 25, line 38, at end insert—

'(5) The CMA must provide a copy of the PCI investigation notice to any person who requests a copy.'

See the statement for Amendment 46.

Alex Davies-Jones: These important amendments to clause 11 that we have tabled are designed to encourage a more transparent approach to SMS investigations. As repeatedly stated, transparency, openness and accountability have to be central to the Bill working in practice and in reality. The Minister will note that this is a simple set of amendments, which will broaden the regime's openness. Labour firmly believes that a transparent approach where possible and where the impact on markets is limited will be vital to its success. Will the Minister share his thoughts on our amendments? They seek to make the Bill more transparent for everyone and I look forward to some clarity.

Paul Scully: Amendments 46 to 52 would require that the notices the DMU must provide to an SMS firm in respect of an SMS designation, conduct requirements and PCIs should be made available on request to third parties. We agree with the hon. Member for Pontypridd that transparency and accountability are essential to the new regime, and we will always look for ways to make sure that it is open and at the core of what we do.

The Bill already provides that the DMU will be required to publish online a statement summarising the contents of those notices whenever they are provided to a firm. That is, it will need to set out required elements of the notice, such as describing its decisions and the reasoning behind them, in a shortened form. In the statements, the DMU will provide the key information from the notice about its decisions to other businesses, consumers and the wider public, in line with public law principles. The DMU may redact commercially sensitive information.

For example, the summary notice for a conduct investigation must give details about the conduct requirement and the behaviour suspected of breaching that requirement, and it must provide information about the investigation period and the timeframe for making representations for third parties.

10.30 am

Peter Dowd (Bootle) (Lab): I completely understand where the Minister is coming from, but the Labour Front Bench is trying to push this question of transparency and I am concerned about what the Minister just said. The hon. Member for Broadland talked in relation to another issue about the courts becoming involved. The last thing we want is to create a need for clarification from the courts. Is there not a danger that, unless this area is transparent and the statements are more significant than just a summary, we will get into needing clarification by the courts?

Paul Scully: Third parties can clearly get involved and approach the DMU, which I will cover in a minute, so we do not necessarily need to get to court stage. I have talked about some of the specifics that will be in the summary notices, which will have quite a considerable amount of detail anyway. We do not want to add extra resource requirements that take away from the core tasks of the DMU.

The summary statements are just one of the ways in which the DMU will inform and involve stakeholders in its decision making. The DMU will be required to publicly consult before making major decisions, which include designating a firm with strategic market status in a digital activity, making pro-competition orders, and imposing conduct requirements. It will also be required to publish guidance on how it will take those decisions.

Should a third party be unsatisfied with the DMU's summary statement, they can request the full notice through a freedom of information request. As a public authority, the CMA is required under the Freedom of Information Act 2000 to provide the public with information it holds when requested to do so, subject to the relevant exemptions, which include a requirement to protect commercially sensitive information. We agree that public transparency for the new digital markets regime is vital. The drafting ensures that the right information will be made publicly available. I hope I have set out our position to hon. Members and that they feel able to withdraw their amendments.

Alex Davies-Jones: I have listened to the Minister carefully outline the Government's position. I do recognise that a balance needs to be struck, yet we feel that our amendments would seek to increase transparency, openness and accountability. For that reason, we will press them to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 7.

Division No. 2]

AYES

Coyle, Neil	Malhotra, Seema
Davies-Jones, Alex	Mishra, Navendu
Dowd, Peter	Thomson, Richard

NOES

Ford, rh Vicky	Stevenson, Jane
Hollinrake, Kevin	Watling, Giles
Mayhew, Jerome	
Scully, Paul	Wood, Mike

Question accordingly negatived.

Clause 11 ordered to stand part of the Bill.

Clauses 12 to 18 ordered to stand part of the Bill.

Clause 19

Power to impose conduct requirements

Alex Davies-Jones: I beg to move amendment 54, in clause 19, page 11, line 17, after "CMA," insert—

"(ab) where the designated undertaking has been given an SMS decision notice under section 14(2), must come into force no later than three months of the SMS decision notice being given".

This amendment introduces a timeline for the enforcement of conduct requirements set out on the face of the Bill and in CMA Guidance.

1. *[Official Report, 10 July 2023, Vol. 736, c. 3MC.]*

With your permission, Dame Maria, I will also speak to clause 19, in the interests of efficiency.

The Chair: *indicated assent.*

Alex Davies-Jones: Clause 19, which outlines the CMA's power to impose conduct requirements on a designated firm, is very welcome indeed. It is an important clause that aims to prevent harm that may result from the market position of undertakings with strategic market status.

In practice, these conduct requirements are essentially instructions given to a designated undertaking to conduct digital activities in a manner that promotes competition. The requirements can be prescriptive or prohibitive in nature; they are essentially the dos and don'ts, except that the requirements do not apply automatically to every undertaking having SMS and instead apply on a case-by-case basis. The DMU therefore has wide discretion to impose conduct requirements on specific SMS firms, as long as they fit within a list of purposes that are listed in clause 20.

Vicky Ford (Chelmsford) (Con): I am very fond of the hon. Member and she has a beautiful voice, but she did complain earlier about how long it had taken this Bill to get to market. I urge her to remember that we want to get through the Bill as quickly as possible, for consumers. Repeating every single thing that we can already read in the explanatory notes and in the Bill does not seem to me to be the most efficient use of all of our time.

Alex Davies-Jones: I am grateful for that intervention. The hon. Member will know I am also fond of her and her voice. I think it is important to clarify exactly what we are debating, and why we are reasoning as we are. I will happily refer to certain clauses if that would please the hon. Member, but it is important that we outline exactly why we have come to the rationale that we have on the Bill as it stands before us.

Potential examples of prescriptive conduct requirements include having effective processes for handling complaints, trading on fair and reasonable terms, or giving users options or default settings. Conversely, some examples of prohibitive conduct requirements may be preventing abuse of dominance practices, such as treating its own products more favourably, using data unfairly, tying practices, restricting interoperability, refusal to grant access and so on.

We particularly welcome subsection (5), which provides that the CMA may impose conduct requirements only for certain objectives. However, we have concerns about subsection (10), which says that a conduct requirement

> "(a) comes into force at a time determined by the CMA, and
>
> (b) ceases to have effect—
>
> (i) in accordance with a decision of the CMA"—

as Members can read in the Bill.

For swift implementation, it is right that the Bill's approach allows for conduct requirements to be written alongside an SMS designation investigation, but we need a statutory time limit for the initial set of conduct requirements to be implemented. As it is likely that the DMU will have considered the three conduct objectives before the SMS designation decision is made, the DMU should be required to impose the initial set of conduct requirements either at the same time as the SMS designation or within three months of its date.

A central feature of the new regime is to enable the DMU to revise its rules as time goes on, so the deadline should apply only to the initial set of conduct requirements, so as not to hinder the DMU in revising or adding to them subsequently. Amendment 54 would introduce a timeline for the enforcement of conduct requirements set out in the Bill and in CMA guidance.

Peter Dowd: Given that subscription traps cost between £28 billion and £34 billion a year, my constituents in Bootle are perfectly entitled to listen to my hon. Friend ram home this point time after time, because £28 billion out of their pockets in someone else's pocket is not appropriate, not reasonable and not fair, given the current cost of living crisis. My hon. Friend should speak as much and as long as she wants.

Alex Davies-Jones: I am grateful for that intervention. It is important that we get the Bill right. It is a very technical Bill. It is incredibly wordy—Members will have heard me trip over my words a number of times. It is important that we are able to portray the nature and benefits of the Bill to those listening at home or elsewhere, for the future and for the CMA, so that they understand what we as legislators mean when we speak in this place. That could influence decisions later. It is important for our constituents, who will be positively—we hope—impacted by the Bill. It will enable to have them more choice to hear exactly what we as legislators in this place mean.

The amendment introduces a timeline. It is important and we have given it some serious thought. I hope that the Minister has given it serious thought, too, because it would be helpful to ensure that the CMA is forced to act swiftly, as we have all discussed. I look forward to hearing his comments. I hope that he sees how beneficial this simple amendment could be. It is not meant to trick him; it is meant to make the legislation as positive and as beneficial as it can be.

The Chair: I remind the Minister that he may speak to clause stand part as well.

Paul Scully: Thank you, Dame Maria. I will cover the clause first. It enables the DMU to introduce conduct requirements to govern the behaviour of SMS firms. That will help manage the effects of their market power by protecting the businesses and consumers that rely on their services. The tailored rules will be used to promote fair dealing, open choices, and trust and transparency, which mean that the DMU will be able to ensure that SMS firms treat consumers and other businesses fairly, not subjecting them to unreasonable terms and conditions. It will also mean that the regulator is able to intervene to ensure that users can choose freely and easily between different products and providers. Finally, the DMU will be able to intervene to ensure that users have the information they need to understand what is on offer, and to make their own decisions about whether they want to use the SMS firm's products.

[Paul Scully]

The clause sets out that, where the DMU imposes a conduct requirement, it must send a notice to the SMS firm and publish that notice online as soon as reasonably practicable. That will ensure that the obligations and responsibilities will be made clear to the SMS firm and to those businesses and consumers who rely on them.

Neil Coyle (Bermondsey and Old Southwark) (Lab): My hon. Friend the shadow Minister has been accused of repetition, but she made a point about resources. The Minister is making further comments about the capacity and tasks of the regulator, so perhaps he could come back to the earlier question on resourcing, about which a lot of concern was expressed last week in the evidence sessions. Will the Minister address some of that and tell us how the new body will be resourced to fulfil all the tasks that he is discussing?

Paul Scully: That is a good point. The hon. Gentleman will be aware that that is one of the reasons why we have set the DMU up in shadow form, to start building up its capacity and expanding on its expertise. Currently, the DMU stands at about 70 people, and it is able to lean in on expertise as required. In the evidence session last week, we heard from the chief executive of the CMA that she feels that they have the expertise and the resource able to make the clear decisions needed in a complicated area of competition. The whole point about digital markets is that they are not like the analogue competition regime that we have been used to for so many years. That is complex enough, but it is well established and matured; in digital markets, things happen very quickly.

The Opposition are absolutely right when they say that we need to make decisions quickly, transparently and in a way that holds the confidence of consumers and the challenge attackers, to ensure that this is a place where people can grow and scale a company, even to the size of those companies that are likely to have entrenched market power and to have SMS in the first place.

The clause enables the DMU to vary conduct requirements as firms and markets change, ensuring that they remain appropriately tailored and proportionate. Without the clause, the DMU would not have the means to regulate the most powerful tech firms appropriately, and consumers would continue to be not adequately protected from harms in digital markets.

Neil Coyle: The Minister made reference to the analogue competition. That equivalent is trading standards and physical competition, but last week they told us that they had had a cut of 50% in their capability to tackle problems. The Minister is talking about powers to investigate, to assess, to recall, to monitor and to review, all within a fixed timetable, against companies with very significant resources, so what capacity will there be to review the powers and resources of the new body and how will it be kept up to date in terms of its skills?

10.45 am

Paul Scully: I have talked about the fact that the CMA will publish on a regular basis—on an annual basis—its report about what it is doing and how it is working. The Under-Secretary of State for Business and Trade, my hon. Friend the Member for Thirsk and Malton, has regular meetings with the CMA and with the Competition Appeal Tribunal as well. We will meet regularly the digital markets unit to talk through the issues of capacity and its decision making, but it is not just for us to be talking to it "behind closed doors", within the Department. The regular reports from the CMA and the decision-making reports, which will be published as well, will absolutely highlight why the decisions have been taken and how they have been taken, and therefore we can take a judgment on what resources it needs and whether it is under-resourced.

Over the three years of my ministerial career, I seem to have been giving the CMA jobs to do. I say that having done the Bills that became the United Kingdom Internal Market Act 2020 and the Subsidy Control Act 2022 and now this. The hon. Member for Bermondsey and Old Southwark is right to say that the CMA has expanded. But it has expanded in accordance with the expertise that it has.

Jerome Mayhew: We had three days of oral evidence last week and were lucky enough to have the chief executive of the CMA come and give evidence to us. I do not have a copy of *Hansard* with me, so I stand to be corrected, but I believe that I am right in saying that Ms Cardell, when she gave her evidence, was directly questioned about the level of resource that the CMA had and her degree of confidence as to whether it would be sufficient to carry out the tasks anticipated in the Bill. The words that stick in my mind and that I ascribe to Ms Cardell—again, I stand to be corrected—were that the CMA is well resourced and more than capable of undertaking these activities.

Paul Scully: I thank my hon. Friend.

Peter Dowd: Does the Minister agree with me that we have to learn lessons from history? The Committee considering the Bill that became the Criminal Finances Act 2017, on which I served, took evidence from the enforcement and regulatory authorities and they said at the time, "Oh yes, we have all the resources we need," but that proved not to be the case. If the chief executive of the CMA is saying that, let us come back in 12 or 18 months' time and see whether it is actually correct. Will the Minister agree to a review of it in perhaps 12 or 18 months' time, when this Bill has bedded in?

Paul Scully: The hon. Gentleman is absolutely right that we have to keep all these things in our purview, because if we get this wrong, that just embeds the entrenched power that we are talking about. It is absolutely the case that we have to ensure that the CMA, as an important body—I am thinking of not just the digital markets unit, which we are discussing here, but the entirety of its operation—has the capacity to do its work. As I said, we will clearly continue to look at the resources, capacity and expertise of the digital markets unit.

Amendment 54 would introduce a duty on the DMU to impose conduct requirements within three months of a decision notice being given, as we have heard. I absolutely share hon. Members' interest in ensuring

that conduct requirements are imposed quickly so that businesses and consumers can be protected. Indeed, we anticipate that conduct requirements will be in place from the day a firm is designated—or if not, much sooner than the three months proposed in the amendment. That is because the DMU can develop tailored conduct requirements informed by, and alongside, the designation investigation. That is facilitated by clauses 13(2) and 24(3), which enable the DMU to carry out the public consultation on strategic market status designation alongside the public consultation on any proposed conduct requirements.

Although we expect conduct requirements to be imposed as soon as a firm is designated, the Government have not included a statutory deadline. That is because the DMU needs the flexibility to deal with the complexities of developing targeted obligations. That includes taking the time necessary to consult and consider all the views shared by interested stakeholders.

Vicky Ford: I want to be quick. I really care about this Bill, because it is incredibly important for our constituents, who are consumers, to ensure that they are offered fair choices and fair prices. The clause is important, because it means that when a company acts inappropriately, the CMA, through the digital markets unit, can tell it what to do. Can the Minister give an example of a case where it might need more than three months for that telling it what to do to be done?

Paul Scully: That is a very good point. I do not think that I can give my right hon. Friend a specific example. If particular technicalities are involved, we do not want to put an arbitrary time limit such as three months, because we want the decision to be right. The Government absolutely expect the decision to be taken either on the day of designation or very shortly afterwards, but by binding ourselves there may be examples—I am afraid I am not nimble enough to think of a specific example, but I am sure one will come down the line. The whole point of this Bill is that it is flexible, proportionate and gets things right. At the end of the day, that is what we are trying to do, rather than putting in a timescale.

Vicky Ford: For the record, when the DMU tells a company what to do, does the Minister agree that that should always be done as quickly as possible, given that there may be technical changes to get things done as well? This is not a suggestion that decisions or actions should be delayed.

Paul Scully: I totally agree. That is exactly the point. Let us make it quickly, but we do not want an arbitrary timescale so that we rush and get the decision wrong. It is more important to get the answer right. For those reasons, I hope that the hon. Member for Pontypridd will withdraw her amendment.

Alex Davies-Jones: I have listened to the robust debate we have had. I still feel that having a timeline on the face of the Bill would provide transparency, clarity and certainty. Therefore, we will press the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 7.

Division No. 3]

AYES

Coyle, Neil	Malhotra, Seema
Davies-Jones, Alex	Mishra, Navendu
Dowd, Peter	Thomson, Richard

NOES

Ford, rh Vicky	Stevenson, Jane
Hollinrake, Kevin	Watling, Giles
Mayhew, Jerome	
Scully, Paul	Wood, Mike

Question accordingly negatived.

Clause 19 ordered to stand part of the Bill.

Clause 20

Permitted types of conduct requirement

Alex Davies-Jones: I beg to move amendment 53, in clause 20, page 12, line 11, at end insert—

"(ca) carrying on activities in an area of its business other than the relevant digital activity, which if they were done in relation to the relevant digital activity would be prevented under the provisions of this section."

This amendment prevents a designated undertaking from carrying on activities that would be prevented by the provisions of section 20 from being done in a different area of its business.

Amendment 53 aims to prevent a designated undertaking from carrying on activities that would be prevented by the provisions of section 20 from being done in a different area of its business. We feel that the amendment gets to the heart of the issues at hand, and we urge the Minister to consider it carefully. It will prevent a Whac-A-Mole situation in which the regulator is always having to define new activities to catch up, and we see it as an essential part of the Bill.

Paul Scully: I am trying to work out the intention of the amendment. It seems that it would add a permitted type of conduct requirement in order to expand the ability of the DMU to intervene outside the designated digital activity; I am not sure that I understand whether my understanding of that is clear.

The regime is explicitly designed to address competition issues in activities when a firm has strategic market status—that is, when it holds substantial and entrenched market power and a position of strategic significance. In some circumstances, SMS firms may use other, non-designated activities to further entrench their market power in the designated activity. Clause 20(3)(c) allows the DMU to create conduct requirements to address that; however, it is important that the DMU does not intervene in non-designated activities beyond that.

SMS firms are likely to be active in a large range of activities, and in many of them will face healthy competition from other firms. The amendment would allow the DMU to intervene outside the designated digital activity, without any requirement to show that there is a link to the firm's market power in any given activity. That could be harmful to competition, consumers and innovation.

[Paul Scully]

We are worried about whether the regime can tackle retaliatory conduct. It is important that that ability is built in, because a retaliatory action is likely to be captured under conduct requirement categories to ensure fair dealing, such as those that prevent discriminatory treatment or unfair terms and conditions. We want the DMU to be able to take firm action against retaliatory conduct, whether or not that is within the scope of designation, but only if it can prove the link between the two. It is really important that that step happens first.

Alex Davies-Jones: I appreciate the Minister's comments, although I disagree with him on the reasoning. We see the leveraging principle as critical to the success of the pro-competition regime. It is important to clause 20, which is a mammoth clause. Our amendment would prevent a designated undertaking from carrying on activities that would be prevented by the provisions in the clause. It is really important that the amendment is included so we will press it to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 8.

Division No. 4]

AYES

Coyle, Neil	Malhotra, Seema
Davies-Jones, Alex	Mishra, Navendu
Dowd, Peter	Thomson, Richard

NOES

Firth, Anna	Scully, Paul
Ford, rh Vicky	Stevenson, Jane
Hollinrake, Kevin	Watling, Giles
Mayhew, Jerome	Wood, Mike

Question accordingly negatived.

Alex Davies-Jones: I beg to move amendment 58, Clause 20, page 12, line 22, at end insert—

"(i) discriminating against a recognised news publisher by withholding from an internet service material produced by the recognised news publisher."

This amendment would allow a conduct requirement to be used to stop a designated undertaking withholding news from a recognised news publisher from its platform.

The Chair: With this it will be convenient to discuss new clause 2—*Recognised news publisher: definition*—

"(1) In section 20, 'recognised news publisher' means any of the following entities—

(a) the British Broadcasting Corporation,

(b) Sianel Pedwar Cymru,

(c) the holder of a licence under the Broadcasting Act 1990 or 1996 who publishes news-related material in connection with the broadcasting activities authorised under the licence, and

(d) any other entity which—

(i) meets all of the conditions in subsection (2), and

(ii) is not an excluded entity (see subsection (3)).

(2) The conditions referred to in subsection (1)(d)(i) are that the entity—

(a) has as its principal purpose the publication of news-related material, and such material—

(i) is created by different persons, and

(ii) is subject to editorial control,

(b) publishes such material in the course of a business (whether or not carried on with a view to profit),

(c) is subject to a standards code,

(d) has policies and procedures for handling and resolving complaints,

(e) has a registered office or other business address in the United Kingdom,

(f) is the person with legal responsibility for material published by it in the United Kingdom, and

(g) publishes—

(i) the entity's name, the address mentioned in paragraph (e) and the entity's registered number (if any), and

(ii) the name and address of any person who controls the entity (including, where such a person is an entity, the address of that person's registered or principal office and that person's registered number (if any)).

(3) An 'excluded entity' is an entity—

(a) which is a proscribed organisation under the Terrorism Act 2000 (see section 3 of that Act), or

(b) the purpose of which is to support a proscribed organisation under that Act.

(4) For the purposes of subsection (2)—

(a) news-related material is "subject to editorial control" if there is a person (whether or not the publisher of the material) who has editorial or equivalent responsibility for the material, including responsibility for how it is presented and the decision to publish it;

(b) 'control' has the same meaning as it has in the Broadcasting Act 1990 by virtue of section 202 of that Act.

(5) In this section—

'news-related material' means material consisting of—

(a) news or information about current affairs,

(b) opinion about matters relating to the news or current affairs, or

(c) gossip about celebrities, other public figures or other persons in the news;

'publish' means publish by any means (including by broadcasting), and references to a publisher and publication are to be construed accordingly;

'standards code' means—

(a) a code of standards that regulates the conduct of publishers, that is published by an independent regulator, or

(b) a code of standards that regulates the conduct of the entity in question, that is published by the entity itself."

This new clause is linked to Amendment 58.

Alex Davies-Jones: The amendment would allow a conduct requirement to be used to stop a designated undertaking withholding news from a recognised news publisher from its platform. None of us want to see in the UK situations like those occurring elsewhere across the globe. Colleagues will be aware that Google and Meta have attempted to ward off fair negotiations in Australia and Canada by restricting or threatening to restrict access to domestic trusted news that is the antidote to online disinformation. Denying citizens access to reliable information to avoid payment serves only to

emphasise the primacy that such firms place on profits, rather than citizens' interests. The Government must absolutely not give in to similar threats in the UK.

As the EU and other jurisdictions have forged ahead with similar but ultimately less agile and effective digital competition regulation, there is a danger that the UK will become a rule taker and not a rule maker. I urge the Minister to consider carefully the principles of the amendment and new clause 2, which further outlines a favourable definition of a recognised publisher that Labour supports. I look forward to hearing the Minister's comments, but if we are not reassured, we will press the amendment to a vote.

Paul Scully: As we have heard, amendment 58 and new clause 2 are intended to strengthen the regime's protections for news publishers by defining "recognised news publisher" and introducing a specific power to protect them from discrimination. I understand and appreciate the sentiment behind the amendment and what the hon. Member for Pontypridd is striving to do. It is important that news publishers can benefit from the robust protections offered by the new regime. I am confident that the Bill, as drafted, will make an important contribution to the sustainability of the press. I hope the hon. Lady will understand when I expand on that, because the DMU's tools, including all permitted types of conduct requirement, are designed to rebalance the relationship between SMS firms and those who rely on them, including firms and sectors across the economy. They are drafted in a sector-neutral way for that reason.

11 am

Clause 20(3)(a) will already enable the DMU to prevent an SMS firm from

"applying discriminatory terms, conditions or policies".

That could apply to a wide range of businesses, very much including news publishers. Adding a sector-specific type of conduct requirement on discrimination is therefore redundant. It would also create the risk of DMU interventions being unfairly skewed towards one sector at the expense of others. Right the way through, we have tried to ensure that the regime is not only technology-agnostic, but sector-agnostic.

Alex Davies-Jones: Is the Minister reassured that the Bill will not allow the emergence of a situation like those in Australia and Canada, where online disinformation is pumped around constantly because of the lack of clarity on platforms highlighting recognised news publishers?

Paul Scully: Yes.

Peter Dowd: Does the Minister agree that this is an exact replica of what happened when ITV tried to stop Sky advertising on ITV platforms, in terms of competition? That was stopped: it was not fair and it was not reasonable. Is this not sort of similar? We cannot give the power to the platform itself to decide what it does or does not do and what people's access to news is.

Paul Scully: No, I do not agree. To answer the question asked by the hon. Member for Pontypridd, I absolutely believe that it does, because the conduct requirements can be tailored to instruct SMS firms on how they should treat consumers and other businesses, including publishers. In the case of publishers, that could, for example, include conduct requirements on SMS firms to give more transparency to third parties over the algorithms that drive traffic, or it could oblige firms to offer third parties fair payment terms for the use of their content. Examples of that have come up time and again, both in evidence and in my conversations with publishing representatives.

Freedom of contract is a crucial principle, but withdrawal of service by an SMS firm could be considered anti-competitive if the behaviour is discriminatory or sufficient notice is not given. In such a scenario, the DMU could take appropriate action through conduct requirements or PCIs. There are plenty of general examples, and the Bill very much accounts for the examples of Australia and Canada. We are just shaping it in a different way, in as flexible—

Neil Coyle: The Minister's assertion is not shared by the News Media Association. The Opposition amendment tries to address some of the concerns around timeframes of designation and final offer mechanisms. Will the Minister tell us why he thinks the News Media Association's briefing is inaccurate?

Paul Scully: At the end of the day, this is an interpretation of the Bill. The amendment names a number of specific news publishers; our approach is sector-unspecific. All those will come within the regime of the Bill, but specifying just one sector would risk skewing the conduct of the regime and the way it works towards that sector. I think the question that was asked was whether those news publishers and the kind of behaviour that has been described come under the regime of the Bill, as drafted. We believe they absolutely do.

Alex Davies-Jones: I appreciate the Minister's rationale, but leaving the interpretation of the Bill so ambiguous could mean certain platforms allowing news publishers that are not relevant news publishers to cause harm and damage to society and the public, as we have seen elsewhere in the world. It is imperative on us as legislators to get it right, and we have that opportunity in the Bill.

We have always said that we want this law to be world-leading. We wanted to be able to do things differently from the EU. This amendment gives us the flexibility to make that change and do things differently, which is why we will press it to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 8.

Division No. 5]

AYES

Coyle, Neil	Malhotra, Seema
Davies-Jones, Alex	Mishra, Navendu
Dowd, Peter	Thomson, Richard

NOES

Firth, Anna	Scully, Paul
Ford, rh Vicky	Stevenson, Jane
Hollinrake, Kevin	Watling, Giles
Mayhew, Jerome	Wood, Mike

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

Paul Scully: The DMU will be able to use conduct requirements to address and prevent practices that exploit consumers and businesses or exclude innovative competitors. Clause 20 sets out an exhaustive list of permitted types of conduct requirement that the DMU can impose in order to address and prevent harm to businesses and consumers in digital markets. It ensures that the regime can adapt to future challenges by empowering the Secretary of State to amend this list, subject to parliamentary approval.

The list reflects insights drawn from the CMA's market studies and regulatory expertise. It captures 13 well-evidenced types of anti-competitive behaviours including self-preferencing, tying and bundling, and the unfair use of data. Conduct requirements could be used to ensure that SMS firms interact with users of all kinds on fair and reasonable terms; that consumers are not discriminated against; or that competitors do not lose out because an SMS firm has used data unfairly. The list of permitted types of requirement reflects the competition issues we see in digital markets today, but these markets are fast-moving.

It is vital that the Secretary of State is able to amend the list in future, with Parliament's approval, to ensure that consumers are protected from whatever new challenges arise. Setting out the types of permitted requirement in the legislation, rather than specifying the requirements themselves, means that the regime will be flexible and responsive. It will make it possible to impose targeted and tailored interventions that address harms to consumers, while avoiding unnecessary burdens and unintended consequences for SMS firms.

Alex Davies-Jones: Clause 20 is a mammoth clause that sets out an exhaustive list of permitted types of conduct requirement. Labour welcomes the clarity in the clause—as, I am sure, will the CMA and firms likely to be designated. Ultimately, pro-competitive interventions will tackle the causes of market power and are a necessary step to addressing the characteristics of these markets, such as network effects and economies of scale that tip some digital markets towards a single firm. Those interventions could also include mandating that consumers have greater choice over the collection and use of their personal data. They could even look at ownership separation. However, some digital markets cannot be made competitive, and in such cases the effects of market power must be managed. To do this, the DMU needs sufficient powers. We see the clause as central to getting that balance right.

Clause 20 states that conduct requirements may prevent the SMS firm from

"carrying on activities other than the relevant digital activity in a way that is likely to increase the undertaking's market power materially, or bolster the strategic significance of its position, in relation to the relevant digital activity".

The leveraging principle is critical to the success of the pro-competition regime. Without it, the DMU will find itself unable to address harmful conduct and will meet arguments about where—meaning in which activity—a piece of conduct occurs, because the DMU will be unable to touch conduct that occurs outside the SMS activity even if it is closely related to the SMS activity.

A stronger leveraging principle would prevent designated firms from simply moving their service fees from one location in the ecosystem to another, such as from app store service fees to an operating system licence—the stealth tax that we heard about during our evidence sessions. It would prevent a whack-a-mole situation in which the regulator always has to define new activities to catch up.

We have already debated our amendment, with which we were seeking a stronger principle. Sadly, it was not accepted by the Government, but we will push this further as the Bill progresses.

Question put and agreed to.

Clause 20 accordingly ordered to stand part of the Bill.

Clause 21

Content of notice imposing a conduct requirement

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clauses 22 to 25 stand part.

Paul Scully: Clauses 21 to 25 set out the procedural aspects in relation to conduct requirements, because it is really important that SMS firms, and the people and businesses who rely on them, understand what obligations are being imposed and why. The DMU is required to give notice to the SMS firm and then publish the notice online as soon as is reasonably practicable. Clause 21 sets out the information that must appear in the notice.

Given the rapid pace of change across businesses and digital markets, it is important that the DMU can adapt conduct requirements to ensure that they remain targeted and proportionate, so clause 22 will establish the DMU's power to revoke a conduct requirement, helping to ensure that conduct requirements remain targeted and proportionate as markets and firms change.

Clause 23 will allow the DMU to facilitate the smooth transition into or out of a conduct requirement. Without the clause, there is a risk of disruption or harm to businesses and consumers where a conduct requirement comes into force or ceases to have effect without a sufficient transition period.

The conduct requirements in clause 24 will impose tailored, enforceable obligations on SMS firms. It is only right that consumers and businesses, including the SMS firms themselves, have a chance to share their perspective on those obligations, so clause 24 requires the DMU to carry out a public consultation on its proposed decision before it can impose, vary or revoke a conduct requirement.

Clause 25 requires the DMU to keep conduct requirements under review, ensuring that requirements remain effective, targeted and proportionate. It also ensures that the DMU monitors where breaches may have taken place.

Alex Davies-Jones: Clause 21 sets out the information that the CMA is required to publish as part of the notice imposing or varying a conduct requirement. Labour supports the clause, which we feel is important for clarifying the details around the content of potential conduct requirements. Again, I am keen to understand exactly who will have access to such information. As

ever, I would appreciate the Minister's thoughts on that point. That aside, we see the clause as integral to the Bill, so we have not sought to amend it at this stage.

As with clause 21, we support clause 22 and its intentions in full. The only point that I feel is worth raising with the Minister is the slight ambiguity around the timeframes. It will be helpful for all involved if the regime is not only flexible, but rapid and able to evolve for changing markets. Can the Minister assure us that the clause will support this in practice?

Clause 23 is important and serves a vital function in establishing the transitional provisions related to conduct requirements. An example would be if a conduct requirement were imposed from a particular date, but some allowances were made in relation to certain aspects of that conduct requirement so that they had effect from a later date to smooth the transition for the benefit of a designated undertaking. That speaks to the nature of the regime: we all want to see it as flexible and fair, but it is therefore only right that the CMA be given appropriate statutory powers to vary its conduct requirements where required. We also welcome subsection (2), the details of which will enable and empower the CMA to investigate and enforce against historical breaches. That is vital, as we seek to establish a regime that will be sufficiently agile for breaches both past and present.

Clause 24 is also incredibly welcome. It imposes a duty on the CMA to consult publicly before imposing, varying or revoking a conduct requirement. The consultation must be brought to the attention of such persons as the CMA considers appropriate. We have already discussed who is an appropriate person, but sadly the transparency and commitment to consultation is not mirrored elsewhere in the Bill, which is frustrating. Given the broadly collegiate nature of our debate thus far, I hope that the Minister can consider some adjustments, and I look forward to hearing from him shortly. By and large, though, Labour welcomes the provisions in subsection (3), which provide that the CMA will be allowed to carry out a consultation on proposed conduct requirements before making a decision on designation. As we know, that makes it possible for the CMA to impose conduct requirements at the same time as issuing a decision on designation, or very shortly afterwards. We consider that to be a sensible approach, and we therefore support the clause.

Again, there is no need to repeat myself. Labour supports clause 25, which places a duty on the CMA to consider, on an ongoing basis, the effectiveness of any conduct requirements in place and how far the designated undertaking is complying with them. The CMA will also need to consider, on an ongoing basis, whether to impose, vary or revoke a conduct requirement, and whether it would be appropriate to take action against a breach of any conduct requirement. It would be helpful for us all to have an idea of how regularly the reviews will happen. It cannot and should not be the case that one SMS firm has its conduct requirements reviewed more regularly than any other, so I am keen to hear the Minister's assessment of how that will work fairly and equitably in practice.

Question put and agreed to.

Clause 21 accordingly ordered to stand part of the Bill.

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

11.15 am

Adjourned till this day at Two o'clock.