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Public Bill Committee

DIGITAL MARKETS, COMPETITION AND CONSUMERS BILL

Seventh Sitting

Thursday 22 June 2023

(Morning)

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Monday 26 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

Thursday 22 June 2023

(Morning)

[Mr Philip Hollobone *in the Chair*]

Digital Markets, Competition and Consumers Bill

11.30 am

The Chair: Before we begin, I have a few reminders: please switch electronic devices to silent, no food or drinks apart from the water provided, and please send speaking notes to hansardnotes@parliament.uk.

Clause 44

Power to make pro-competition interventions

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

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

Government amendment 12.

Clauses 45 to 54 stand part.

The Parliamentary Under-Secretary of State for Science, Innovation and Technology (Paul Scully): To create self-sustaining and dynamic competition in UK digital markets, we must address the sources of SMS—strategic market status— firms' substantial and entrenched power in digital markets. Clause 44 gives the digital markets unit the power to address competition problems in digital markets through pro-competition interventions, which the DMU can make where factors relating to a digital activity undertaken by a SMS firm prevent, restrict or distort competition in that digital activity. That is known as an adverse effect on competition. The concept is already used for market investigations under the Competition and Markets Authority's existing markets regime. Government amendment 12 is a technical amendment relating to PCI investigations.

Turning to clauses 45 to 54, PCIs are fundamental to the new digital markets regime. They will address the root causes of market power that can lead to one or two large firms dominating, to the detriment of consumers and businesses in the UK. Clause 45 empowers the DMU to open a PCI investigation into suspected competition problems related to designated digital activities.

Clause 46 describes the process relating to PCI investigations. Under clause 47, the DMU will be required to carry out a public consultation on a proposed PCI decision before concluding its investigation and giving notice of final PCI decisions. Clause 48 provides the procedure for the DMU to give notice of its decision when concluding a PCI investigation. When the DMU decides to make a PCI, it must do so within four months of the PCI decision.

Pro-competition orders, set out in clause 49, are the means by which the DMU can require a firm to take, or refrain from taking, specific actions. That includes orders on a trial basis. They are vital in converting the DMU's PCI decision, from clause 48, into an operationable remedy.

To effectively address the sources of competition problems in digital markets, PCIs should be iterative and targeted, so the DMU will be able to replace pro-competition orders. That is provided for in clause 50, which will allow the DMU to initially apply lighter touch remedies and then assess their effectiveness before introducing stronger measures if necessary.

Clause 51 gives the DMU the power to revoke a pro-competition order where it deems it inappropriate to vary the order through replacement, or where the order has addressed the competition problem and is no longer required. That ensures that PCIs remain effective and proportionate and can respond to changes in the market.

Clause 52 provides that before making or revoking a pro-competition order, the DMU must carry out a public consultation. The DMU will be under both a general and specific duty to monitor and review pro-competition orders provided for in clause 53.

Finally, SMS firms should be able to offer commitments to the DMU to propose a solution to a competition problem. That supports a participative approach to regulation, which is set out in clause 54.

Alex Davies-Jones (Pontypridd) (Lab): We will of course look properly at the issue of consumer protections later in the Bill, and my hon. Friend the Member for Feltham and Heston has a number of contributions to add on that topic.

Clause 44 is important in putting consumer rights at the heart of the Bill, as it enables the CMA to remedy competition problems by making direct interventions. In contrast to conduct requirements, PCIs are interventions by the CMA to remedy an adverse effect on competition by addressing the root causes of an undertaking's entrenched market power. The CMA will need to take into account the benefits that UK users may get from the factors having an adverse effect on competition.

We note that there is no defined list of PCI remedies, but that they may include behavioural and structural remedies. Will the Minister update us on his assessment of the value of adding a list of potential remedies to the Bill? Some companies we have spoken to feel that that would be helpful to understand just how these interventions will work in practice. However, we believe that the PCI is an exceptionally useful tool and a big advantage over the EU Digital Markets Act, as it will be able to go further than the conduct requirements and address the root causes of entrenched market power.

As it stands, the Bill outlines that the CMA may make a PCI where it considers that a factor or combination of factors relating to a relevant digital activity is having an adverse effect on competition, also known as the AEC test. The AEC test is in line with the legal test in the existing market investigation regime; by contrast, the digital markets taskforce recommended an AECC test—an adverse effect on competition or consumers test—enabling the CMA to address consumer harm without always needing to show that competition has been undermined. Similar to a supplementary duty to have regard for the interests of citizens, that would give

the DMU broader scope to intervene beyond its traditional focus on competition. Can the Minister outline exactly why the AEC test was chosen over the AECC test?

Labour supports the intention behind Government amendment 12, which confirms that the CMA will be able to begin a PCI investigation into a designated firm, even when it has previously made a decision not to do so. We see that as integral to the CMA's powers, and we will support the amendment.

We see clause 45 as fleshing out the legal powers that the CMA will need to draw on in the event of a formal investigation. We welcome clarification that the CMA will form its initial view of the competition problem on the basis of available evidence, such as that arising from complaints submitted by third parties, from the CMA's market studies or from referrals of information from other regulators. Labour has heard from some tech companies that although pro-competition interventions are viewed as a major advantage of the UK's regime, companies are concerned about the broader effects they could have on markets, and urge for thorough consultation and for a graduated approach to the potential severity of the intervention. I am therefore keen to hear the Minister's thoughts about this issue, as it is important for all concerned that we get some clarity.

Clause 46 is an important clause for designated undertakings that may find themselves subject to a PCI investigation. We welcome provisions that ensure the CMA will be under a duty to publish a summary of the PCI notice as soon as it is able to do so. The Minister will not be surprised that we are keen to understand more about that and what it will look like in practice. Where exactly will the summary be published? Will it be made available to others who wish to view it? We welcome subsection (2), because it is important that the CMA has the power to update a PCI investigation notice when it needs to do so. That is outlined in subsection (3), which is an important point to note.

Lastly, clause 46(4) places a duty on the CMA to publish a notice of investigation as soon as practicable. Again, can the Minister confirm whether that will be public? There is a theme in my questions to the Minister about the public transparency of such documents. Naturally, we understand that some information will obviously need to be redacted, but there is plenty of value in improving transparency.

We welcome the principles in clause 47, which we have long called for, because the regime will be effective only if consultation is truly at its heart. However, we have concerns about how the conduct requirements and PCIs will run alongside one another. In the Bill's current drafting, it is unclear by what metrics the CMA will determine whether a CR or PCI is appropriate, and it will have discretion to choose. We could very well find ourselves in a position whereby the CMA will generally implement a CR first and see whether it is having an impact, before beginning a PCI investigation. If the CMA chooses to focus on CRs initially, it could allow SMS firms to maintain much of their entrenched market power before taking action. To improve the effectiveness of the regime, one potential option that has been raised with us is for the CMA to be required to consider whether a PCI investigation and PCI remedy may be more effective early on, or complementary to a CR, when constructing a CR. I would be grateful if the Minister could give us some thoughts on that and explain whether he will be able to instruct the CMA on which one would be best to carry out first.

Other issues that have been raised with us relate to clarity on a number of points, and I hope the Minister can provide that clarity. First, can PCIs be introduced only after conduct requirements have been imposed, rather than the alternative that is alongside them? Secondly, what is the exact purpose of the revocation process? Does it mean that PCIs cannot be adapted while they are in effect, as indicated in the Government's consultation process, and that the CMA would have to restart the process—meaning there would be an investigation, a consultation, a decision and then an order—before introducing a new PCI? It feels like that could cause delay and uncertainty in the regime, which could ultimately impact its effectiveness. I look forward to hearing the Minister's thoughts on those specific points.

Labour sees clause 48 as fairly standard in outlining the procedure for concluding a PCI investigation. It is important that the process is outlined on the face of the Bill, and we welcome confirmation of the length and period of investigation, and of the period in which the CMA has to consult and issue a pro-competition order where required. Those are important timeframes, which Labour supports.

We note clause 48(7), which states:

"As soon as reasonably practicable after giving a notice under subsection (1) or (6), the CMA must publish a copy of the notice."

Again, that is a key point that I want to prod the Minister on. What is his assessment of

"as soon as reasonably practicable"?

What will that be and who will the CMA be publishing the statement for?

We welcome clause 49, which outlines the way in which pro-competition orders will work in practice. In relation to clause 50, I would be grateful if the Minister could confirm whether the replacement of a PCI as outlined in the clause will require revocation, as set out in clause 51, and a fresh process involving an investigation, consultation, decision and order? Alternatively, will the process be to revise an existing PCI and will that be sped up? We do not want any delay in that happening. That is the point I am trying to make, so will the Minister elaborate on what evidence is needed to justify a revocation of that kind?

I hope the Minister will respond to my points. We support the broad intentions of the remaining clauses in this group and are therefore happy to support their full inclusion in the Bill.

Paul Scully *rose—*

The Chair: Order. I am a bear of little brain. If somebody does not stand, I do not know that they want to speak.

Seema Malhotra (Feltham and Heston) (Lab/Co-op) *rose—*

The Chair: I call Seema Malhotra.

Seema Malhotra: I just wanted to make a general point in relation to the DMU's powers, because they are wider and there is a question about mechanisms to

[Seema Malhotra]

address the scrutiny and accountability of DMU decisions. We support the PCI framework and the flexibility, but on the way in which decisions can be made about PCI notices, the changes to allow greater flexibility and changes to orders made, there is the potential for a lot more flexibility, but there is the balance of certainty and scrutiny. Can the Minister address how there will be greater opportunity for scrutiny, transparency and accountability over the DMU's use of the greater powers?

Paul Scully: I will try to cover as many of those points as I can. On the difference between AEC and AECC and adverse effects on consumers and competition, that is effectively built into the regime, anyway. The DMU's objective is to promote competition for the benefit of consumers, and that must shape the design of all its regulatory interventions, including for PCIs. Under the current drafting, the DMU is able to address the detrimental effects of a competition problem on consumers. The issue is terminology rather than anything else.

The hon. Lady asked about how PCIs will be published. They can be introduced after CR and can be published alongside them, because speed is important, which it is important to highlight. She also asked about where PCIs will be published, which I can summarise. A PCI notice launches an investigation and a summary of that will be published, with the firm having had the full notice.

Seema Malhotra: Will the Minister confirm how soon that will happen? There is a four-month timeline after that full consultation and then the pro-competition orders or alternatives. In terms of the public—

Paul Scully: That is a fair point. The best I can say is as soon as is practicable. I talked about the fact that speed is important, but it really depends on the complexity of the case and what needs to be in the summary, how quickly it will take to summarise and so on. There is a drive to get on with this as quickly as possible. The theme throughout the entire framework of the Bill is that detriment happens at speed in digital markets and we have to crack on and get those PCIs in place should they be required.

The decision notices for PCIs will go to the firm first. The full document will be published and an order will be introduced. A summary will be published. Should the PCI be replaced, an order revoked or should there be an acceptance of varying commitments on a PCI, the full document will be published.

The CMA can consult on an order as part of the earlier PCI decision, so the four months may not be necessary. Those timetables are there as a maximum, depending on the complexities.

Seema Malhotra: I would like to pick up on the point about pro-competition orders and the consultation. Clause 49(4) states:

"The provision that may be made in reliance on subsection (3) includes provision requiring an undertaking to act differently in respect of different users or customers (and such provision may be by reference to a description of users or customers, to absolute numbers of users or customers, or to a proportion of the undertaking's total number of users or customers)."

That appears both broad and specific. Interested parties may want clarity, so is it expected that that detail will be discussed and consulted on?

Paul Scully: The way that consultation is done depends. If there is something starkly obvious to everyone, it may be that only minimal consultation is needed. If it is more technical, it will need to be more in depth, which is why we are not being prescriptive from the centre. It is up to the DMU to consider this.

The hon. Lady also asked about a list of PCIs and potential PCIs. It is very much for the DMU to address the recourse to a designated firm's market dominance. Examples of PCIs that could be introduced include choice remedies that will allow users to make an active choice in the digital services that they use. PCIs could, for example, compel a designated firm to present users with different options for their preferred web browser, and we heard evidence on that from Gener8. Instead of defaulting to a particular browser, PCIs could include interoperability remedies that will enable users to use goods and services from different providers as opposed to being locked into one provider. For example, the DMU might require users of different instant messaging services to be able to communicate with one another.

The DMU could introduce data portability remedies, which would make it easier for users to switch providers. Such remedies could, for example, require a designated firm to make it possible for its users to download and export data to a new phone with a different operating system. PCIs could include data access remedies, which would level the playing field by requiring designated firms to share their data with competitors, which could include the data that large search engines have on users' search history. Separation remedies would require designated firms to run different aspects of their businesses independently, so that dominant firms cannot use market power in one part of the business to gain power in another, which might involve requiring data stores for different services to be separated. It could require the firm to sell off a part of its business altogether.

Those are examples, but that was not a prescriptive or exhaustive list of PCIs. They are very much up to the DMU to frame depending on the technology and the market dominance that they are trying to remedy.

The Chair: The hon. Lady is looking at me in a funny way.

Seema Malhotra: I seek your guidance, Mr Hollobone. I was just wondering about process. I had one last question for the Minister; I thought that he was continuing his speech, but he has finished it.

The Chair: One last question.

Seema Malhotra: I seek clarification from the Minister on clause 51(8), which reads:

"The fact that a pro-competition order ceases to have effect does not affect the exercise of any functions in relation to a breach or possible breach of that order."

I assume that is referring to historical breaches, but I seek clarification on that because it is not in the wording of the clause.

Paul Scully: Yes, that is the case.

Question put and agreed to.

Clause 44 accordingly ordered to stand part of the Bill.

Clause 45

POWER TO BEGIN A PCI INVESTIGATION ETC

Amendment made: 12, in clause 45, page 25, line 18, at end insert—

"(3) The CMA may begin a PCI investigation in relation to a designated undertaking even if it has previously made a decision not to make a PCI in respect of that undertaking."—*(Paul Scully.)*

This amendment confirms that the CMA can begin a PCI investigation in relation to a designated undertaking even if it has previously made a decision not to make a PCI in respect of that undertaking.

Clause 45, as amended, ordered to stand part of the Bill.

Clauses 46 to 54 ordered to stand part of the Bill.

Clause 55

DUTY TO REPORT POSSIBLE MERGERS ETC

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

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

Clauses 56 to 59 stand part.

That schedule 2 be the Second schedule to the Bill.

Clauses 60 to 66 stand part.

Paul Scully: These clauses comprise chapter 5, "Mergers", and schedule 2 provides further detail needed for chapter 5 to function smoothly.

Clause 55 establishes a requirement for SMS firms to report possible mergers involving them that have the potential to harm competition in the UK to the CMA before they can be completed. Unlike most merger regimes, at the moment there is no obligation in the UK to notify mergers to the CMA, but firms may choose to voluntarily notify the CMA of a merger in order to receive a binding decision from the CMA on it. In digital markets, this is a very different thing, because of the speed with which it can happen and the entrenchment of power, which we have discussed at length. That is why it is important that the CMA has the opportunity to review potentially harmful mergers involving SMS firms before it is too late. This light-touch reporting requirement is designed to focus on only those possible SMS firm mergers with the potential to give rise to competition concerns.

The mergers will need to be reported only if three conditions are met, these are when the SMS firms will obtain qualifying status through holding shares or voting rights in a target firm that is a UK-connected body corporate. I will set out further detail on the former when I explain clause 56. The latter means any body corporate that carries on activities in the UK or supplies goods or services to the UK, or which has a subsidiary that does so. The consideration provided by the SMS firm for the holding of shares or voting rights must also be at least £25 million. Similar conditions will also apply for the reporting of possible mergers involving an SMS firm participating in a joint venture. When an SMS firm is part of a larger corporate group, the requirement to report will instead apply to all the bodies corporate that make up the group. In those situations, the question will generally be whether the group as a whole will meet the conditions I have set out. When I say "an SMS firm" in debates on this chapter in part 1 of the Bill, it means an SMS firm or any larger corporate group it is part of.

The reporting process should take a maximum of 10 working days. Once a report has been submitted, the CMA will have up to five working days to determine whether the report is sufficient and must therefore be accepted. Following acceptance, the CMA will have a further five working days to review the information in the report before the possible merger can be completed. If the CMA identifies a reported merger as potentially problematic, it can use its powers under the general merger regime to investigate the merger as it would any other type of merger.

Clause 56 defines qualifying status. Under the merger regime, control over a target firm or joint venture vehicle must be acquired or increased for a merger to take place. That is for the CMA to determine on a case-by-case basis. One of the ways control can be exercised is through a shareholding or through voting rights. In order to capture acquisitions of control over target firms based on shares or voting rights, clause 56 provides that SMS firms will acquire qualifying status in a target firm when the percentage of the shares or voting rights they hold in the firm crosses any of the thresholds in subsection (1)—that is, when the percentage moves from less than 15% to 15% or more; from 25% or less to more than 25%; or from 50% or less to more than 50%. These thresholds have been chosen specifically to capture circumstances in which different levels of control recognised under the merger regime are likely to be acquired by an SMS firm.

Clause 57 sets out what is meant by the "value of consideration", which is necessary to determine whether a possible merger meets the £25 million threshold for reporting set out in clause 55. Clause 58 places several requirements on the CMA with regard to the notice it is required to make, setting out the parameters of the report that SMS firms will be required to provide to the CMA about a possible merger. The clause requires the CMA—to pre-empt a possible question—to publish online a notice setting out what information must be included in a report and what form a report must take. We decided, in subsection (2), to limit what the CMA may require in the report to only that information considered necessary to decide whether to initiate a merger investigation or make a hold separate order under the general merger regime while an investigation is ongoing.

Clause 59 sets out further detail of when and how reporting requirements will apply. Schedule 2 provides further detail as to when interests like shareholdings and rights, such as voting rights, are treated as held in a target firm or joint venture vehicle for the purposes of the duty to report a possible merger in clause 55. Clause 60 places time limits and procedural requirements on the CMA once it has received a report. Clause 61 makes it clear that a reportable event must not take place until the reporting requirements set out in the chapter are met. Clause 62 clarifies when a possible merger is considered as taking place for the purposes of the

[Paul Scully]

reporting requirements. Clause 63 permits SMS firms to authorise third parties to act on their behalf—specifically, to give a report to the CMA about a possible merger and to receive the notice of acceptance or rejection from the CMA. In general, those third parties are likely to be legal representatives.

Clause 64 sets out the review process for non-penalty decisions made by the CMA in connection with the chapter. We will talk about appeals and the wider area later on, but if a person is aggrieved by the decision made by the CMA in connection with a reporting requirement that is not a penalty decision, they can apply to the Competition Appeal Tribunal for a review of that decision. The Competition Appeal Tribunal will apply the same principles as would be applied by a court on an application for judicial review. A full merits appeal process will apply to penalty decisions made by the CMA in connection with this chapter, as it does to penalty decisions under the wider merger regime.

Clause 65 provides the Secretary of State with powers to make regulations in relation to the duty to report. It also sets out which procedure-specific regulations are subject to that. It is appropriate that the Secretary of State has the power to make regulations on the duty to report. Operational experience may reveal that the criteria needs to be changed for the reporting process to continue to function effectively. Clause 66 places a duty on the CMA to monitor and enforce the merger reporting requirements. It goes no further than requiring the CMA to consider exercising its investigative and enforcement powers where it is aware of a basis for doing so.

Alex Davies-Jones: I am grateful to the Minister for outlining chapter 5 and we welcome the provisions. None of us want to see potential loopholes or designated undertakings being able to avoid their responsibilities thanks to a merger, so we see clause 55 and many of the clauses that follow in this chapter as being eminently important. More specifically, the clause sets out the circumstances in which designated undertakings or, where designated undertakings are part of a group, group members—see clause 114—will have a duty to report a possible merger involving a reportable event to the CMA before it takes place.

We welcome the clarification that there will be two categories. The first is concerned with designated undertakings or groups reaching certain percentage thresholds of the shares or voting rights held in certain bodies corporate with links to the United Kingdom. The second is concerned with designated undertakings or group members forming certain joint venture vehicles that are intended or expected to have links to the United Kingdom. We recognise the role of a minimum value requirement, which will also apply in relation to the consideration provided for the relevant shares or voting rights, or in relation to the formation of the joint venture vehicle.

We see the clause as important in clarifying where the line will be drawn for possible mergers in relation to this regime, and agree with the drafting, which sets the value of the merger as being at least £25 million. We feel that is a fair value, so we support the clause and have not sought to amend it at this stage. The same can be said for clauses 56 to 59. As we know, one of the strategic recommendations of the Digital Competition Expert Panel's Furman report suggested that legislation adapting the merger control rules—so that the CMA could more effectively challenge mergers that could be detrimental to consumer welfare—was required. So we see clause 56, which sets out the circumstances in which a designated undertaking or group will have qualifying status in relation to a UK-connected body corporate or joint venture vehicle, as being vital to ensuring that mergers are covered by this legislation more widely.

12 noon

Turning to clause 57, I note that subsection (3) creates a delegated power for the Secretary of State to make regulations setting out

"further provision about how the value of—

(a) consideration,

(b) capital, or

(c) assets,

is to be calculated for the purposes of"

the duty to report.

Although I welcome the clarification that this power is subject to the negative procedure, as per subsection (5), I wonder whether the Minister could elaborate on exactly how it will work in practice. Could he give us an example whereby he deems that the Secretary of State of the day would want to draw on this delegated power, and what the ensuing regulations may or may not look like?

Clause 58 concerns the "Content of report", which is important, and we welcome its inclusion in the Bill. As the Minister confirmed, it means that the CMA will have to set out a notice, which will be published online, as well as setting out the required form and content of a report. That is a sensible approach and we welcome the transparency of the clause.

However, I draw the Minister's attention to subsections (3) and (5). Subsection (3) reads:

"The CMA may from time to time replace the notice."

Can he say in what circumstances that may occur and whether there will be a limit on how many notices may be replaced?

Subsection (5) reads:

"The CMA must consult—

(a) the Secretary of State, and

(b) such other persons as it considers appropriate,

before making or replacing a notice under this section."

We welcome consultation—that has been a regular theme of our debates in this Committee so far—but we find it curious why no other individuals or bodies have been named at this point. It is of course important that the Secretary of State plays a role here, but can the Minister elaborate on which other individuals he envisages will also fall under this subsection and that therefore will also have a role in the consultation?

Turning to clause 59 and schedule 2, we see these as reasonable and sensible, so we have not sought to amend them. Similarly, we support clauses 60 to 66, which broadly relate to the duties around report timings. We have not sought to amend them at this stage and they should stand part of the Bill.

Paul Scully: Regarding the hon. Member's questions about the Secretary of State having the powers to amend things, I cannot give her an example but it very much goes back to what I was saying in a previous

debate, namely that digital markets change really quickly and it is just so that the Secretary of State has the power to amend things quickly and so that the reporting criteria may develop and evolve over a period of time, so that they can remain relevant in the long term.

Clearly, we have safeguards in the process there, so the Secretary of State will need to consult the CMA. This is not just an isolated decision-making process; the CMA has expertise in this area, but it will be for the Secretary of State to focus on the decision. The CMA will be able to provide the expert advice, ensuring that amendments can correctly reflect the changing landscape, and Parliament will clearly need to approve any amendment.[1]

Regarding the notice that the hon. Member was talking about, again it is appropriate for the CMA to set out by notice what a report must contain. The CMA has considerable expertise in the assessment of mergers, so it is well-placed to decide what information it needs to make an assessment. So, the approach that we are suggesting here is consistent with the wider merger regime, whereby the CMA sets out what information should be included in a voluntary merger notification.

Question put and agreed to.

Clause 55 accordingly ordered to stand part of the Bill.

Clauses 56 to 59 ordered to stand part of the Bill.

Schedule 2 agreed to.

Clauses 60 to 66 ordered to stand part of the Bill.

Clause 67

Power to require information

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

The Chair: With this it will be convenient to discuss clause 68 stand part.

Paul Scully: Clearly the DMU needs to have access to the correct information to ensure its work is evidence-based. Clause 67 allows the DMU to request information it needs to either exercise, or decide whether to exercise, any of its digital markets functions. That includes information in any form, such as data, internal documents and forecasts. The clause also includes new powers to investigate the outputs of algorithms by requiring SMS firms to generate information and to carry out tests and demonstrations of technical processes.

Clause 68 allows the DMU to require that an SMS firm names a senior manager to be responsible for ensuring that the firm complies with a specific information request. The DMU will be able to impose a penalty on the named senior manager where they have failed, without reasonable excuse, to prevent the SMS firm from failing to comply with the request for information. Personal liability will help to embed a culture of compliance within strategic market status firms.

Alex Davies-Jones: Clause 67 is an important starting point as it gives the CMA powers to require the provision of information from designated undertakings and any other person believed to hold material needed for it to operate the regime. That includes any information in any form, which might include data, correspondence, forecasts and estimates.

We welcome the clarity that the CMA will be able to specify the format in which the information must be provided. That is a very important point that we feel will be critical to ensuring timely responses from designated undertakings. We have seen the dangers of what can happen when we allow these big firms to overwhelm with the provision of data in complex formats and in incredible quantities in legal proceedings around online safety, and we do not want to see the same negative consequences here.

We welcome subsection (4), which, importantly, includes provisions that will enable the CMA to compel evidence collection by requiring a person to collect and retain information that it may not otherwise collect and retain. In addition, subsection (7) specifies that the CMA can require the recipient of an information notice to give the CMA information, either in physical or electronic form, which is located outside the UK. That is an important point worth touching on.

We know that these SMS firms have a global reach. We do not want to be in a position whereby the CMA cannot access information just because it is held overseas. This is a sensible and crucial clause to ensure the CMA has the appropriate teeth and power to act when it needs to.

We are also pleased to see clause 68 included in the Bill, which references a point that Labour have repeatedly called for in other legislation. Without these provisions and the ability to name an individual, big companies will typically not take their responsibilities seriously. We therefore welcome confirmation that a penalty may be imposed on a named senior manager of a designated undertaking that fails to comply with an information notice—a point we will address later, when we discuss clause 85.

Ultimately, we feel that the provisions are in line with other regulated sectors, principally financial services, where regulation imposes specific duties on directors and senior management of financial institutions, and those responsible individuals face repercussions if they do not comply.

I feel we have lots to learn here from looking to other regulated industries. For example, in financial services regulation, the Financial Conduct Authority uses a range of personal accountability regimes, including the senior managers and certification regime, which is an overarching framework for all staff in financial services industries. The regime aims to

"encourage a culture of staff at all levels taking personal responsibility for their actions and make sure firms and staff clearly understand and can demonstrate where responsibility lies".

If only we could have that approach to other legislation on online safety. We therefore support clause 68—we see it as standard—and have not sought to amend it at this stage.

Question put and agreed to.

Clause 67 accordingly ordered to stand part of the Bill.

Clause 68 ordered to stand part of the Bill.

Clause 69

Power of access

Paul Scully: I beg to move amendment 13, in clause 69, page 39, line 18, after "access" insert "business".

This amendment limits the power of the CMA to require access to premises so that it may be used only in relation to business premises.

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

The Chair: With this it will be convenient to discuss Government amendments 14 to 24.

Paul Scully: Government amendments 13 to 24 remove possible ambiguities about the scope of the power of access, and of a firm's duty to co-operate with a skilled person, so that they are aligned with similar Digital Markets Unit information-gathering tools. Clause 69 allows the DMU to require firm-led tests or demonstrations under the DMU's supervision. That backstop power of access will be available when a strategic market status firm fails to comply with an information notice or with the duty to assist a skilled person. Clause 77 introduces a power for the DMU to appoint a skilled person to produce a report on an aspect of an SMS firm, or a firm subject to an SMS assessment. There will be a duty on the firm to co-operate with the skilled person, including by giving them access to their premises.

These essential clauses ensure that the DMU has the right powers, but it is important to ensure that those powers are proportionate and appropriately constrained. Government amendments 13 and 16 limit the DMU's power of access to business premises, rather than allowing access to all premises. That ensures that the power cannot be interpreted as allowing access to domestic premises and maintains consistency with the restrictions on the DMU's powers of entry. Government amendments 17 to 20 and 22 are consequential.

Neil Coyle (Bermondsey and Old Southwark) (Lab): The Minister will have heard the witnesses last week, including witnesses from trading standards. Will the amendments in this grouping be replicated to address the concerns of trading standards and ensure equivalence across the regulatory powers?

Paul Scully: We listened to the evidence and considered that, and we will reflect on that in our further consideration of the Bill. It was interesting to hear the evidence last week.

Neil Coyle: Is the Minister suggesting that the equivalent powers to access information, which were specifically addressed last week by trading standards representatives, will be covered by this legislation?

Paul Scully: I am saying that the amendments that we are discussing in this grouping are specifically about domestic and business premises. I am just keeping to the narrow scope of the amendments. As for the wider evidence that we heard last week, we will clearly reflect on that and work out any other parts of the legislation; I was being really specific about what these amendments do.

Government amendment 21 limits a firm's duty to give access to a skilled person, so that it is access to business premises only, to ensure consistency with other DMU and wider CMA investigatory powers. Government amendment 14 to clause 69 limits the power of the DMU to access persons to a power to access individuals, and Government amendment 23 limits the firm's duty to assist a skilled person to a duty to assist a skilled individual. Those changes clarify the scope of the power and the duty, as a person includes a legal person, such as a company. The clauses already specify that the DMU or skilled person can require access to a designated firm's premises, equipment, services and information. Limiting access to individuals—or natural persons—is a more accurate reflection of the policy intention of the clauses.

Finally, Government amendments 15 and 24 clarify that the DMU may access individuals or business premises only in the UK, and similarly that a firm's duty to assist a skilled person by giving them access applies only to individuals and business premises in the UK. The DMU's powers of entry allow entry to domestic premises only under a warrant, under clause 73. Its interview and entry powers may also be exercised only in respect of individuals and premises in the UK. Government amendments 13 to 24 will preserve those important limits on the DMU's powers and ensure consistency across the DMU's information-gathering toolkit.

Neil Coyle: I am hoping for clarity. I think there were attempts to get information to the Minister when I intervened before. Last week, trading standards specifically asked for the powers that are being discussed in these amendments. I appreciate that this grouping is for a different regulatory body, but does the Minister aim to set up equivalence for regulatory bodies, or is the new body to have greater powers than an existing body with a similar purpose?

Paul Scully: I am trying to remain specific, rather than widening the discussion to other regulatory issues, because the provisions must be specific to the matter that we are discussing; I think I am correct in saying that. Effectively, this grouping tries to narrow down the enforcement powers; it clarifies that they relate to business premises, and apply within the UK, rather than extraterritorially. That is why I hope that hon. Members will support these Government amendments.

12.15 pm

Alex Davies-Jones: The Opposition believe that clause 69 is crucial to the Government's policy objective of empowering the Competition and Markets Authority, and ensuring that it can enforce its regime and proactively address the root causes of competition issues in digital markets.

The clause builds on clause 68 and gives the CMA the power to require a designated undertaking to obtain, generate, collect or retain specified information or to conduct a specified demonstration or test of a business system or process under the supervision of the CMA. Specifically, the power can be exercised when the designated undertaking has failed to comply with a previous request for information under an information notice or to provide sufficient assistance to a skilled person. We welcome those provisions. We also welcome the clarity provided by the clause about when the CMA can use the powers, which is when companies have failed to comply with other requirements. None of us wants the CMA to take an overly heavy-handed approach, but it must be compelled and empowered to act where necessary.

We understand that the powers in subsections (2) and (3) will be used rarely, but it is important that they be in the Bill. They are also an important step in ensuring that big strategic market status firms, which for too long have gone unregulated, cannot bypass the regime by concealing information or operating systems. It is vital that the Government do not give in here, so I urge the Minister to ensure that they do not. I imagine that there

is heavy pressure from firms that will be captured by the provisions, but the Government must not cave in or weaken this regime; I hope the Minister can reassure us that they will not. That being said, we welcome the clause and have not sought to amend it at this stage.

Government amendments 13 and 14 clarify that the CMA's access rights will be used only in relation to business premises. We see that as appropriate. Government amendments 15 to 23 are technical changes that we are happy to support. Government amendment 24 is an important clarification that limits duties to inside the UK, which again is a sensible inclusion that Labour supports.

Mr Hollobone, would you like me to discuss clause 70, or finish there?

The Chair: We will wait for that treat.

Paul Scully: To answer the one easier question that the hon. Lady asked, I can assure her that we will not weaken the provisions.

Amendment 13 agreed to.

Amendments made: 14, in clause 69, page 39, line 18, leave out "persons" and insert "individuals".

This amendment limits the power of the CMA to require access to persons so that it may be used only in relation to persons who are individuals.

Amendment 15, in clause 69, page 39, line 33, at end insert—

"(5) The powers conferred by this section are not exercisable in relation to premises, equipment or individuals outside the United Kingdom.

(6) But the powers conferred by this section are exercisable in relation to information and services whether stored or provided within or outside the United Kingdom."

This amendment limits the power of the CMA to require access to premises, equipment or individuals so that it may not be used to require access to premises, equipment or individuals outside the United Kingdom.

Amendment 16, in clause 69, page 39, line 33, at end insert—

"(7) In this Chapter, 'business premises' means premises (or any part of premises) not used as a dwelling."—*(Paul Scully.)*

This amendment is consequential on Amendment 13 and moves the definition of "business premises" from clause 72 to clause 69.

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

The Chair: With this it will be convenient to discuss clauses 70 to 76 stand part.

Paul Scully: Clause 69 is a backstop power enabling the Digital Markets Unit to supervise firm-led tests and demonstrations, either at a firm's premises or remotely. It will be available only in limited cases in which an SMS firm has not complied with an information notice or a duty to assist a skilled person. It provides an efficient way for the DMU to get the information that it needs without placing an undue burden on firms.

Clause 70 allows the DMU to require an interview with any individual in the UK with information relevant to a digital markets investigation. That will enable the DMU to gather vital evidence that is held by individuals with relevant knowledge, rather than in digital or physical forms. Clause 71 protects individuals who are compelled to give testimony under clause 70 from self-incrimination. It limits the circumstances in which the DMU can use an individual's interview statement as evidence against them in a criminal prosecution. Clause 72 allows the DMU to enter business premises without a warrant for the purposes of a breach investigation. It ensures that the DMU can collect information that is being withheld by an SMS firm that is accessible only on the premises. Without that power, there would be greater risk that a firm could destroy or interfere with material relevant to an investigation.

Clause 73 allows the DMU to enter business and domestic premises for the purposes of a breach investigation, after obtaining a warrant from the High Court, Court of Session or Competition Appeal Tribunal. The DMU must also establish that a firm has failed to comply with previous information requests, or that no other powers would secure the necessary evidence, and establish reasonable suspicion that the information is relevant to the investigation. Clause 74 contains supplementary requirements for how the DMU must exercise its power to enter premises under a warrant. It also clarifies the extraterritorial scope of that power. The DMU will not be able to enter premises outside the United Kingdom under clause 73, but it can access information regardless of where it is physically stored.

Clause 75 allows the DMU to take copies of, or extracts from, information and sift it off site when exercising its power to enter either business or domestic premises under a warrant, if it is unsure whether the information falls within the scope of the investigation. Clause 76 ensures that the DMU follows established judicial procedures when applying for a warrant to enter premises. It requires the DMU to follow the rules of the High Court, Court of Session or Competition Appeal Tribunal; that provides vital checks and balances.

These clauses are largely modelled on the CMA's existing information-gathering powers, and they will be subject to the same robust safeguards. They also give the DMU new powers to scrutinise the output of algorithms in clause 69, and enhanced powers in clause 73 to access information that is stored on remote servers but accessible over the internet. It is important to recognise that without those powers, the DMU's interventions would not be well evidenced or enforceable.

Alex Davies-Jones: I was champing at the bit to talk about these clauses. However, I will keep my comments brief because much of Labour's thoughts align with our thoughts on previous clauses.

Clause 70 gives the CMA the power to require any individual to attend an interview and answer questions for the purposes of a digital markets investigation. That is consistent with the amendments to section 26A of the Competition Act 1998. We welcome those, so it is only right that the powers appear in this legislation, too. These are basic powers and the clause is fairly procedural. The CMA must have the power to give notice to any individual with information relevant to a digital markets investigation, requiring them to answer relevant questions at a place or in a manner specified in the notice. That is fundamental for an empowered regulator. We support the approach, so we have not sought to amend the clause at this stage. We also support the intentions of

[Alex Davies-Jones]

clause 71, and we believe that the approach is fair and reasonable. The clause is important for clarity. We welcome its inclusion in the Bill and we have not sought to amend it at this stage.

Turning to clause 72, it is right and proper that the CMA must have reasonable grounds to suspect that information relevant to the breach investigation can be accessed from or on the premises. We support that common-sense approach. The provisions are in line with those for other regimes, and will be important in ensuring that if the CMA is required take action for the purposes of a breach investigation, it can do so in a timely and effective manner. We support the clause and have not sought to amend it.

We also support the intentions of clause 73, which gives the CMA the power to enter business and domestic premises under a warrant, without notice and using reasonable force, for the purposes of a breach investigation. Again, the CMA has powers of entry under a warrant through sections 28 and 28A of the Competition Act 1998. It will come as no surprise, given that we support provisions for the CMA to act without a warrant, that we agree that it should be able to act with one. We value the clarification that the CMA must prove that there are reasonable grounds to act. If it has to, it can call on individuals who have expertise that is not available in the CMA but is required if the terms of the warrant are to be fully carried out. That will allow the CMA to act rapidly, which, given the level of these breaches, is vital. We therefore support this clause standing part of the Bill.

Clause 74 sets out the supplementary requirements to the CMA's power to enter premises under a warrant. We welcome the transparency afforded by subsection (1), and the clarification that although the CMA cannot enter premises outside the United Kingdom, as outlined in subsection (6), it can access information regardless of where it is physically stored. That is an important point, given the nature of SMS firms and their global holdings. For those reasons, Labour is happy to support the clause standing part of the Bill.

Clause 75 makes necessary amendments to a range of sections of the Criminal and Justice and Police Act 2001 to enable the CMA to seize information and take copies of, or extracts from, information when exercising its power under clause 73 to enter business and domestic premises with a warrant. It is a practical clause that aligns with the CMA's power to seize documents from business premises under section 28 of the Competition Act 1998. We therefore believe that the clause should stand part of the Bill.

Clause 76 requires the CMA to follow the rules of the High Court, the Court of Session or the CAT when making an application. We see it as a natural consequential clause and will therefore support it.

Seema Malhotra: May I make one additional comment? We received evidence from trading standards about their access to information that could be stored online in order for them to undertake some of their responsibilities. Has any consideration been given to whether the search powers that the CMA will be given could be extended to trading standards, which sometimes undertake very similar areas of work?

Paul Scully: I note that if there were a word cloud of comments from the hon. Member for Pontypridd, "We are not amending at this stage" would be quite high up. Duly noted.

On the matter raised by the hon. Member for Feltham and Heston, I will write to her with more detail, because I think we are talking about two different regimes across two different Departments. I do not want to pre-empt what my hon. Friend the Member for Thirsk and Malton may do with trading standards. These provisions relate specifically to CMA powers, which is why I am remaining in that narrow tramline. I will write to the hon. Member for Feltham and Heston about the wider trading standards regime.

Question put and agreed to.

Clause 69, as amended, accordingly ordered to stand part of the Bill.

Clauses 70 and 71 ordered to stand part of the Bill.

Clause 72

POWER TO ENTER BUSINESS PREMISES WITHOUT A WARRANT

Amendments made: 17, in clause 72, page 40, line 31, after "premises" insert "(see section 69(7))".

This amendment is consequential on Amendment 16.

Amendment 18, in clause 72, page 41, leave out lines 40 and 41.—*(Paul Scully.)*

This amendment is consequential on Amendment 16.

Clause 72, as amended, ordered to stand part of the Bill.

Clause 73

POWER TO ENTER PREMISES UNDER A WARRANT

Amendments made: 19, in clause 73, page 43, leave out line 22.

This amendment is consequential on Amendment 16.

Amendment 20, in clause 73, page 43, line 33, after "business premises" insert "(see section 69(7))".—*(Paul Scully.)*

This amendment is consequential on Amendment 16.

Clause 73, as amended, ordered to stand part of the Bill.

Clauses 74 to 76 ordered to stand part of the Bill.

Clause 77

REPORTS BY SKILLED PERSONS

Amendments made: 21, in clause 77, page 47, line 3, after "such" insert "business".

This amendment limits the duty to assist a skilled person by giving access to premises so that it applies only in relation to business premises.

Amendment 22, in clause 77, page 47, line 3, after "premises" insert "(see section 69(7))".

This amendment is consequential on Amendment 16.

Amendment 23, in clause 77, page 47, line 4, leave out "persons" and insert "individuals".

This amendment limits the duty to assist a skilled person by giving access to persons so that it applies only in relation to persons who are individuals.

Amendment 24, in clause 77, page 47, line 5, at end insert—

"(13) The duty in section 77(12) does not include a duty to give access to premises, equipment or individuals outside the United Kingdom.

(14) But the duty in section 77(12) does include a duty to give access to information and services whether stored or provided within or outside the United Kingdom."—*(Paul Scully.)*

This amendment limits the duty to assist a skilled person by giving access to premises, equipment or individuals so that it does not include a duty to give access to premises, equipment or individuals outside the United Kingdom.

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

The Chair: With this it will be convenient to discuss clauses 78 to 80 stand part.

Paul Scully: Clauses 77 to 80 introduce the final elements to support the DMU's investigatory powers.

Clause 77 will give the DMU the power to authorise a skilled person to provide a report to it in relation to an SMS firm, or firm subject to an SMS investigation, on a matter relevant to the operation of the regime. That is needed to give the DMU access to expert reports to enable it to interpret technical information gathered when carrying out its digital markets functions.

Clause 78 will impose a legal duty on certain people to preserve evidence that is relevant to a digital markets investigation or to a compliance report in relation to an SMS firm. That duty will also apply when the DMU is providing investigative assistance to an overseas regulator. That will ensure that no party may destroy, conceal or falsify any relevant evidence without reasonable excuse.

12.30 pm

Clause 79 will prevent the DMU from requiring any person to provide any information that is subject to legal professional privilege or, in Scotland, to confidentiality of communications. It will also prevent the DMU from seizing or taking copies or extracts from such material. An exception is made, however, where it is not practicable to separate privileged information from non-privileged information. In such cases, the information will be subject to the safeguards under part 2—"Powers of seizure"—of the Criminal Justice and Police Act 2001. Legal professional privilege is a fundamental principle of justice that ensures that parties' rights to a fair trial and privacy are protected. That is because legal advice is confidential to the client to whom it is given.

Clause 80 will give the DMU the power to publish a notice of any decision to assist a regulator in another country with an investigation. That ensures that the DMU cannot be sued for defamation as a result of publishing a notice of a decision to provide investigative assistance, provided it is in line with the requirements set out in the clause. It is essential that the DMU is able to support other regulators without undue fear of legal action, which might limit its ability to assist in pursuing challenging international cases effectively.

Seema Malhotra: It is a pleasure to speak to this group of clauses on behalf of my hon. Friend the Member for Pontypridd, who is speaking in another debate.

We support clause 77, which will give the CMA the power to require a skilled person, which could be a legal or other person, to provide a report to it on a matter relevant to the operation of the regime. That is in line with other regimes of that nature, and we therefore support its inclusion.

The clarity afforded by subsection (1), which sets out that the CMA can use this power in

"exercising, or deciding whether to exercise, any of its digital markets functions",

is welcome. It is also right that the CMA can exercise the power only in relation to a designated undertaking or an undertaking subject to an SMS investigation.

In order to ensure no unnecessary delay, subsections (2) and (3), which will give the CMA the power to appoint a skilled person to provide a report and give notice of the appointment and other relevant matters to the undertaking in question, while also specifying the form of a report, are an important inclusion. That aligns well with subsection (12), which imposes a duty on the designated undertaking or undertaking subject to an SMS investigation, and any person connected to those undertakings, to assist the skilled person in any way reasonably required to prepare the report.

One hopes that designated undertakings would co-operate in such instances, but it is welcome and helpful to have their obligations outlined as they are in clause 77. Clarity on the consequences of failing to comply, in the form of penalties or other enforcement provisions, is also an important and positive step. Labour has therefore not sought to amend the clause at this stage; we believe it should stand part of the Bill, as drafted.

As with any regulatory regime, the CMA should of course preserve relevant evidence. Clause 78 is integral, because it places a legal duty to preserve evidence that is relevant to a digital markets investigation, a compliance report by a designated undertaking, and evidence where the CMA is providing investigative assistance to an overseas regulator. The Bill also confirms that where the CMA has made a formal request for information, there are penalties for non-compliance, or for falsifying, concealing or destroying information.

Labour supports the purpose of clause 78, which is to preserve evidence before and after the CMA has made a formal request. We believe that it is consistent with the existing duty to preserve evidence under section 201(4) of the Enterprise Act 2002 on cartel offence investigations. We note, however, that the duties within this clause do not apply

"where the person has a reasonable excuse to do so."

I—and, I am sure, others—would welcome clarification from the Minister on that point. We support the intentions of the clause and have therefore not sought to amend it at this stage, but I would appreciate further clarity on the definition and how it will work in practice.

Clause 79 is helpful because it specifies that the CMA cannot require any information subject to legal and professional privilege, or, in Scotland, confidentiality of communications. That is an important point to make and is in line with similar regimes. We support the clarity outlined in subsection (2), which specifies that the limitation applies to producing, taking possession of, and taking copies of or extracts from a privileged communication. I do not need to elaborate much further here. Labour considers this to be a fairly standard procedure and we therefore support clause 79 stand part.

Finally, clause 80 gives the CMA the power to publish a notice of any decision to use its investigatory powers under the digital markets regime to assist an investigation by the regulator in another jurisdiction. The notice may

[Seema Malhotra]

include the regulator that the CMA is assisting, the undertaking that is the subject of investigation, and the matter for which the undertaking is under investigation. Labour welcomes the transparency measures here.

My question is about why that approach has not been afforded to the CMA's domestic work on digital markets. If the CMA is able to support overseas regulators in ways that might identify the undertaking, I am unclear as to why the CMA is not compelled in the same way for issues that might arise in the UK. I am interested to hear the Minister's thoughts on that point, because it is an important one for companies likely to be captured in the SMS definition and for challenger firms that might one day find themselves subject to these regulations, too.

Paul Scully: I thank the hon. Lady. I will probably write to her with examples of where that measure might come in. As I have said, it does not come in if there is an exemption for people with a reasonable excuse. I am not fleet enough of foot to come up with a good example for her at the moment, but I will certainly write to her.

On the domestic situation for the DMU, I will, again, probably write to the hon. Lady, but my interpretation is that it is easier to deal with the potential for defamation and so on when someone has full control of the case in one jurisdiction. If we are working across jurisdictions internationally it is more complex, so the protections need to be there.

Question put and agreed to.

Clause 77, as amended, ordered to stand part of the Bill.

Clauses 78 to 80 ordered to stand part of the Bill.

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

12.39 pm

Adjourned till this day at Two o'clock.