PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

DIGITAL MARKETS, COMPETITION AND CONSUMERS BILL

Ninth Sitting

Tuesday 27 June 2023

(Morning)

CONTENTS

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

not later than

Saturday 1 July 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 27 June 2023

(Morning)

[Philip Hollobone *in the Chair*]

Digital Markets, Competition and Consumers Bill

9.25 am

The Chair: Before we begin, I remind Members to please switch electronic devices to silent. There is to be no food or drinks, except the water provided. Please send speaking notes to hansardnotes@parliament.uk.

Clause 91

Destroying or falsifying information

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

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

Clauses 92 and 93 stand part.

Government amendment 34.

Clauses 94 to 96 stand part.

The Parliamentary Under-Secretary of State for Science, Innovation and Technology (Paul Scully): Let me cover the criminal offences in the regime, which largely mirror existing powers that the Competition and Markets Authority has in the Competition Act 1998. Criminal liability is important for deterring serious acts of misconduct in the context of information gathering and compliance monitoring, and will help to ensure that the digital markets unit can access relevant information.

Clause 91 makes it a criminal offence for an individual or firm to intentionally or recklessly destroy information, conceal information, provide false information, or cause or permit any of those actions. Those offences apply in relation to any of the powers provided for in chapter 6, which concerns information gathering and compliance reports.

Clause 92 makes it a criminal offence for a person to knowingly or recklessly give false or misleading information to the DMU in connection with any of its digital markets functions. It is also an offence for a person to knowingly or recklessly give false or misleading information to another person, knowing that it will be used by the DMU.

Clause 93 makes it a criminal offence for an individual to intentionally obstruct an officer of the DMU when lawfully entering a premises with or without a warrant.

Government amendment 34 seeks to clarify that named senior managers for information requests and nominated officers cannot be held criminally liable for not fulfilling their duties in those roles. As drafted, clause 94(2) broadens the definition of an officer of a body corporate. That would mean that individuals assigned to those roles could risk facing criminal proceedings on the basis of their assignment to the role. It has always been the policy intention that a named senior manager or nominated officer should face a civil penalty only where a firm with strategic market status has failed to comply with a relevant information request or compliance report and where the named individual failed, without reasonable excuse, to prevent that failure from occurring. The amendment would not prevent a senior manager or a nominated officer from facing criminal proceedings if they happen to also qualify as an officer of a body corporate under clause 94. I therefore hope that the Committee will support the amendment.

Clause 94 sets out that, in certain circumstances, where a body corporate commits a criminal offence, an officer of the body corporate can also be held criminally responsible. An officer of a body corporate can be, but is not limited to, a director, manager or secretary. An officer can be held criminally liable where the body corporate commits a criminal offence and the offence is attributable to that officer's consent, connivance or neglect on their part. That will help to encourage officers in firms to take personal responsibility for their actions and will ensure that they are held accountable for any serious information offences.

Clause 95 limits the extraterritorial application of certain offences in the Bill, and I will set out our wider approach to extraterritoriality when we debate clause 110. Specifically, clause 95 states that a person cannot commit any of the part 1 criminal offences unless they have a UK connection, which is established when the person is a UK national, is habitually resident in the UK, or is a body incorporated under UK law. We have carefully considered the options and implications of restricting the extraterritorial application of criminal offences in this way. Although it is crucial that the CMA may apply its powers extraterritorially, they must be used only when strictly necessary and when a sufficient connection exists with the UK. In circumstances in which the person does not have a sufficient connection with the UK for the purpose of committing an offence, the CMA will still be able to enforce breaches of information requirements using civil penalties. That approach will ensure that, in exercising its powers, the CMA is respectful of the territorial jurisdiction of other nations.

Finally, clause 96 sets out the punishments that can be imposed by the relevant courts on conviction of a criminal offence under clauses 91 to 93. Any person found guilty of one of those offences is liable on summary conviction to a fine. In England and Wales, that will be of an unlimited amount, and in Scotland or Northern Ireland it will be up to the statutory maximum. On conviction on indictment, a person is liable to imprisonment for up to two years, a fine or both.

Alex Davies-Jones (Pontypridd) (Lab): I welcome the clauses in this grouping that outline the criminal offences, as the Minister has explained. We welcome their inclusion for clarity, and we are also grateful that they broaden the scope of the Bill to include specific provisions, particularly in clause 94.

We support the clarity and intention of Government amendment 34. It is important that the term "officer" has its usual meaning in relation to offences committed by officers as well as bodies corporate. This is an important clarification and we are grateful to the Minister for tabling the amendment.

Question put and agreed to.

Clause 91 accordingly ordered to stand part of the Bill.

Clauses 92 and 93 ordered to stand part of the Bill.

Clause 94

OFFENCES BY OFFICERS OF A BODY CORPORATE ETC

Amendment made: 34, in clause 94, page 56, line 14, leave out subsection (2).—*(Paul Scully.)*

This amendment removes a gloss on the definition of "officer" of a body corporate so that the term has its usual meaning in relation to offences committed by officers as well as bodies corporate.

Clause 94, as amended, ordered to stand part of the Bill.

Clauses 95 and 96 ordered to stand part of the Bill.

Clause 97

DIRECTOR DISQUALIFICATION

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

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

Government amendments 35 and 36.

Clauses 98 to 101 stand part.

Paul Scully: I will now cover the remaining enforcement measures in the regime, and the appeals process. Clause 97 gives power to the DMU to apply to the court to disqualify a director of a UK-registered company that forms part of a firm with strategic market status, where that firm has breached the digital markets regime. That will allow the DMU to use the Company Directors Disqualification Act 1986, as the CMA does currently under the Competition Act 1998, when an SMS firm infringes the regime and the director's conduct makes them unfit to be involved in the management of a company. That helps to protect UK businesses and the public from individuals who abuse their role and status as directors.

Government amendment 35 clarifies that costs relating to a court order under clause 98 can be made against any person that has breached the relevant requirement, whether or not they are an undertaking. The amendment changes the wording in subsection (3) to reflect the rest of the clause, which applies to persons—in practice, meaning a legal entity forming part of an SMS firm. I hope the Committee supports the amendment.

Government amendment 36 seeks to clarify in clause 98 that where a firm is responsible for the failure to comply with a relevant requirement, a costs order can be made against any officer of the relevant firm.

Clause 98 allows the DMU to apply for a court order where an SMS firm fails to comply with a regulatory requirement and, where relevant, a subsequent order or commitment intended to bring them back into compliance. A breach of a court order is a serious offence that can eventually lead to an unlimited fine and/or imprisonment for officers of the undertaking in question if it is not complied with. The threat of a court order is a key backstop for ensuring SMS firms comply with the regime.

Clause 99 makes explicit provision to allow parties to seek redress privately if they suffer harm or loss when an SMS firm breaches a requirement imposed by the DMU. Redress will be available when an SMS firm breaches a conduct requirement, pro-competition intervention or commitment to the DMU.

Clause 100 sets out that the CMA's final breach decisions are binding on the courts and the Competition Appeal Tribunal to which redress claims can be made. The court or tribunal will only consider what a suitable remedy would be. That will encourage harmed parties to assist the DMU during investigations into suspected breaches of the regime.

Clauses 99 and 100 strike the right balance of ensuring there is a clear and effective route to redress, while ensuring that the regime's focus is on public enforcement.

Clause 101 provides that decisions of the DMU, made in connection with its digital markets functions, can be appealed to the Competition Appeal Tribunal. When deciding these challenges, the CAT will apply judicial review principles. Valid grounds for appealing decisions of the DMU could include challenging whether it acted lawfully and within its powers, applied proper reasoning or followed due process, as well as, in some circumstances, whether the DMU's decision was proportionate. That is with the exception of decisions relating to mergers, which will be brought under the existing process for merger appeals set out in the Enterprise Act 2002. That will ensure that there is a consistent appeals regime for all merger decisions.

Judicial review will allow for appropriate scrutiny of the DMU's decisions in the digital markets regime, ensuring that the DMU is accountable for those decisions, that they are fairly and lawfully taken, and that the rights of businesses are protected. I am sure we all remember the oral evidence: the majority of people in front of us were clear that this was the right approach, and was proportionate.

Alex Davies-Jones: Clause 97 is important in that, as the Minister said, it enables the disqualification of a person from being a director as a consequence of their involvement in an infringement of a requirement relating to conduct requirements or pro-competition interventions. Labour sees that as an important step in ensuring that individuals who have not abided by the terms of this regime are not able to continue in their role. The clause specifically inserts new text into the Company Directors Disqualification Act which allows for these provisions. We welcome that this disqualification can be for up to 15 years—a significant yet fair period—and support the Government's approach. We therefore support clause 97 in its entirety and think that it should stand part of the Bill. I am pleased to confirm that we also support Government amendments 35 and 36.

I will now move on to clauses 98 to 101. On clause 98, we particularly agree with the logical step set out in subsection (1). Its clarification means that, in the event of any initial breach of a conduct requirement that occurs before an enforcement order has been put in place or a commitment has been accepted, it cannot be enforced with a court order. We also agree with the intentions of subsection (3). Again, these are sensible approaches which we support. On the whole, we believe clause 98 to be an important step in establishing and rooting the CMA's powers on a statutory footing. For that reason, we are happy to support it standing part of the Bill.

A fair regulatory regime must include provisions around seeking compensation, so we welcome clause 99. We particularly welcome subsection (2). We further

[Alex Davies-Jones]

welcome the clarity that subsection (4) affords. Again, these are simple clauses that we see as logical and sensible. We are happy to see their inclusion.

I now come to the most important clause in the Bill: clause 101. The Minister will be pleased to know that I have plenty to say on it. Subsections (8) to (10) provide that decisions of the CAT may be appealed to the appellate court for that jurisdiction. That is an incredibly important point and one which the Government must maintain. The DMU will ultimately have the power to make pro-competitive interventions to reduce SMS firms' market power and to review more of their mergers. That means that they will be able to make significant changes to SMS firms' business models with the objective of opening up their ecosystems and levelling the playing field for other businesses. The benefits of doing so are significant, and I am sure we will touch on them in sessions to come.

In the current version of this Bill, the standard of review that applies to DMU decisions is the judicial review standard generally used for authorities that make forward-looking assessments, rather than the "merits" standard used for certain competition law enforcement decisions by the CMA. That means that parties will be able to apply to the Competition Appeal Tribunal to review the legality of the DMU's decisions, focusing on the principles of irrationality, illegality and procedural impropriety. That is an extremely important point and is consistent with other regimes, so the Government must not bow down to pressure here and adopt a "merits" appeals approach. As the Minister quite rightly said, we heard from countless witnesses during our oral evidence sessions who said the same.

We know that judicial review appeals are more streamlined than merits appeals and they can last a matter of days, rather than weeks, years or even decades. Under this Government, our courts are already facing significant backlogs—perhaps the less said about that the better—but there is no reason why we should subject this regime and the appeals principle to even further delay. We recognise the pressure that the Government are under here; clearly, potential SMS firms and their advocates oppose the adoption of the JR standard. It is obvious that a company that may be negatively impacted by this new regime would seek to obstruct or delay it by arguing for an appeals process that incorporates a consideration of the merits of the case.

However, Labour strongly believes that the current drafting is fair and well aligned with other regulatory regimes. For far too long, big tech has had the ear of this Government and has been able to force the hand of many of the Minister's colleagues when it comes to online safety provisions. The Minister must reassure us that that will not be the case. I look forward to his confirmation.

Paul Scully: I appreciate the hon. Lady's approach to the appeals standard, which she has taken in regard to the measures throughout the Bill. The Government speak to larger companies and smaller challenger companies, because it is really important that we get this right. I can assure the hon. Lady that there is no way we are going to weaken the appeals structure. We will always make sure that we listen and do things fairly. In no way will the structure be watered down such that challenger tech cannot come through. It is important we ensure that the Bill in its final form is the best it can be and is fair and proportionate.

Question put and agreed to.

Clause 97 accordingly ordered to stand part of the Bill.

Clause 98

ENFORCEMENT OF REQUIREMENTS

Amendments made: 35, in clause 98, page 58, line 23, leave out "undertaking" and insert "person".

The requirements to which clause 98 relates can apply to persons other than undertakings. This amendment clarifies that a costs order under this clause can be made against any person, whether or not they are an undertaking, who fails to comply with a requirement.

Amendment 36, in clause 98, page 58, line 25, leave out paragraph (b) and insert—

"(b) where the person responsible for the failure is an undertaking, any officer of a body corporate that is or is comprised in that undertaking."—*(Paul Scully.)*

This amendment clarifies the circumstances in which a costs order under this clause can be made against an officer of a body corporate.

Clause 98, as amended, ordered to stand part of the Bill.

Clauses 99 to 101 ordered to stand part of the Bill.

Clause 102

EXTENSION ETC OF PERIODS

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

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

Clause 103 stand part.

Government amendment 37.

Clauses 104 to 109 stand part.

Government amendment 38.

Clauses 110 to 114 stand part.

Government amendment 39.

Clause 115 stand part.

New clause 4—*Annual report on operation of CMA functions*—

"(1) The Secretary of State must, at least once a year, produce a report on the operation of the CMA's functions under Part 1 of this Act.

(2) Each report must include an assessment of the following matters—

(a) the outcomes of SMS investigations carried out by the CMA, with regard to the number of undertakings found—

(i) to have SMS, and

(ii) not to have SMS;

(b) the extent to which designated undertakings have fulfilled any conduct requirements imposed by the CMA; and

(c) the effectiveness of any pro-competition interventions made by the CMA.

(3) The first report must be published and laid before Parliament within one year of this Act being passed."

This new clause requires the Secretary of State to produce an annual report on the operation of the CMA's functions under Part 1. The report will be made publicly available and will be laid in Parliament.

Paul Scully: Clauses 102 to 115 deal with the administration of the regime and some technical matters. Clause 102 provides the DMU with the ability to extend investigations for strategic market status, conduct and pro-competition interventions, including the use of the final offer mechanism, for up to three months for special reasons. If a firm does not comply with information or interview requests, the deadlines can be extended until compliance is achieved. Clause 103 supports that measure by clarifying that special reasons extensions can be used once per investigation and specifying how total extension periods are calculated. Together, that provides clarity for firms on how investigations will be run and ensures that the implementation of extensions by the DMU is consistent.

Clause 104 sets out who will be permitted to take decisions in the new regime. It reserves the launch of strategic market status and pro-competition investigations to the CMA board, and further specified regulatory decisions to the board and one of its committees. The committee's membership is constrained to provide a balance of independence and expertise.

Government amendment 37 amends clause 104 and requires that the continued application of existing obligations at the point of further designation, or transitional arrangements at the end of designation, are decisions reserved for the CMA board or its committees. That will ensure consistency across the introduction of obligations on firms.

Clause 105 sets out the manner in which a notice may be given to SMS firms or other relevant parties in relation to its functions under the digital markets regime. The provision is necessary to prevent parties frustrating investigations by claiming that they have not received a notice or that it has not been given to them in the proper way.

Clause 106 creates a statutory duty for the DMU to consult key regulators on significant proposed actions that engage their regulatory interests where it is relevant and proportionate to do so. Those regulators are the Information Commissioner, Financial Conduct Authority, Ofcom, Prudential Regulation Authority and the Bank of England. That ensures that the DMU can draw on expertise, avoid negatively impacting the interests of other regulators and prevent conflicting interventions.

Clause 107 creates a formal mechanism for the Financial Conduct Authority or Ofcom to make a recommendation to the CMA for it to exercise a significant digital markets function. That will ensure that the FCA and Ofcom, as concurrent competition regulators, have a clear and transparent process to refer cases to the DMU.

Clause 108 extends existing information-sharing provisions in part 9 of the Enterprise Act 2002. It ensures that information can be shared between the CMA and other relevant regulators to help them to carry out their statutory functions. The CMA will be able to disclose information to SMS firms or third parties to enable them to respond to allegations, seek legal advice or make appeals.

9.45 am

Clause 109 gives the CMA a power to collect a levy from firms that have been designated with strategic market status. The CMA will design the levy and publish rules for its administration, laying a draft in Parliament in the process. That allows the CMA to recoup costs associated with delivering the regime, ensuring value for money for taxpayers.

Clause 110 clarifies the extraterritorial application of the digital markets regime and sets out the circumstances in which the CMA can give a notice, such as a penalty notice, overseas. The regime will by default have extraterritorial scope—with certain exceptions to limit the scope to what is strictly necessary. Government amendment 38 corrects a minor gap in the Bill. It allows for a notice requiring the provision of information to be given to a named senior manager or nominated officer who is overseas. This is in circumstances in which the CMA is "considering" whether to impose a penalty on them, rather than only if a penalty has already been imposed on them. It would be necessary if the CMA needed information to determine whether a penalty should be imposed on those individuals for failing to fulfil their role.

Clause 111 ensures that the CMA is protected against legal action for defamation as a result of delivering the digital markets regime. This matches long-standing provision in the Competition Act 1998 and the Enterprise Act 2002. Clause 112 sets out how the CMA must undertake its duties to consult and publish statements online in the course of delivering the digital markets regime. It must have regard to confidentiality and timing, and ensure that consultation materials include relevant background and rationale. That ensures that consultation invites relevant, productive and timely evidence. Clause 113 mandates that the CMA must publish guidance on how it will exercise its powers under the digital markets regime and sets out the relevant requirements. The CMA must consult before new or replacement guidance is published. This ensures that the CMA is transparent about the interpretation of this legislation and its approach to the delivery of the regime.

Clause 114 sets out when an undertaking is part of a group for the purposes of part 1 of the Bill. An undertaking is part of a group if corporate bodies within the undertaking are members of the group along with other corporate bodies. The term "group" is used in some part 1 provisions, in particular in clause 7 in relation to the turnover condition and in chapter 5 in relation to the merger reporting requirements.

Clause 115 is a technical clause, providing interpretations for key terms and concepts used throughout the Bill, to give consistency and legal certainty about their meaning. Government amendment 39 to this clause is minor and technical. It is necessary to make the definition of "relevant service or digital content" in clause 115 consistent with the definition of a digital activity in clause 3(1). I hope that amendments 37 to 39 will be accepted.

New clause 4 would require the Secretary of State to produce an annual report on the operation of the new digital markets regime. The production of such a report by Government would undermine the CMA's operational independence and could prejudice its enforcement decisions. It is important that the CMA publishes its own annual report, performance report and accounts, which will cover the operation of the digital markets regime. It is right that that is the approach that we take, that we remain with the CMA doing that, and it is right that it is Parliament, rather than the Secretary of State, that holds it to account for that.

Alex Davies-Jones: Clause 102 is incredibly important if the CMA and, subsequently, the DMU are to be able to be an accountable body that consumers and businesses—and parliamentarians—have confidence in. This clause allows the CMA to extend various deadlines in part 1 of the Bill by up to three months where there are "special reasons" to do so. Those may include, for example, illness in the CMA investigation team. These are important provisions to ensure that the CMA is able to extend relevant investigations by up to three months.

We think it reasonable that the clause does not define the exact parameters of "special reasons". We support a common-sense approach and therefore anticipate that those would include matters such as the illness or incapacity of members of an investigation team that has seriously impeded their work, and an unexpected event such as a merger of competitors. We further support the need for the CMA to publish a notice to trigger an extension under this clause. However, the Minister knows how important it is that these notices are made public, so I hope that he can clarify that that will be the case here.

It is right and proper that subsection (7) outlines the interaction between SMS investigations and active SMS designations. If the CMA is carrying out a further SMS investigation for a designated undertaking and needs to extend it, that investigation may not conclude until the original designation has expired, meaning the undertaking would fall outside the regime before the need for continued SMS designation is confirmed. The clause enables the SMS designation to be extended to match the length of the SMS investigation period and is a sensible approach that Labour supports.

We also welcome the provisions around clause 103, allowing the CMA to extend an SMS designation by up to three months. That speaks to the nature of an agile and flexible regime, which we ultimately all want and support. Government amendment 37 prevents decisions about whether and how to exercise the power in clause 17 being delegated to a member of the CMA's board or a member of staff of the CMA. We consider that to be an appropriate response.

Clause 104 is crucial all round because it explains how decisions will be made under the digital markets regime and has practical applications in establishing exactly how the functions within the CMA will be able to operate when implementing the legislation. Notably, subsections (1) to (5) provide the CMA with the ability to create groups. The CMA must state the function for which such a group is established and the group will be required to fulfil that function. Can the Minister confirm where that information will be reported? Again, it will be helpful for us all to understand how that will work in practice.

We also value the clarifications outlined in the clause, which establish that to be eligible to carry out the functions under subsection (2A), a committee must include at least two CMA board members, which can include the chair. Furthermore, a majority of the committee's membership must be non-staff or CMA panel members. We welcome the clarification that any changes of this nature would need to be laid before and approved by each House of Parliament before being enacted. Can the Minister confirm whether the Secretary of State will be required to be consulted under the provisions? That aside, we support the clause and believe it should stand part of the Bill.

We support clause 105 and welcome the clarification that a notice may be given to the particular individuals specified in subsections (3) to (5). This is an important clause that will allow the CMA to fulfil its obligations as the regulator. We also welcome clause 106, which outlines the requirements that will ensure the CMA has to consult specific named regulators, and welcome the clarity that those five regulators are the Bank of England, the Financial Conduct Authority, the Information Commissioner, the Prudential Regulation Authority and Ofcom. It is positive that they are outlined in the Bill. They are all established and relevant regulators that are subject to their own vast regulatory regimes, so Labour supports their involvement in assisting the CMA to regulate the regime proposed in the Bill. Again, we feel that subsection (6) is fair and reasonable. We particularly approve the fact that it is proportionate and we are happy to support it.

If clause 106 forces the CMA to consult the specific named regulators, it is only right that clause 107 sets out the formal mechanisms to be exercised under their regulatory digital markets function and that they are in the Bill too. We welcome the clarification on the timeframes, particularly around the fact that the CMA must respond to each relevant regulator within 90 days, setting out what action, if any, it has taken or will take and the reasons for that decision. It is important that those time periods are established in the Bill so as not to delay the CMA in taking action on a firm that is not operating in alignment with the regime.

For transparency purposes, we are also pleased to see the summaries of the CMA's responses and that they must be published online. I am sure the Minister is pleased that that is included. We will come on to that matter as we address further clauses, particularly clause 112.

We welcome clause 108, which we see as a procedural clause that additionally extends current provisions to enable information sharing between the CMA and the Information Commissioner's Office where that facilitates the exercising of one of their respective statutory functions, and we support the clause's intentions. Information sharing must be encouraged between the agencies to allow for a regulatory regime to work in practice and be robust. It is right that the clause makes amendments to the Communications Act 2003 and the Enterprise Act 2002, which we see as vital for the regime to work in practice. We therefore support the clauses and believe they should stand part of the Bill as fully drafted.

Labour fully supports the provisions in the Bill to ensure the CMA has sufficient power to collect a levy from designated undertakings to recoup the costs associated with delivering the digital markets regime. We see that as a positive and effective way of encouraging compliance, but also an important way of generating funds to ensure the sustainability of the digital markets regime more widely. The polluter pays model is commonplace in a wide range of policy areas and it can be immensely effective. We therefore welcome the provisions in full. I do not need to address each subsection individually because the overall message is the same. SMS firms should absolutely pay a levy. For far too long they have got away with having considerable power and profit, and the time for them to have a statutory obligation to support measures such as those outlined in the Bill is well overdue.

We support the provisions in Government amendment 38, which we hope will go some way to assist should penalties have to be invoked by the CMA. The amendment permits notices to be served on people outside the UK if the CMA is considering imposing a penalty. Again, that is appropriate, and the Minister can be assured of our support. We feel that the provisions in clause 110 are fair and in alignment with similar regimes already in place, so we are happy to support it too. This is all becoming very collegiate.

Clause 111 protects the CMA against legal action for defamation as a result of its exercise of functions under the digital markets provisions in this part, and we support it entirely.

We welcome the provisions outlined in clause 112, which confirms the CMA's duties to consult and publish statements online. As the Minister will be aware, any measures around transparency must factor in an element of consultation and transparency, so we welcome the clarifications that clause 112 affords. Colleagues will note that subsection (1) makes provision for when the CMA consults and publishes a statement. We think that it makes perfect sense. We are happy to support it, and wish to see that transparency echoed throughout the Bill.

Clause 113 is again welcome because it sets out the CMA's obligation to publish guidance. It is important to have confirmation that the CMA will be able to revise or replace any guidance that it publishes, but must publish the revised or replacement guidance. While we recognise that that could include industry associations with a particular interest in the specific guidance in question, I would be grateful if the Minister would clarify whether others may be consulted in the instance of revised guidance being published? That aside, we support the intention behind clause 113 and believe that it should stand part of the Bill.

Clause 114 is particularly important. In the case of a large corporate group whereby a designated undertaking may be part of a wider body, it is important that that is defined within the Bill and interpreted when used throughout the Bill. Turning to Government amendment 39, we of course support the need to ensure that the definition of

"relevant service or digital content"

is consistent with the definition of "digital activity", so we will support the amendment. We welcome clause 115 and do not disagree with any of the definitions outlined therein. We see them as fairly standard, as long as they are applied with common sense. We therefore fully support the clause.

Lastly, turning to new clause 4, we have already touched on this to some extent in previous debates. The aim of the new clause is clear: we want there to be more transparency over the function of the CMA's regime. Particularly when it is in its infancy, the information will be extremely useful to businesses, civil society, academics and parliamentarians alike. It will also be important for other jurisdictions to have a meaningful way of understanding the regime, particularly if we want it to be world leading, when considering options for their own legislation.

I hear the Minister's comments regarding replication of work and the need for the independence of the CMA, but it is right that Parliament has that scrutiny and overview. I would welcome his commitment to ensure that Parliament will have a mechanism by which to review the activity of the CMA via a regular report. If he could commit to me that that will be the case, we will not need to press the new clause to a vote.

Paul Scully: I thank the hon. Lady for her approach. Let me answer some of her questions. Notices will be made public, and information about the groups will be reported online.[1] Under clause 104, the Secretary of State would not need to be consulted because, again, it is an independent regulator, so mandatory consultation with the Secretary of State is not necessarily appropriate. On clause 113 and who will be consulted on the revised guidance beyond industry, it will be relevant stakeholders, such as SMS firms themselves, other regulators such as Ofcom and the ICO, businesses likely to be affected by the decisions, and consumer groups. A wide-ranging consultation will be required to ensure that the regime works properly.

I think I can give the hon. Lady the assurance that she is looking for on new clause 4. It is really important that Parliament continues to be able to scrutinise the regime effectively. I do not think that it is appropriate to take the approach that the Secretary of State needs to do another form. It is less to do with duplication; it is more to do with the fact that if the Secretary of State is putting forward his or her own report, that might undermine the report that the CMA is doing. The CMA has an annual report, which it will publish at the end of each financial year. It will include a survey of developments relating to its functions, assessments of its performance against its objectives and enforcement activity, and a summary of key decisions and financial expenditure. That should be enough for Parliament to scrutinise that report and the work of the CMA and the DMU. I am happy to give that assurance that Parliament has that scrutiny and oversight.

10 am

Question put and agreed to.

Clause 102 accordingly ordered to stand part of the Bill.

Clause 103 ordered to stand part of the Bill.

Clause 104

EXERCISE AND DELEGATION OF FUNCTIONS

Amendment made: 37, in clause 104, page 63, line 31, at end insert—

"(aa) what, if any, provision to make in reliance on section 17 of the 2023 Act;"—*(Paul Scully.)*

This amendment prevents decisions about whether and how to exercise the power in clause 17 being delegated to a member of the CMA Board or a member of the staff of the CMA.

Clause 104, as amended, ordered to stand part of the Bill.

Clauses 105 to 109 ordered to stand part of the Bill.

Clause 110

EXTRA-TERRITORIAL APPLICATION

Amendment made: 38, in clause 110, page 69, line 15, after "imposed" insert "or is considering imposing".—*(Paul Scully.)*

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

This amendment permits notices such as information notices to be served on a person outside the United Kingdom if the CMA is considering imposing a penalty under clause 85(2) or (3) as the case may be.

Clause 110, as amended, ordered to stand part of the Bill.

Clauses 111 to 114 ordered to stand part of the Bill.

Clause 115

GENERAL INTERPRETATION

Amendment made: 39, in clause 115, page 72, line 42, leave out "anything else done" and insert

"any other activity carried out". *—(Paul Scully.)*

This amendment makes the definition of "relevant service or digital content" consistent with the definition of "digital activity" in clause 3(1).

Clause 115, as amended, ordered to stand part of the Bill.

Clauses 116

REMOVAL OF REQUIREMENT FOR AGREEMENTS ETC TO BE IMPLEMENTED IN THE UK

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

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

Clauses 117 to 121 stand part.

That schedule 3 be the Third schedule to the Bill.

Clauses 122 and 123 stand part.

Clauses 134 and 135 stand part.

Paul Scully: I hope my voice will stand up to this level of scrutiny. Part 2 of the Bill focuses on the UK's existing competition regime. First, I will explain that while the CMA is the principal regulator responsible for the public enforcement of the prohibitions in part 1 of the Competition Act 1998, its functions are also exercisable concurrently by sector regulators, such as Ofgem and Ofcom, among others. The measures in clauses 116 to 120 and clause 135, and when we reach them clauses 136 and 137 and schedules 8, 9 and 11, affect the CMA and sector regulators. For the sake of brevity, I will just refer to the CMA.

Clause 116 extends the territorial reach of the chapter 1 prohibition in the Competition Act 1998. The prohibition relates to anti-competitive agreements, decisions by associations of undertakings or concerted practices, hereafter simply referred to as agreements. The chapter 1 prohibition captures agreements that have as their object or effect the prevention, restriction or distortion of competition within the UK, and which may affect trade within the UK. Currently, it is limited to agreements that are, or are intended to be, implemented within the UK. The extension in reach of the chapter 1 prohibition means that agreements implemented, or intended to be implemented, outside the UK are also captured, but only where they would be likely to have immediate, substantial and foreseeable effects on trade within the UK.

Clause 117 introduces a new duty to preserve documents on persons who know or suspect that an investigation is being, or is likely to be, carried out under the Competition Act 1998. The duty will apply from when a person knows or suspects that an investigation by the CMA is under way or likely to occur. Where a person has a reasonable excuse for not complying with the duty, no liability for a penalty will arise. A reasonable excuse could include something out of an individual's control, such as an IT failure.

Clause 118 strengthens the CMA's powers to require the production of electronic information stored remotely—for example, in the cloud—when executing warrants to enter business or domestic premises. Under this reform, the CMA will be able to require the production of information for the purposes of its investigation without needing to demonstrate when making the request the specific relevance of the particular dataset to be produced. It will then be able to take copies or extracts only of information that is relevant to the investigation. The CMA will also be able to operate equipment to produce remotely stored information itself. Clause 134 makes similar amendments to the CMA's power to require the production of electronic information when executing a warrant during an investigation into a suspected criminal cartel offence under part 6 of the Enterprise Act 2002.

Clause 119 amends part 1 of schedule 1 to the Criminal Justice and Police Act 2001, to include the power of the CMA to undertake an inspection of domestic premises, under section 28A of the Competition Act 1998. That means that when the CMA undertakes an inspection of domestic premises, it will have access to the same seize and sift powers as are already available to it when it inspects business premises under a warrant.

Clause 135 also concerns the CMA's investigative powers. First, it expands the CMA's power to require persons to answer questions for the purposes of a Competition Act 1998 investigation, so that it applies regardless of whether the person has a connection to a business under investigation. The CMA will be able to require individuals to answer questions only where they have information that is relevant to an investigation. Secondly, the clause amends the CMA's powers to require individuals to answer questions across its Enterprise Act 2002 markets and mergers and Competition Act 1998 functions, so that it can specify that interviews for those purposes should take place remotely.

Clause 120 amends the standard of review applied by the Competition Appeal Tribunal in appeals against interim measure decisions from full merits to judicial review. Interim measures are temporary directions that the CMA has the power to give during an investigation under the Competition Act 1998. To be an effective tool in fast-moving modern markets, it is essential that interim measures can be implemented efficiently. Judicial review will provide a flexible and proportionate standard of review, ensuring the CMA is held accountable appropriately for its decisions.

Clause 121 introduces schedule 3 to the Bill, which amends the Competition Act 1998 to empower the Competition Appeal Tribunal to grant declaratory relief in private actions claims under the Competition Act 1998. Declaratory relief is a remedy that involves a court making a legally binding statement on the application of the law to a set of facts.

Clause 122 gives the Competition Appeal Tribunal, the High Court of England and Wales, the Court of Session and sheriff courts in Scotland and the High Court in Northern Ireland the ability to award exemplary damages in private competition claims. This will help deter and punish particularly egregious conduct and ensure that those impacted by the most reckless breaches of competition law can be awarded additional damages.

Clause 123 amends section 71 of the Serious Organised Crime and Police Act 2005 to designate the CMA as a specified prosecutor. This designation will allow the CMA to enter into formal agreements with an offender who has assisted or offered to assist its criminal cartel offence investigations. For example, if it considered it appropriate, the CMA could agree not to use specified information against them in any criminal proceedings. Agreements to provide assistance can also be taken into account by the courts when sentencing an offender, or their sentence could be referred back to the court for review. These measures do not enable the CMA to offer immunity from prosecution.

Alex Davies-Jones: Part 2 focuses on the competition elements of the Bill. I am pleased to see clause 116, which expands the territorial reach of parts of the Competition Act 1998. Labour recognises the importance of ensuring that legislation already on the statute book is aligned with the intentions behind the Bill, because we understand that regulation of our digital markets will draw on existing competition law. We therefore welcome the clause, which will expand chapter 1 of the 1998 Act. The chapter 1 of the 1998 Act considers only undertakings and decisions that might affect trade within the UK, and which have as their object or effect the prevention, restriction or distortion of competition. At the moment, those behaviours are prohibited only where they are, or are intended to be, implemented in the United Kingdom, but we need to consider the impact of agreements, decisions and practices that might affect trade within the United Kingdom. Subsection (2) of the clause will replace the existing section of the 1998 Act to ensure that a consideration of the effect on trade will be considered. That is particularly important in the context of digital markets because they operate on a global level.

The clause goes some way to address the lack of futureproofing in the Bill more widely. The Minister knows my thoughts on that, and knows the Bill should go further in that regard. That aside, we welcome subsection (3), which will repeal the existing equivalent in the 1998 Act. The introduction of the qualified test will ensure that UK trade and businesses and consumers based in the United Kingdom, are protected from any detrimental effects of anti-competitive conduct, regardless of where that conduct takes place. That is welcome, and we consider the measure to strike a positive balance.

We welcome the clarity and the changes to the 1998 Act that will bring important provisions of the Bill into line with existing legislation. We have therefore not sought to amend the Bill, and we support those measures being part of it.

Clause 117 is important in that, once again, it will amend part 1 of the 1998 Act. We know that big companies can often be smart in concealing, or even overloading, information relevant to regulatory regimes, and we have seen that happen time and again when it comes to online safety. Labour does not want the same detrimental behaviours to be allowed to continue within this regime. We therefore welcome the provisions in the clause, particularly proposed new section 25B, which sets it out that the duty applies where

"a person knows or suspects that an investigation by the CMA… is… or is likely to be carried out."

The inclusion of a person "suspecting" is important, and, in theory, it will push companies to abide by their duties. Recently, we have seen those at the heart of Government in the news owing to their failure to produce vital documents in investigations of the covid-19 pandemic, so it is very welcome indeed that the Government appear to have learned their lessons and worked to ensure that designated companies will not be able to circumvent the regime, as a former Prime Minister has attempted to do.

Let me get back to the Bill and the matters at hand. In practice, those duties will arise where a business receives a case initiation letter from the CMA, so it will be perfectly aware that its conduct is under investigation. Such duties might further arise when, for example, an individual working for a business is aware that a customer has reported their suspicions of price fixing, and that the customer has been interviewed by the CMA, or members of an anti-competitive agreement have been "tipped off" that a member of the agreement has blown the whistle to the CMA. Those are important clarifications, which we welcome. We therefore support their inclusion in the Bill.

We support clause 118, which specifically amends sections 28 and 28A of the 1998 Act, and we support the clarity with respect to the execution of such warrants—for example, a named CMA officer has the power to require the production of information that is held electronically and is accessible from the premises. It is a positive step to have these amendments to the 1998 Act, which will expand the powers of the court or the CAT to grant a warrant to the CMA based on the fact that there are reasonable grounds to suspect that there are documents relating to an investigation that are accessible from the premises, when the other criteria set out in the section are met. Those powers will apply to any information stored electronically, and we hope and expect that the provisions of the clause will rarely be used. Despite that, we fully support their inclusion. It is right and appropriate that businesses and other jurisdictions looking closely at the Bill have a sense of the process that will result in the event of the CMA being forced to act on a warrant. The clause and others in this part of the Bill are an important part of ensuring compliance, and we therefore welcome the provisions in full.

Clause 119 is, once again, an important clause that will amend existing legislation. The powers of seizure conferred by section 28 of the 1998 Act are already specified for the purposes of section 50 of the Criminal Justice and Police Act 2001, so the amendment will align the powers available to the CMA whether it is inspecting business or domestic premises under a warrant, and it will make consequential changes in the light of those made by clause 118. These practical clauses will make important changes to legislation to bring other provisions in line with the Bill.

10.15 am

Clause 120 is incredibly important because it will change the standard of review to be applied by the CAT on appeals against interim measures directions under

section 35 of the 1998 Act. The Minister knows that Labour feels passionately that judicial review is the correct approach, so again I press him not to weaken the measures in the other place. As we know, under section 35 of the Competition Act 1998, when an investigation has been commenced but not completed, the CMA has the power to issue directions, known as interim measures, for the purpose of preventing significant damage to a particular person or category of person or protecting the public interest. Clause 120(1) amends section 46 of the Competition Act 1998 to make it clear that a decision either to make or to not make interim measures can be appealed to the CAT by any party to an agreement in respect of which the CMA has made such a decision. We welcome that clarification. Subsections (2) to (4) contain important points, which we also welcome. I would be grateful if the Minister could reassure us that those provisions will not be weakened and that the appeals process will not be reduced to a merits-based process in the other place. To be clear, if I have not already been clear, we fully support clause 120 and its intentions.

We welcome the provisions in schedule 3, which gives the CAT the power to make legally binding statements on the application of the law to a particular set of facts. Particularly helpful is paragraph 4, which inserts proposed new section 47DA into the Competition Act. The proposed new section provides clarification and enables legislative parity across the UK, particularly with Scotland and England and Wales. That is welcome for the legislation to work as intended.

I do not feel that I need to go into any further detail about our support for the other clauses in the grouping, but I wish to make a point about clause 134 in regard to the Serious Fraud Office's investigations of suspected cartel offences. The clause will enable a named CMA officer to require the production of information that is held electronically and accessible during an inspection under a warrant. It would also expand the powers of the High Court and the CAT in England and Wales and Northern Ireland, and the sheriff in Scotland, to grant a warrant if necessary. We support those provisions in their entirety. It is important that the CMA is able to act in the most serious of circumstances.

Finally, Labour supports the intentions of clause 135; of course there should be provisions in the Bill about the attendance of witnesses, as outlined in the clause. We see those as sensible and a key focus if the regime is to work in practice.

Question put and agreed to.

Clause 116 accordingly ordered to stand part of the Bill.

Clauses 117 to 121 ordered to stand part of the Bill.

Schedule 3 agreed to.

Clauses 122 and 123 ordered to stand part of the Bill.

Clause 124

RELEVANT MERGER SITUATIONS AND SPECIAL MERGER SITUATIONS

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

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

That schedule 4 be the Fourth schedule to the Bill.

Clause 125 stand part.

That schedule 5 be the Fifth schedule to the Bill.

Clauses 126 to 128 stand part.

Paul Scully: Chapter 2 of part 2 upgrades and refines UK merger control to ensure it remains the best in class. Clause 124 and schedule 4 amend the thresholds for merger review to focus the UK's merger regime on reviewing the transactions that have the potential to have the most marked impact on competition in UK markets.

The Bill makes three changes to those thresholds. First, it introduces a new acquirer-focused threshold, which gives the CMA clear jurisdiction over transactions in which a very large business with a UK turnover of more than £350 million, and at least a 33% share of supply, acquires another business. The new threshold will allow the CMA to review potentially harmful transactions—for example, a business with significant market power in one part of a supply chain acquiring a business in another and then being able to leverage its market power across that supply chain.

Secondly, the Bill increases the turnover test level from £70 million to £100 million. That adjustment limits merger review of cases that are less likely to be harmful, maintaining the balance intended when the UK's merger regime was created. Thirdly, it introduces a safe harbour for transactions where all parties have a UK turnover of no more than £10 million. For the first time, therefore, small and micro enterprises merging with each other can be certain that they will not be captured by UK merger control.

Clause 125 and schedule 5 introduce a fast-track procedure to allow certain mergers to be expedited to an in-depth, or phase 2, investigation. That is intended to increase flexibility and deliver more efficient merger investigations. Now, when the CMA investigates a merger, initially it has to undertake a phase 1 investigation lasting up to 40 working days before it can refer the transaction for an in-depth phase 2 investigation. Merger parties, however, may be aware early in the process that their merger is likely to require an in-depth investigation by the CMA. In such cases, moving quickly to phase 2 will significantly speed up the overall process. Let me be clear: the fast track is not a suitable process for all mergers that the CMA reviews. However, in some cases, it will be a valuable tool to save time and resources for all involved, especially if parties request a fast track early on.

Clause 126 enables merger parties and the CMA to extend existing statutory time limits for merger reviews by mutual agreement where appropriate. The increased flexibility that that provides will ultimately help to resolve cases more effectively and, in some cases, more quickly. Clause 127 enables the CMA and merger parties to extend the time limits of merger review in public interest cases. Unlike in a normal merger review, however, the Secretary of State has an important role in decision making in public interest cases. This clause therefore sets up a key additional requirement for such cases: the CMA can only make or cancel an extension if the Secretary of State also consents. Clause 128 replaces the requirement for the CMA to publish the merger notice in the *London Gazette*, *Edinburgh Gazette* and *Belfast Gazette* with a requirement to do so online.

Alex Davies-Jones: Labour welcomes the provisions in the clause which establish that transactions within jurisdiction can be reviewed by the CMA, although no obligations or requirements are imposed on businesses by being in scope. Schedule 4 introduces the new acquirer-focused threshold, as well as introducing a small merger safe harbour that is primarily targeted at reducing the regulatory burden faced by small and micro businesses—the burden that we heard about in our evidence sessions. We support the clause standing part.

Schedule 4 makes several changes to the thresholds, which determine what transactions are within the jurisdiction of UK merger control. As I have noted already, the UK's merger control regime is voluntary, meaning that there is never on obligation to notify a transaction to the CMA. However, when the existing jurisdictional thresholds in the Enterprise Act 2002 are met, the CMA may review a transaction even if it is not notified. The CMA has such jurisdiction if: the target's UK turnover in its most recently completed financial year exceeded £70 million; or the parties have a combined share of supply of 25% or more in relation to any product or service in the UK or a substantial part of the UK. This schedule will clarify some significant changes to those thresholds, which Labour welcomes.

Schedule 4 introduces a new threshold that will grant the CMA jurisdiction to review transactions where one party has a UK share supply of at least 33% and UK turnover exceeding £350 million. We see the new threshold as largely capturing killer acquisitions, in which a larger firm acquires a smaller and possibly innovative firm, potentially with a view to eliminating the threat of future competition. The CMA's existing 25% share-of-supply threshold has already shown itself to be flexible in capturing many such transactions, but it is estimated that the new threshold will lead to an increase of between two and five phase 1 cases per year. That is to be applauded.

The new £350 million threshold is aimed at expanding the CMA's jurisdiction, but other sections of schedule 4 seek to reduce the burden on merging companies by removing certain transactions from the CMA's jurisdiction. By increasing the target turnover threshold from £70 million to £100 million, it is estimated that the changes to the turnover test will lead to a reduction of two or three phase 1 cases per year. In addition, the Government have proposed an interesting solution with the introduction of a safe harbour threshold to the existing share-of-supply test where, even if the 25% share of supply threshold is met, the CMA would not have jurisdiction if no party to the transaction had more than £10 million of UK turnover.

Labour recognises that it would be inappropriate to burden the CMA unnecessarily, but we are keen to have an understanding of how schedule 4 will operate in practice. Has the Minister considered introducing an annual reporting mechanism that would allow for more transparency on whether the approach is working? That aside, we certainly and carefully support the intentions of this schedule.

We welcome the provisions of clause 125 and are pleased to see that particular attention has been given to merger situations. Labour recognises that designated companies often buy other companies or merge with them, so it is only right that the CMA is empowered with the appropriate tools to investigate in such circumstances, where necessary. As we know, at present the UK's merger control regime is voluntary, meaning that there is never an obligation to notify the CMA of a transaction. However, as I have said, when the thresholds in the Enterprise Act are met, the CMA may review a transaction despite not having being notified of it.

Clause 125 is relevant because it amends part 3 of the Enterprise Act to enable the CMA to fast-track a merger to an in-depth phase 2 investigation if it receives a request from the parties involved to do so. That is an important step in streamlining merger review procedures and timelines by removing certain statutory duties on the CMA that currently limit the benefits and use of the existing, non-statutory fast-track procedures. This fast-track process gives the CMA more flexibility to deliver quicker and more efficient merger investigations without prejudicing the quality of the review. We welcome the clarifications in clause 125 and support its standing part of the Bill.

We welcome schedule 5, which amends the Enterprise Act to enable the CMA to fast-track these mergers. In particular, we support the clarification that the CMA may launch a phase 2 investigation only if it believes that a completed or anticipated merger has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom. We also support the clarification of the circumstances in which the CMA can accept a fast-track reference request.

When making these decisions, the CMA must have regard to whether the merger could raise public interest issues or whether a special public interest intervention has been launched under provisions in the Enterprise Act, to ensure that no case is unduly fast-tracked. Schedule 5 is important and will be central to ensuring the CMA can work at pace in the case of any merger requiring investigation. We welcome and support it.

Labour fully supports the intentions of clause 126. The timetable for phase 2 investigations is important for the timely resolution of merger investigations, and we believe the approach outlined to be sensible. As it stands, section 39 of the Enterprise Act, which outlines time limits, requires the CMA to publish its report on a merger reference within 24 weeks of the date of the reference. Clause 126(2) amends that provision to give the CMA the power to extend the period if necessary. We welcome the clarity that the length of an extension has to be agreed between the CMA and parties involved in the potential merger.

We also acknowledge that, while the Bill does not specify circumstances in which the CMA and the parties involved in a merger can agree an extension, an extension is most likely to be helpful in support of early consideration of remedies or in multi-jurisdictional mergers that are being reviewed in other countries in parallel to the UK. We welcome that distinction. Labour has consistently said that for the regime to work in practice it must be flexible. We see clause 126 as an important step towards that aim and are therefore happy to support its inclusion in the Bill.

As I said with respect to clause 126, Labour supports flexibility to extend time limits, and we feel that is particularly important where there is a public interest to do so. That is why we support clause 127. The clause amends chapter 2 of part 3 of the Enterprise Act, which sets out that the Secretary of State may intervene in the consideration of a merger where the Secretary of State

[Alex Davies-Jones]

believes it raises a public interest consideration that needs to be taken into account. We feel that this is an appropriate and proportionate way of ensuring accountability for public interest interventions, and that the Secretary of State should be empowered to do so. We therefore support the intentions of clause 127 and, again, believe that it should stand part of the Bill.

Finally, clause 128 replaces the obligation on the CMA in section 96(5) of the Enterprise Act to publish the latest form of the merger notice

"in the London, Edinburgh and Belfast Gazettes"

with an obligation to publish it online. We welcome that transparency. The Minister knows my views on transparency with respect to the Bill more widely. I wish that provision about online publication was replicated elsewhere in the Bill, so that information is available to anyone who wishes to see it. We welcome clause 128 and hope to see it replicated.

Paul Scully: Indeed, a lot of the publication is done online, as we have discussed, even if that is not stated specifically in the Bill. I hope the hon. Lady takes heart in that.

The hon. Lady asked specifically about schedule 4 and safe harbours. Clearly, we would expect the CMA and the Government to review the merger review thresholds regularly, and there are powers to amend the thresholds if and when it is considered appropriate to reflect economic developments or, indeed, because of the experience of enforcing the thresholds, as she rightly said. The CMA board is accountable to Parliament, as we have described. We expect that, through its annual plan and performance reports, Parliament will be able to scrutinise the decisions that have been taken.

Question put and agreed to.

Clause 124 accordingly ordered to stand part of the Bill.

Schedule 4 agreed to.

Clause 125 ordered to stand part of the Bill.

Schedule 5 agreed to.

Clauses 126 to 128 ordered to stand part of the Bill.

Clause 129

MARKET STUDIES: REMOVAL OF TIME-LIMIT ON PRE-REFERENCE CONSULTATION

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

10.30 am

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

Clauses 130 and 131 stand part.

That schedule 6 be the Sixth schedule to the Bill.

Clause 132 stand part.

That schedule 7 be the Seventh schedule to the Bill.

Clause 133 stand part.

Paul Scully: The UK's markets regime is the CMA's most powerful tool for promoting competition in UK markets. Clauses 129 to 133 reform the markets regime, ensuring that it is effective, focused and proportionate.

Clause 129 reforms the market study process. Currently, the CMA or sector regulator must start a consultation on making a market investigation reference, or decide not to make a reference, within six months of the start of a market study. That timeframe is unduly restrictive. The clause removes the six-month time limit, giving flexibility for the consultation to start at the most appropriate point. It allows extra time to gather evidence, ensuring that information that comes to light later on can be considered.

Clause 130 makes amendments so that references can be targeted appropriately, to better define the scope of the investigation required. It further narrows the questions that the CMA group must consider, reflecting the scope set out in the reference. This will allow the CMA to ensure that its work is targeted effectively, which will benefit businesses and investors.

Clause 131 introduces schedule 6, which expands the use of voluntary undertakings that remedy competition harms. The clause allows the CMA to accept such undertakings at any stage in the market inquiries process. This includes the acceptance of partial undertakings that address some features causing concerns in a market, but not all. The flexibility to take issues "off the table" by accepting such undertakings, alongside the amendments made by clause 132 regarding narrowing the scope of investigations, will help to provide greater flexibility in the regime. We recognise that voluntary undertakings will not be appropriate in every case. Where they are appropriate, they will drive efficiencies and enable faster results. They will also help to tackle competition problems and any resulting consumer harm as quickly as possible.

Clause 132 introduces schedule 7, which gives new powers to the CMA to conduct trials of certain types of remedies at the conclusion of a market investigation where an adverse effect on competition has been identified. That will help to ensure that any final remedy is suitable and effective. For now, the power to trial remedies will be limited to solutions that relate to the provision or publication of information to consumers. That is the area where trials are most likely to be useful and enables a proportionate approach to introducing this new power. The Secretary of State will be able to expand the scope of remedies to trial in future, subject to the draft affirmative procedure.

Clause 133 gives the CMA new powers to amend ineffective remedies where less than 10 years has passed since the original market investigation. Where the CMA decides that remedies have been ineffective and should be varied, it will be required to consult with affected businesses before reaching a final decision on whether to vary a remedy, and to conclude the variation within six months. In cases where the Secretary of State has accepted or imposed remedies, the CMA will provide advice to the Secretary of State. This new power will be constrained by a mandatory two-year cooling-off period, beginning at the end of a remedy review.

Alex Davies-Jones: I will speak briefly to clause 129 before addressing our thoughts on the rest of the group. Labour supports the intentions of the measures in the group, and we have not sought to amend them at this stage.

The removal of the time restriction outlined in clause 129 gives the CMA flexibility and more time to gather evidence to determine when the consultation process

should commence. That is something I think we can all get behind and fully support.

Schedule 6 outlines the process by which the CMA will be able to accept voluntary commitments during all stages of a market study and a market investigation. It allows the CMA to accept partial undertakings, to narrow the issues that require further investigation. We see these features as central to a flexible regime that firms want to easily engage with. That must be at the heart of any fully functioning and appropriate regime.

Clause 132 and schedule 7, which are incredibly welcome, provide that the CMA may be required by the Secretary of State to conduct trials of remedies before setting a final remedy package. We recognise that since this is a new regime, the regulator may benefit from such trial remedies, and it is important that the CMA has the legislative teeth and support to do so.

We therefore support the measures in the group. We have not sought to amend them, and we believe that they should stand part of the Bill.

Question put and agreed to.

Clause 129 accordingly ordered to stand part of the Bill.

Clauses 130 and 131 ordered to stand part of the Bill.

Schedule 6 agreed to.

Clause 132 ordered to stand part of the Bill.

Schedule 7 agreed to.

Clauses 133 to 135 ordered to stand part of the Bill.

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

10.38 am

Adjourned till this day at Two o'clock.