

Business, Energy and Industrial Strategy Committee

Oral evidence: Post-pandemic economic growth: state aid and post-Brexit competition policy, HC 742

Tuesday 26 April 2022

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Watch the meeting

Members present: Darren Jones (Chair); Richard Fuller; Ms Nusrat Ghani; Paul Howell; Charlotte Nichols; Mark Pawsey.

Questions 228 - 252

Witnesses

[I:](#) The Rt Hon Lord Andrew Tyrie, former Chair, Competition and Markets Authority.



Examination of witness

Witness: Lord Tyrie.

Q228 **Chair:** Welcome to this morning's session of the Business, Energy and Industrial Strategy Select Committee for our final hearing on competition and state aid policy post-Brexit. In the first session today we are delighted to welcome Lord Andrew Tyrie.

Good morning, Lord Tyrie, and welcome to the Committee. You were previously on this side of the table, and then you were chair of the Competition and Markets Authority. We are very much looking forward to your contributions this morning.

Just to kick us off, I am interested in the general oversight that Parliament has of economic regulators. I wonder if you could give us your view of the general performance of the Competition and Markets Authority and whether its accountability to Parliament is sufficient.

Lord Tyrie: On the first question, before I go any further, in hearings like this, committees generally want to elicit some criticisms of whatever it is that is being examined, which can then be thrown at Ministers and others. I want to make clear right at the start that the CMA is full of very able and highly motivated people. If anything I say today is construed as criticism—and it quite reasonably could be—it needs to be seen in that light. The Government—I might be critical of the Government—have also been distracted, to put it mildly. The combination of those is the background to what I want to say.

The CMA is not performing as well as it should. It has some fundamental structural weaknesses, which have become much more serious and glaring as the pressure on competition authorities to perform better has grown because of public discontent. As for Parliament's scrutiny, there has not been enough of competition authorities. We would be in a better place, had that taken place.

A comparison with the financial crash is relevant. The regulators of financial activity in the UK fell well short prior to the crash. They have upped their game since they were put under pressure by Parliament, and then Parliament legislated. Some of those regulators were dismembered and major reforms were pushed through. Another major package of structural and other changes is now being pushed through at pace in the FCA. All of those changes are going in the right direction, but every decade even reasonably well-performing regulators, as bodies that are not subject to the profit motive like the private sector, need some robust scrutiny.

Does that answer the question?

Chair: It does. We will see in the Queen's Speech whether there is any legislation forthcoming in the next session that will be relevant to the CMA.



Q229 **Ms Ghani:** Good morning, Lord Tyrie. You said that you do not want to be drawing the wrong attention to the CMA, but you also talked of its weaknesses, and how serious and glaring they are, so we know where we are starting from. To what extent does the CMA have the ability to effectively manage the expansion of its post-Brexit role? I just want you to reflect on a statement you made in 2019. You argued for the CMA to act more quickly and decisively on competition issues, and for its powers to protect consumers to be upgraded to the same level as its competition powers.

Lord Tyrie: That breaks into several parts. First of all, yes, we have given the CMA quite a lot more responsibility or are in the process of doing so. That “we” is Parliament, if I may speak as Parliament for a moment. The CMA has responsibility for the big-ticket mergers, the Office for the Internal Market, the Subsidy Advice Unit, as it is going to be called, and of course the Digital Markets Unit. These are major new responsibilities for the CMA.

It is being expanded, but at the same time it has become fairly clear that it is not acting fully on its existing legislative base. It has five main areas of responsibility, and it is only really fully performing on two of them. It could do better on its consumer protection, advocacy and markets work. It could also make a contribution to allaying the public’s discontent with the performance of the economy for them. A lot of the public think that the economy does not work for them and that it is there for someone else. They feel ripped off, and digital technology has increased that sense. All of these are big problems for the whole of the political community, not only in the UK but internationally.

I was just reading what I wrote some time ago. If you do not mind, just for a moment, here is what the *Economist* said about—

Ms Ghani: What is “here”? What do you have in your hand?

Lord Tyrie: I have my own publication. It is always important to read one’s own publications when one can. In here, I quote the *Economist*. I hope you do not mind. “When you come into contact with the competition establishment in the rich world—regulators, academics, lawyers—the cruellest comparison is with financial watchdogs before the 2008-09 crash. They are the proud custodians of an internally logical set of rules, developed over years, that do not seem to be producing good results and cannot easily be communicated to anyone outside the priesthood”, because they are too complicated. “Most competition authorities are unwilling to be held accountable for the level of competition in the economy; indeed they go further and insist that it is impossible to measure”.

The first question I asked when I arrived at the CMA was, “Is competition getting better or worse in the economy?” and I was not able to get an answer. Their payoff line is powerful, too. “Given the profound



HOUSE OF COMMONS

consequences of a rise in corporate power, that is an unsustainable position and will have to change”.

Q230 **Ms Ghani:** Lord Tyrie, you are talking as though you are an observer on the outside looking in, but how long were you chair for?

Lord Tyrie: It was a couple of years.

Q231 **Ms Ghani:** In the same publication you also said that the CMA’s facelessness and absence of visible leadership pose problems for its legitimacy. What did you do in post for two years?

Lord Tyrie: I did my very best to do something about all of those problems. As I just mentioned a moment ago, one of the first questions I asked was, “What is the state of competition in the UK?” and I was given exactly the reply that the *Economist* implies there. “This is all too difficult to measure, and in any case the information would not be of much use”.

That sort of information should be directly guiding case selection. That type of microeconomic data, which is the counterpoint to the macroeconomic data that is very well and thoroughly collected, and made use of by other institutions, should be gathered together by the CMA and published. I tried to get that under way. I also, successfully, I think, persuaded the top brass of the CMA to address some of the weaknesses in the legislative framework. I am pleased to say—it is very kind of him—that the Secretary of State wrote to me last week to tell me that the proposals he has published owe a lot to the suggestions that I made in 2018.

Q232 **Ms Ghani:** Those will be your success markers as chair. We know there is now a new chair on their way in, which the Committee will be involved in. How would you measure the success of the new chair, considering that you also talked about the limitations that you had as chair?

Lord Tyrie: There needs to be change of mindset in the institution as a whole. Would you like me to go into that in more detail?

Ms Ghani: Yes, very briefly. I only have a few minutes with you before the next question starts.

Lord Tyrie: I understand. I do not see any point in giving the body more legislative power if there is not a change of mindset. As I said earlier, it is only acting on part of its statutory remit to a level that Parliament should be happy with. This needs to come from the top.

If I can just half-repeat a point I have already made, the CMA is full of very able people, some of the best in the Civil Service. What we need to do is release their energy. Some of them are just below the very top; some of them are much lower in the organisation. Many of the ideas that I put forward here, which have now found their way into the proposals of the Government, originate with the people I was working with in the CMA.



In some ways, one of the most interesting things I did was to operate with my door open the whole time. After a while staff came wandering in, and I went to the canteen and fell to discussing these sorts of issues with them.

Q233 Ms Ghani: You mentioned earlier on that you think the CMA is only delivering on two of its five responsibilities, but now its role is being expanded. Am I correct in assuming that you probably lack confidence in how it can do these new roles if it is unable to fulfil its present roles? If that is the case, as well as needing people below that most senior level to come forward and be enabled to come up with ideas that can be positive recommendations, what else is stopping the CMA from achieving its goals?

Lord Tyrie: The institution would reply “legislation”. What I have tried to suggest is that it can do a great deal more without legislation, just by looking at its existing statutory base and being bolder in its implementation of it.

Just to take one or two areas, it was very difficult to persuade the CMA to do any work on price gouging during the Covid crisis. I did succeed. A Covid taskforce was created, which did some very good work. It should have been expanded and built upon to be a bedrock of part of the CMA’s activity, but it was disbanded shortly after I left. That was a mistake.

To give another example, it took a super-complaint, as they are called, from Citizens Advice to trigger an investigation into loyalty penalties. I am sure you all understand what loyalty penalties are. That work had to be done in 90 days by statute. It was done in 90 days. It was a super piece of work—a first-class piece of work—but it has not been followed up.

The CMA does not, at the moment, have a mindset that has adjusted to the scale of the challenge required to tackle the growing consumer detriment in the country and the fact that competition seems to be in decline. Concentration ratios are rising; profitability is rising. A smaller number of big firms are collecting larger profits, and people are right to feel fed up.

Of course, the most difficult area to monitor is what is going on in digital markets, which are providing huge new opportunities for people but at the same time bringing scope for detriment and rip-off on quite a big scale, including many people like us in this room, who would normally feel quite confident consumers. When we go to renew a subscription, we may suddenly realise that we have been ripped off for some years.

Q234 Mark Pawsey: Lord Tyrie, I was on the BEIS Select Committee when you came before us for your pre-appointment hearing probably four or five years ago. At that time, you were massively enthusiastic about the role. We thought you were the ideal person to take it on. What went wrong?



Lord Tyrie: Of course, I still do think I was the right person for the job, or certainly capable of it. In a nutshell, I could not persuade the top brass of the organisation to take on what amounts to a strategic change of direction. That change is taking place in a number of other major jurisdictions right now.

Margrethe Vestager, who is probably the most powerful competition regulator in the world, has been making speeches about this and trying to give policy a much more direct focus on consumer detriment. Lina Khan at the Federal Trade Commission is no lover of platforms and is really getting her teeth into a much more vigorous and activist view of what competition policy should be delivering. I have had several discussions about this with Andreas Mundt at the Bundeskartellamt. He also sees the need for a change of direction.

I struggled at the CMA, frankly. Just to take the point about competition levels that I raised earlier, I first of all raised that informally and did not get very far. Then I raised it informally with members of the board, but I got a very mixed response. I then took it to the board, where it was initially rejected. It was only undertaken after I had a meeting about other issues with the then Chancellor of the Exchequer, in which I mentioned it only in passing. He responded by writing a letter saying that he wanted that work to be undertaken.

It was undertaken. What was published in the end was pretty thin, frankly. The original intention was that the first piece of work should be a baseline for further work, so it should become entrenched in both the way the CMA operates and the way Government more widely can find out what is going on in the competition environment, but the small group that had done this work was disbanded and no commitments to further work were made. That is now back on the agenda.

It has been put back as a result of further Government pressure, I suspect, from Kwasi Kwarteng. I strongly welcome that. A unit is going to be created in Darlington. I have nothing against Darlington, but they need to keep in close touch with the economist community down here if they are to do a good job. I gather that they are much better staffed. We are making some progress, although it is several years since I left.

I have strayed a little bit, but I hope I have illustrated the central problem. The people who have run this area of policy for many years—this was part of the post-Cold War settlement, really—have a very clear view about the way they think it should be done, which is primarily mergers and antitrust. Indeed, all the key people have worked on that in the private sector for many years. It is hardly surprising that that is the area that gets the most attention in the CMA, at the expense of these other very important areas of policy.

Q235 **Mark Pawsey:** You have given us some international comparisons, where others have perhaps woken up and smelled the coffee. We have not done that, but we are starting to do that now. Is that because the



nature of corporate life is different? There are more powerful institutions, and the challenge of regulating has become more difficult over time.

Lord Tyrie: It has become more difficult. Some of the regulators may say that Parliament has made it more difficult by challenging them. I would argue the opposite. I was asked what is needed to sort out the CMA—I am paraphrasing the question—and I said, “There needs to be a change of mindset”. There needs to be much more challenge of the key regulators than is currently being provided.

I do not mean to be critical of this Committee, but your predecessors, for example, never saw my predecessor as chair, as far as I am aware, in the whole period of him holding that office. I asked to go before the BEIS Select Committee, because I felt it was my job. I was very pleased that I was called for a pre-appointment hearing.

That sort of scrutiny puts regulators on their mettle. They are very easily captured by vested interests or by their sponsor Departments. To some degree, the latter of those two things has taken place with the CMA. It has a very close relationship with some of the officials at BEIS, which has not always been helpful or productive. It needs challenge elsewhere too, not just by Parliament. There needs to be much wider challenge by the Government and by other scrutiny bodies.

I have proposed separately that Parliament itself creates an internal body that has some of the characteristics of the NAO, to give them the expertise and the clout in order to take on the regulators, which are very well insulated from direct scrutiny by the highly technical nature of their work. It is very difficult to spot when regulators are dissembling or providing incomplete or misleading evidence.

When I was Chair of the Treasury Committee, I did exactly that. I managed to get a group of specialists together, but we were in a banking crisis, and it was easier for me perhaps to assemble that expertise informally. Parliament now needs to do something much more formal, if it is to fulfil its role of challenging the sector regulators and the CMA.

Q236 **Mark Pawsey:** Since you have left, Lord Tyrie, you have written a number of articles suggesting areas for change. I want to refer to your article about rebooting the CMA, which was published by the Centre for Policy Studies. I want to ask you about three things, really. One is the governance, which you described as opaque in that article. How can governance and transparency be improved? You also referred to low public awareness of the CMA.

Earlier, you mentioned the public’s discontent with the way they are being dealt with by major corporations. How should the CMA raise its profile? Many consumers perhaps do not even know it exists. You even drew attention to the fact that two-fifths of businesses were not aware that there was such a body as the CMA.



HOUSE OF COMMONS

Lord Tyrie: One in 10 do not even know it is illegal to collude with other businesses.

Q237 **Mark Pawsey:** What work should be done to raise the profile of the CMA, so people know that there is a body there with teeth and that, if there is wrongdoing, it will get investigated?

Lord Tyrie: It is a very good question. The first thing that is needed is visible public leadership that can exercise soft power. Just warning people that the CMA might take action on price gouging in hand sanitiser during the lockdown was enough to secure a substantial improvement in conduct. The CMA has immense potential for the deployment of soft power, but it is simply not using it.

The CMA wants to make absolutely sure that if everything went the whole way and it ended up in court, it could win the case. It is understandable: it is a very legalistic institution. It is understandable, but it is not enough. That is my view. It is nervous because the OFT, its predecessor body, lost cases.

Q238 **Mark Pawsey:** Do businesses take the role of the CMA sufficiently seriously?

Lord Tyrie: I am absolutely sure that many big businesses see even fines that might be levied as just a business cost. The fines are too small. They are much too small—smaller than the fines that most equivalent regulators in other jurisdictions can impose. We need substantial increases in fines.

On the governance side, the board is really largely form before substance. It has delegated too many of the responsibilities that it should assume itself. It should explain to the public what those responsibilities are and explain to you how it has deployed them. Case selection on enforcement—I cannot remember whether it is in the article—would be an example. If you look at the original statute—the 2015 statute, the amendment, and an earlier statute in 2002; it may be earlier—it is pretty clear that the board is expected to perform this role, but it has been delegated to another body.

I will not ask questions because it is not my role, but put your hands up if you have heard of the pipeline steering group. Chair, that is only because—

Chair: You told me.

Lord Tyrie: I asked several top competition lawyers that very question when I was in post, and none of them had heard of it at all. They are the pointy-headed mandarins of this—the elite that is given short shrift by the *Economist*.

The pipeline steering group is an immensely powerful group at the heart of the CMA. It decides which cases will be picked up and which will be



HOUSE OF COMMONS

discarded. That choice is crucial to the scale of the impact that the institution can have, its public visibility and the communication to the wider public that it is working for them.

Q239 Mark Pawsey: Is the basis of their decision public? Do people know the criteria that they use? Does it appear that there has been a random selection?

Lord Tyrie: You are raising a very interesting point. At the time I started demanding visibility for this, which was internally, there was nothing, as far as I was aware, in the public domain about the steering group. The very first mention that I could find on Google was a mention that I had put into some published minutes. Of course, there are criteria for case selection more generally, but they are sufficiently general to enable very wide discretion to be exercised by the steering group.

That is probably right. What the steering group should do is advise a small group—I would prefer that, actually—or sub-committee of the board, operating of course under overall board scrutiny, to select which should be chosen. The chair of that sub-committee, which should probably be the chair of the CMA, should go to the public and explain why these decisions have been taken. In areas that concern the public in a big way or controversially, they should hold a press conference and explain why those decisions have been taken.

Q240 Mark Pawsey: This would ensure that businesses can understand the decision-making process.

Lord Tyrie: Yes, and they can hear that this body just might be round to see you, might cause you some difficulties and might start investigating you, if your conduct falls short of what is required by law.

Mark Pawsey: That is very helpful. Thank you.

Q241 Charlotte Nichols: I am interested to know about the extent to which consumer law and enforcement economically benefit consumers, but I want to start off with a question that goes back to the remit thing we have been speaking about a bit today.

In order to illustrate the question, in a former pre-MP life I was a union officer. I was involved in the negotiations around the Asda-Sainsburys merger, which ended up being blocked by the CMA. One of the interesting things at the time was that there were a lot of concerns among the workforce. The workforce in Asda had these quite good terms and conditions, distribution was all in-house and so on, whereas Sainsburys had an outsourced model. There was nowhere to feed in that concern around what a merger might mean in terms of driving down the terms and conditions of employment for the workforce.

The TUPE regulations only protect you for two years. In some ways, to some people's analysis, that seemed to be viewed as a good thing, because in theory outsourcing all of your distribution potentially makes



things cheaper in the end for the consumer. Therefore, there was almost a distorting effect in the way the CMA was looking at it from the point of view of competition, of the labour market and, ultimately, of pounds and pence in the Treasury's pocket in taxation.

Is there a fundamental conflict between what benefits consumers and what benefits the economy and society more broadly? Can that square be circled effectively?

Lord Tyrie: Consumers are society. We are all consumers. You will be down at the local shop probably not today but this weekend to pick up your groceries. The trade-off that you are implying is a trade-off between what is best for the employees and what is best for the consumer. There can be a tension there. It is very important that all points of view should be heard. It is new to me, from what you say, that there was not an opportunity to make those points.

It is worth just bearing in mind, while we discussed the Sainsburys-Asda merger, that this work was done completely independently, in my view probably rightly, of the top of the organisation. An independent panel chair is appointed to undertake such inquiries.

If I may use your question as a prompt for making one or two other points, the CMA's decision-making structures have been inherited from a hodgepodge of legislation that dates back decades. Successive Governments have meddled, with the best of intentions, but this has led to ever-greater complexity. This has created a level of opacity that passes all human understanding, like God's will.

We are talking about a field that has plenty of scope for reform—I have not made proposals and decided that it is something that could be addressed at a later date—of the panel system itself. Many people who look closely at it come to the conclusion that it could be much better done. Certainly, the panel system does not help when it comes to explaining to the public why decisions are taken.

We must have, in the competition field and in consumer protection, two key spokespeople. We have to have a spokesman or spokeswoman explaining why the decisions are being taken about case selection and explaining what is initiated. We need somebody else at the end—as small a number of people as possible, preferably just one person—who is always there saying, "We took this decision, and here is why". He or she can come before this Committee, and you can have a go at him or her.

That, it seems to me, is the way 21st-century policy should be made: decisions with explanations, not press releases to a specialist group but something that is absorbable and capable of being understood by a wider public, particularly on decisions such as Sainsburys-Asda, which so directly affect people's welfare. I have rambled a bit in my answer to your question.

Q242 **Charlotte Nichols:** No, it is very helpful. Thank you. We have seen



HOUSE OF COMMONS

across a whole range of sectors companies suddenly taking up a big space within the market, because they have been driving down terms and conditions with this gigification of the economy. Is there something the CMA can do to level that playing field?

Last week, the Government announced that it would introduce reforms that would give the CMA enhanced consumer enforcement powers to tackle rip-offs and bad business practices. Are these the right reforms?

Lord Tyrie: I published a long list of legislative proposals and sent them to the Secretary of State, which was an innovation in itself. It is very unusual for most of these regulators to say publicly what they want, and then effectively to lobby Government and try to push policy in that direction.

May I widen the question slightly? Although ultimately everything boils down to whether it benefits consumers—the Minister has just come in, so it is a very apposite moment to make these points—are the legislative proposals good enough? Are they up to snuff? The proposals on consumer law enforcement are a major step forward. The work on that predated my time in the CMA. There was already work going on to try to establish what was best. Certainly, the existing consumer protection powers are not strong enough to enable a good job to be done.

If I were to tell you that this is moving from the adversarial to the administrative model of consumer protection, it would only add to the opacity of language and culture that I am afraid bedevils this whole area of public policy, which I first encountered when I was looking at the proposals to try to bring some genuine competition to retail banking when I was Chair of the Treasury Committee. I failed largely to achieve that, but I did encounter this opacity.

Let me speed up. The consumer law enforcement powers are an excellent step forward. The information gathering powers are also a step forward. The CMA will now be able to fine firms if requests for information are ignored or where there are breaches of commitments and undertakings that are taken before legal action. A firm will say, "I will come quietly. This is what I will do", but what sometimes happens—in fact quite often, under the current law—is that firms give the CMA the run-around. They say yes, but they mean no, at least not for a long time. They carry on reaping the benefits of whatever action and detriment they are imposing on the consumer. Those behaviours will now also incur fines or the possibility of fines from the CMA. That is a step in the right direction.

Two other big things have been included in these proposals, which I welcome. I had a lot to do with the fact that they were in there in the beginning. One is interim measures on cartels. Where a cartel is identified as a possibility, this will now enable the CMA to take interim measures to stop the detriment continuing while they complete the investigation. There are already legislative provisions for this. The problem was that, in order to avoid challenge by a firm to those interim measures, the whole



case had to be heard. They will now move to a judicial review standard for antitrust and cartels. The CMA has to make a big mistake, really, before its interim measures can be overturned. When I spoke to my French counterpart and several others, I discovered that interim measures are pretty standard and are a key tool for remedy.

The other big step forward is the duty of expedition. This is a general duty right across the board for all functions of the CMA. There will now be a duty on them to get on with it. Some of the cases seem interminably slow. There are sometimes good reasons for this—I have pointed out the CMA’s fear of legal challenge—but just get on with it.

There are four things missing, all of them very important. Therefore, it may be that this package is insufficient to achieve the step change in competition and consumer protection that we need in this country. What are those four things? First, the consumer duty has been dropped. If you look at what I sent to the Secretary of State in 2018—it might have been in 2019—you will see set out there in some detail what the benefits of a consumer duty would be, if it was combined with interim measures and a duty of expedition. This is saying, “You, the CMA, have a duty to act to benefit the consumer directly all the time. It has to inform every piece of work you do”.

Some might argue—it has been argued in the CMA—that this is declaratory and that it informs every aspect of their work already. Combined with other measures, the duty of expedition particularly and interim measures, it will alter the way appeals are heard in the courts. Certainly, the CMA thought so at the time I was there. It would be more difficult to hold up a case with interminable challenge if you could say to the court, “We have a duty of expedition, and we have a duty to do something to help the consumer”.

The parallel I had there was with family law. If you go before a family court, there are children involved. The paramountcy of the child’s welfare trumps everything. It is not enough for the judge to say, “Come back to the court in six months. We would like a bit more evidence, which we do not have in front of us now, in order to take a decision. Come back in six months and we will think about it then”. That is not good enough. The judge knows there is this duty on the court.

Q243 **Charlotte Nichols:** You might take a more favourable view of the family courts than I do.

Lord Tyrie: That is a completely separate subject for another day, which we can discuss outside this. You and I may well be in the same place.

Can I just say what else is missing? The consumer duty is missing; whistleblowing is missing. How do you find out whether there is a cartel if you cannot get at whistleblowers? The key people you need are right at the top of these firms and are earning a lot of money. The £100,000



HOUSE OF COMMONS

compensation that is available is really nothing. I do not favour it, but the Americans give a percentage of the eventual fine as the incentive.

There is also a serious problem with confidentiality. If you are a whistleblower, you want to be able to provide information without having your whole career destroyed. Finding some kind of safe harbour for whistleblowers against that cannot be beyond the wit of man, although it seems to have eluded lawyers so far.

The third key thing is that the markets regime—this is market investigations and market studies, phase 1 and phase 2—does not really cut it. The problem there is that, while you can act under a phase 1 investigation to address consumer detriment, once you get to phase 2, the test or the standard for whether you can take any action is competition. It is back to the point I was making about the consumer duty. What we really need in the markets regime is for the CMA to have the capacity to protect consumers in phase 2 investigations. That would make a difference. I am sorry this is so technical, but we are in the pointy-head world.

Chair: You are on point four, though, are you not?

Lord Tyrie: I am on point four now. I will be very quick. Point four is individual responsibility. What would really change the terms of trade in many big financial institutions? As a result of the work of the Parliamentary Commission on Banking Standards, which I chaired, we pushed through individual responsibility at board level. I said that firms just see things as a business cost. Everything just carries on as normal; no one seems directly responsible.

Make someone individually responsible in big public companies for making sure they are on the right side of competition law. When they get up in the morning, they will think, "The chief executive came to me and told me about this idea. I am not so sure that is a good idea. It might breach competition law, and I am in the frame. I might find myself individually responsible for this and get struck off as a director, ending my career".

Charlotte Nichols: It focuses minds somewhat, does it not?

Lord Tyrie: It focuses minds. I have done my four points.

Q244 **Paul Howell:** You mentioned earlier the potential for exploitation and rip-offs of people. I know you answered part of the question around that, but could you just elaborate a little bit, with specific reference to the digital markets, on what the CMA and the Government should do to tackle where this is going now?

Lord Tyrie: Digital detriment is a major problem. In brief, the first point that needs to be made is that these markets have created enormous scope for improvements in choice and welfare, but they have all also brought with them equally great scope for the exploitation of consumers.



HOUSE OF COMMONS

I mentioned the loyalty penalty, but fake reviews also fall into this category. So does the fact that what amounts to an advertising monopoly by the big platforms means that a high proportion of the benefit of any innovation that takes place at grassroots level is sucked out by platforms. That is one of the big reasons why they are so hugely profitable and why their share price is so high in relation to their earnings: people think they are going to earn even more shortly from the quasi-monopolistic grip they have on information for firms in the marketplace.

How to tackle digital markets is going to be one of the big issues of our time. The Government have done the right thing. They have created a Digital Markets Unit. By persuading the CMA not to lobby directly in order to get the Digital Markets Unit, they have ended up with it. I tried to point out that, if they lobbied, they would just be seen as one of the other lobbyists and it might go somewhere else, for example Ofcom, which was lobbying very heavily. There are some very good people in the CMA who are capable of taking this work forward, and there is more enthusiasm for that.

I will struggle to illustrate this in just a few minutes, but I would point out that, while there is great enthusiasm in the CMA to look at digital markets, of primary interest to many of the experts in the CMA—not all—is demonstrating the intellectual capacity to grasp these issues and work on them when they are in that very specialist community of competition experts. It is a badge of honour that they can grasp this stuff.

What is also needed as a result of the digital work, if it is to be a success, is for the public to become aware that this is taking place. They should know that someone is on their side, trying to make sure that these platforms are not going to be allowed to rip them off. It would take a while—I will not do it now—to explain how the CMA could get its teeth into demonstrating improvements for consumers and a reduction in consumer detriment, but it has to find a way of doing that, if it is going to make a success of it.

The consumer has to start to believe that the economy is run for them and not just for a small elite economic group or for businesses. We are not at that place at the moment. In fact, we have got alienation of free enterprise taking place in many Western economies. That has something to do with the growth of populism and the rejection of globalisation.

Globalisation has provided the greatest improvement in material welfare in the world in human history. If it starts to get reversed—there are signs that it is being reversed by populist nationalism, among other forces—we are all in great trouble. We are in trouble as politicians, because the free enterprise settlement is the best way known so far of improving material welfare, whatever side of the political debate you come from. Unless you are right on the far left or on the autarkic far right, most people agree. If the public no longer believe it is benefiting them, politicians have a very big problem.



That is why it is so important that the bodies they have created to try to tackle this are not only getting on with it—and I am not sure they are, vigorously enough; not just the CMA but a number of other major regulators—but are seen to be getting on with it and can demonstrate that they are with much clearer public explanation than is currently being provided.

Q245 Paul Howell: I would pretty much endorse a lot of what you have said, but there is also the challenge of the international world. The digital market is a worldwide one. We have heard from regulators in the US and Europe; there are differentials between the two. How do you square that space and still give us the opportunity to make sure our consumers feel in control?

In the last session we had, we had the energy markets in front of us. One of those companies had developed and grown purely on recommendations that had come from a digital player. That digital player will have made money in the process, but it was recommending a business that was inadequate and was never going to perform. There needs to be a different type of regulation that sits there as well.

Lord Tyrie: I will make two quick points. Saying something like that to any chair of a Select Committee always gets a nod of agreement, and I got one there. First, if we are going to tackle the big platforms, the UK alone is probably going to struggle, even if technically and intellectually we are up to it. Remember that it means getting deep into the algorithms and having the power, the legislative power, to get hold of those algorithms. Therefore, you need international co-operation. One of the great concerns I had about the CMA's work in this space was that it was trying to go it alone initially. This is back to the point about demonstrating to other regulators how it could cope.

The right approach to dealing with platforms has to be international co-operation, with two or three major regulators together. The EU is very important. The Germans are very important. They have started working on this. The Americans are very important. These are very powerful regulators in this space. The Australians are deep into this as well. We need co-operation among a number of regulators, using their respective and somewhat differing legislative and statutory bases. They can often exert more leverage if they are working together.

Information sharing is a problem—a statutory problem. That is one of the issues that is also being addressed. I have not got enough into the detail to see whether it will help specifically with digital, but I suspect it will. It is also being addressed in the legislation, and it was also in the proposals I put forward to the Secretary of State in 2018.

You mentioned consumers feeling in control. Consumers will feel in control when they do not have the experience I had when I tried to renew something only recently. I am reasonably digitally literate, certainly not hopeless for someone of my age, and I am reasonably alert. My partner



HOUSE OF COMMONS

used to write computer software for the IMF. Between the two of us, we felt we had a chance. I can tell you that, after many hours, we discovered that we were being ripped off or we had been ripped off, and we found the right thing to do. Then in my head I started to work out how many of these other web-based renewals I have to undertake in a year. I thought to myself, "At this pace, I am going to have to devote a week a year". The whole thing gets completely out of hand.

There are partial solutions. One is to act directly on the platforms. One is to create intermediaries that can give you the advice. One of the problems with intermediaries, if they are private sector intermediaries, is moral hazard. They may end up being influenced by the people about whom they should be providing independent advice. If they are in the public sector, they tend to create vanilla products, which then stifle innovation. Somewhere in that space, it should be possible to create a body that can improve material welfare. We do not have enough of this at the moment. We have several bodies in this space: Which?, GoCompare and various others. We have some, but we need to think about ways of stimulating more. I hope I am answering your question.

Paul Howell: That is comprehensive enough.

Q246 **Richard Fuller:** It is good to see you, Lord Tyrie. Let me see whether I have your arguments right in my head. In your IPPR paper, your Policy Institute paper and at other times, you have talked about a growing distrust in markets. Today, you have referred to that in the context of competitive markets not being seen to deliver for consumers. You are concerned that there is a growing interest in an alternative approach to markets that is more dirigiste, Government-driven and interventionist. You say it is important to protect competition, which is this great deliverer of living standards around the world, by having competition policy move to fill this gap of distrust and therefore to say that we are more on the side of consumers. Is that, essentially, the core of your argument?

Lord Tyrie: Yes, 100%.

Q247 **Richard Fuller:** Let us just ask about the first part, then. Other than anecdote, just remind us of the evidence for this growing distrust that is out there. Is it a feeling? Is there a whole body of research to support the premise for that construct?

Lord Tyrie: This is a complex and controversial issue, and I do not have it to hand. I have published it; you will find it in various things I have published. If I had more time, I would spend 30 seconds looking it up and reading it to the Committee. I will be able to point the clerk to material that supports that view after this hearing.

Q248 **Richard Fuller:** It would be helpful if you could. Just on the other side, you are suggesting that we move away from a really clear focus on saying, "Competition delivers better products and you can trust the



HOUSE OF COMMONS

market” to saying, “We need to be on the consumer’s side”. I believe that your perspective on protecting consumers is within the framework of improving competition to deliver that, but are you not at risk of achieving another tool for the interventionists? You spoke earlier on about the fact that regulators are not overseen by Parliament. You talked about their connections and how cosy the mandarins are with their own industry.

If we move away from competition to something that sounds good, which is pro-consumer, are you not inadvertently giving the dirigistes another tool?

Lord Tyrrie: That is a counsel of despair, even if we may all end up despairing, which is unlikely. That is an argument for saying, “We had better not develop this particular tool, because, while we know how to use it for the benefit of the whole community to deal with detriment, somebody might one day get their hands on it and do enormous damage with it, so we should stick with something that is demonstrably second or third best”.

I suppose it is an argument worth thinking through. This is my initial response to that question, which I have not often been posed. The settlement that facilitated competition since the Cold War ended, which everybody thought was right, led to the creation of these highly technocratic competition bodies. Over the last 30 years, about 130 countries have brought in legislation very similar to ours, including us. That is being challenged. This predated the crash, but particularly since the crash it has been heavily challenged. It will be challenged to the point of destruction. At that point, we have lost the benefits of competition anyway. There will be public revolts in some countries, and there will be political instability.

Q249 **Richard Fuller:** If the Government bring this pro-consumer model to the remit, should the remit of the CMA include public services? People consume appointments with their GPs. My constituents have had concerns about that and other public services. Should the CMA’s remit cover all aspects of where people engage with products and services?

Lord Tyrrie: In principle, the CMA already has that statutory reach.

Q250 **Richard Fuller:** What investigations of public services has the CMA ever undertaken?

Lord Tyrrie: It has a capacity to advise Government. This is the power of advocacy. It has a responsibility, which amounts to a duty, although the word “responsibility” is used, to advise Government on where to act and on where its direct legislative base may not be strong enough to enable it to act. Furthermore, the strategic steer, which the Secretary of State writes every three years to the CMA, says that it should be robust and speak up.

Q251 **Richard Fuller:** That is all very well. You have not yet answered my question about how many investigations have taken place. Let me ask



HOUSE OF COMMONS

you a straight question, because I know we need to move on. From the point of view of consumers—

Lord Tyrie: May I just answer your question? My answer to your question is that I cannot think of any off the top of my head. That does not surprise me. What concerns me much more is that I cannot think in the public domain of very many cases where the CMA has used its advocacy powers to tell the Government what it thinks needs to be done.

Q252 **Richard Fuller:** Given that my constituents and the residents of this country consume a wide array of services that are in the public sector, as they do in the private sector, if there is a change in competition policy that focuses on the consumer, is it not a logical conclusion that the remit and the inspection powers of the CMA should be as robust on public services as they are on private sector services?

Lord Tyrie: In principle, yes, but I would like to reflect fully before giving you a 100% yes to the question. It is a very interesting thought. I had started to think through one aspect of this when I was at the CMA. My priority, as you can see, was to get proposals out on a legislative base and to get the CMA to act in a more balanced way to put forward all its statutory responsibilities. As I said, I was not able to take the board with me on enough of that.

Since I left the CMA, I have succeeded in changing the terms of trade on this whole debate, at least to some degree. I have had more influence from the outside than I had from within. That in itself tells a story about the way that some of these regulators currently operate.

Chair: Thank you, Lord Tyrie, for your contributions this morning. We are grateful to you. That brings this panel to an end.