

# Business and Trade Committee

## Oral evidence: The work of the Competition and Markets Authority, HC 1369

Tuesday 16 May 2023

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Members present: Darren Jones (Chair); Bim Afolami; Alan Brown; Ian Lavery; Andy McDonald; Mark Pawsey.

Questions 1 - 36

### Witnesses

I: Marcus Bokkerink, Chair, Competition and Markets Authority; Sarah Cardell, Chief Executive, Competition and Markets Authority.

## Examination of witnesses

Witnesses: Marcus Bokkerink and Sarah Cardell.

**Chair:** Welcome to this morning's session of the Business and Trade Committee, where we will be talking to the Competition and Markets Authority about its work and future plans. I am delighted to welcome back to the Committee Marcus Bokkerink, the chair of the Competition and Markets Authority, and to welcome Sarah Cardell for the first time as the chief executive of the Competition and Markets Authority.

Before we get going, there are some declarations of interest that members need to declare. In so far as it relates to technology and AI, I need to declare that I am the chair of Labour Digital and the chair of the Interparliamentary Forum on Emerging Technologies.

**Bim Afolami:** In relation to anything to do with regulators more broadly, I am the chair of the Regulatory Reform Group.

Q1 **Chair:** We are going to ask questions today in three tranches. We are going to ask about some topical cases, upcoming legislation and your forward plan and strategy at the CMA.

Some of the most widely covered news has been about the Microsoft transaction that the CMA is seeking to block from happening. Could you give us a quick summary about where we are at this stage with that deal and your reasons for that intervention?

**Sarah Cardell:** I will give a quick summary, as you say, but feel free to ask for further detail. I will give a quick recap of the substance of our decision. As you will be familiar with, our merger control decisions are taken by our independent panel groups, and the group reached the decision back at the end of April to prohibit the transaction. The reason for that was that they identified a problem in the cloud gaming market.

This is a rapidly emerging part of the market, and it is a market where Microsoft has a leading position, as things stand, across its position in relation to cloud infrastructure more broadly as well as Xbox and Windows. We were concerned about the ability for Microsoft to take that position and combine it with the very strong position that Activision has in terms of its very significant portfolio of games. The group considered the deal very carefully and concluded that this would lead to a lessening of competition, effectively because it would prevent other cloud gaming providers from being able to compete effectively as that market goes forward.

As I am sure members of the Committee will be aware, the group very carefully considered a proposed remedy that was tabled by Microsoft. It went through several iterations of that and ultimately concluded that that remedy would not be effective to resolve the competition concerns. I remind you that the UK position is that when we identify that a merger will result in a substantial lessening of competition, the legislation



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requires us to consider whether any proposed remedy will be comprehensive and effective in resolving those concerns. The group considered this very carefully and concluded that it would not.

Essentially, the reason for that is that the remedy involved Microsoft offering a licensing deal that would have effectively set the terms of trade for the market for the next 10 years and set the terms on which other cloud gaming providers would be able to get access to those games. The group considered that that was not an effective remedy, remembering that this is a really important evolving market that we want to keep open to free competition. We want to make sure that competition is able to evolve in that market unencumbered by regulatory constraints.

That was the essence of the reason to reject the remedy. That means that the CMA has decided that the deal needs to be prohibited. I am sure that you will have seen the announcement from the European Commission yesterday. The Commission also agreed that the deal would give rise to competition concerns. There is no difference between the CMA and the European Commission there. The Commission has, however, concluded that it considers it appropriate to accept the remedy. It has its own test to apply and has reached its own view. It is fully entitled to reach that view, but we remain of the view, from a UK perspective, that it was not appropriate to accept that remedy.

The final thing I would add is in terms of where we are across global jurisdictions. The deal is also subject to review in the US. The US Federal Trade Commission is suing to block the deal in the US. It is a litigation approach in the US. The current position, in summary, is that the CMA has concluded that the deal should be prevented. The US DOJ is also suing to block the deal. The European Commission has indicated that it will accept the remedy that has been tabled.

**Q2 Chair:** Could you flesh out a little for me why the European Commission felt differently about the remedy? What is the substance of the disagreement between the Competition and Markets Authority and DG COMP?

**Sarah Cardell:** We do not have the detail of the Commission's reasoning. I can give you the rationale for why the CMA concluded that it was not appropriate to accept that remedy. We looked very carefully at this. The process that we have involves a specific hearing on remedies and the opportunity for the parties to put in several rounds of remedy proposals. It was a long and careful process.

What the group are considering there is whether a remedy will give the group confidence that this market will be able to continue with the competitive dynamics that you would have had in the absence of the merger. This is a market that is in early gestation where we want competition to flourish. We want all parties, big and small, in that market to be able to access the market. There was a real concern on the part of the group that, if you accept the proposal that was tabled by Microsoft, it



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would constrain the way that the market would evolve going forward. It would not replicate the conditions of full and free competition that we would see in the absence of the merger.

**Q3 Chair:** We will talk more about legislation briefly later. This week, Parliament is intending to give the Competition and Markets Authority much wider powers to work within digital markets and new mechanisms to be able to intervene in these types of business decisions. It has been reported that tech companies have been recruiting lots of lobbyists and persuaders to try to influence the work of the CMA. What is your experience of that? How has that changed? Do you have any worries or concerns about that?

**Sarah Cardell:** Overall, our experience is very positive in terms of the engagement that we have had across the tech industry. One of my priorities since I have been in role, and indeed even before that, when I was heading up our Digital Markets Unit, was to make sure that I was engaging very actively with businesses large and small across the tech sector. It is absolutely critical, from my perspective, that we have good engagement, that we understand the sector and its businesses, but also that we can have a frank and constructive dialogue.

I have been meeting on a regular basis with senior representatives from the individual tech companies but also with industry groups such as techUK, for example. One point that I have made in those meetings, which I think has been reciprocated, is a recognition that this is a sector where we want to work together; this is a sector where we want to make sure, together, that we can create and support the best conditions for competition. That will enable companies, big and small, to thrive, including many UK start-ups and UK competitors.

Of course it is the case that there will be individual decisions where we have a difference of views. Again, that is something that we have had very frank discussions about. It is absolutely critical that we maintain a constructive dialogue. That is something that I seek to do and am doing regularly. I do not find that we are operating, broadly speaking, in a hostile environment.

The other thing I would mention is that we have an individual case, like Microsoft Activision, where the parties disagree with our outcome. We have many other cases that we are pursuing, including a number of cases on our antitrust side, where we are in the process of reaching, and have reached, constructive outcomes.

A good example of that would be the antitrust case that we had in relation to Google's privacy sandbox. This was proposals by Google to withdraw the third-party cookies on its Chrome browser. We identified early on some competition concerns there. Google was very constructive in that case, and it came in and offered commitments. This is an opportunity to resolve the case through binding commitments rather than



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taking it through to a final conclusion. We engaged very actively with them and with the Information Commissioner's Office.

We have been able to work together to come up with a solution that is now being rolled out worldwide. That is a really good example of the kind of constructive engagement that we look to see. It is very much the model that we would expect to see going forward with the new regime as well.

**Q4 Bim Afolami:** Ms Cardell, do you consider the implications of your decisions—for example, in relation to merger control, but it could be others—for the UK's international reputation as a place to do business?

**Sarah Cardell:** I will give an initial answer and then Marcus may want to come in as well. In our work at the CMA, we are absolutely committed to making sure that we support competitive markets in a way that is good for the UK and the UK's economy. Competition is a keystone and an absolutely foundational block of UK competitiveness. We want to have strong competition in markets. That promotes growth and innovation.

**Q5 Bim Afolami:** Everybody is in favour of competition in markets. I am asking you very precisely about the international reputation of the UK. Do you consider that at all, either on a decision-by-decision basis or strategically? Both of you, as the leaders of the organisation, do you consider that as the UK being somewhere that is seen as open to business—yes or no?

**Sarah Cardell:** Individual cases need to be decided on their merits. When we are looking strategically at the role of the competition authority, absolutely we will consider the impact of the decisions that we make and the impact that that has for the UK economy, including the reputation externally. I believe that strong competition is a very positive signal for the UK's reputation externally.

**Marcus Bokkerink:** Could I reinforce that? I understand the inference: a decision is made that blocks a deal and then there are questions about whether the UK is open for business. I disagree with the premise that somehow the two are connected. All businesses know that there is a very big difference between building a business, investing in a new business, investing in a start-up or creating a new business, and buying an already well-established firm with established positions. The two are not the same.

The UK has always encouraged—and it is the CMA's duty to support and encourage—open competitive markets. All our decisions are absolutely about encouraging and promoting open competitive markets where innovators can flow freely. We are vigilant, as it is our duty to be vigilant, about investments that consolidate and entrench market power. I would challenge the premise that there is an impact on international confidence in doing business in the UK, and that the best way to serve that confidence is by turning a blind eye to anti-competitive mergers.



**Q6 Bim Afolami:** That assumes that your decision is correct. It is interesting, as the Chair has already said, that the European Union has taken a different decision. It is not necessarily unusual or strange for an international body that does not know the UK very well to therefore perceive the EU competition authority to be more flexible or forward-thinking in terms of this area than the UK. Do you worry about that perception?

**Marcus Bokkerink:** I would worry about a perception that the UK would allow anti-competitive mergers to go ahead and restrict competition in markets. I see in the numbers that there are thousands of mergers and acquisitions transactions happening in the UK every year. A certain number of those hit the CMA.

The ones that ultimately get blocked are a handful. They get blocked only in a situation where the CMA and the independent panel believe that there is a real and credible risk of harm to people or businesses through anti-competitive situations. The business environment and the business investment landscape are influenced by many factors, but the ability to compete and the knowledge that you can compete unconstrained has always, in my conversations and experience and in the experience of many studies, been a core driver.

**Q7 Bim Afolami:** On the international aspect of this, Ms Cardell, to what extent does the CMA discuss and co-ordinate with authorities considering the same mergers in other jurisdictions? For example, did you interact with the FTC in the US and the European Commission in the stages of examining this case? What weight do you put on those discussions?

**Sarah Cardell:** I will take the answer generally and then come to the specifics. I should emphasise that the starting point is that we are very mindful that, post Brexit, we are looking at a significantly larger number of global transactions than we would have done previously. That means, as a merger control authority, we are likely to be looking at deals alongside other authorities, such as the European Commission and the US authorities.

When we are looking at those deals, of course we are highly mindful of the fact that we want to ensure continuity and an integrity of analysis to the extent possible. Alongside that, our responsibility, at the end of the day, is to look at the impact for the UK. We are balancing those two aspects.

To answer your question in terms of specifics and engagement, the extent to which we engage with other authorities on individual cases will depend on whether there are waivers in place from the merging parties that enable us to have specific conversations in relation to the deal. In this case, for example, we had a waiver in place that was granted by the parties that enabled us to have conversations with the European Commission at appropriate points along the way.



Q8 **Bim Afolami:** What about the US FTC?

**Sarah Cardell:** I am not sure that it is appropriate to get into the specifics of the case.

Q9 **Bim Afolami:** You can say whether you talked to them.

**Sarah Cardell:** In the latter stages we did not have a waiver in place and therefore we were more restricted in our ability to have specific conversations.

Q10 **Bim Afolami:** How late were the latter stages?

**Sarah Cardell:** I do not have the specific details of when that position changed.

Q11 **Bim Afolami:** You are saying that, from a particular point, X weeks or months before the final decision, you did not have any interaction with the US FTC at all.

**Sarah Cardell:** There would have been general conversations with the FTC, but we were limited in the conversations that we had because there was no waiver in place.

Q12 **Bim Afolami:** I have been made aware that there is a perception in certain competition circles that the nature of the burden of proof that the CMA has to discharge is comparatively low compared to, for example, in the US where they have to sue. It is a litigation system whereby, as you explained at the beginning, it is a court-based process. That means that the CMA, effectively, can operate on a future likelihood of harm, whereas in a court-based process in the United States they have to demonstrate evidence of harm.

Is that your understanding of it, as somebody who knows much more about competition law than I do? Therefore, there is a feeling that perhaps, if there have been discussions and co-operations with the FTC, it may be useful for the FTC for the CMA to block something that they may not be able to do in their own jurisdiction.

**Sarah Cardell:** The first point I would like to clarify is that the CMA will take its decisions based on our assessment of a merger. I would clarify this, because I think that there has been some speculation on this, for example in the press. We are absolutely not doing the bidding of other agencies. We undertake our own analysis. As I mentioned before, we have our independent panel groups who are responsible for those decisions and take those responsibilities incredibly seriously.

The forward-looking nature of merger control assessment is common to all jurisdictions. It is inherent in the nature of a merger control assessment that you are looking at what the impact of the merger is. Essentially, you are saying, "Let us take the position in a market without the merger. How do you think that will evolve? How will competition evolve in the absence of a merger?" Then you compare that with the



position in the event the merger goes ahead—what impact will that have on competition. That is a forward-looking assessment in any jurisdiction.

In common with other agencies, we will draw on a whole range of different evidence. To do that we will hear from the merging parties. We will hear from third parties. We will look at business plans. We will undertake economic analysis and draw on a whole host of different evidence. We will undertake a forward-looking assessment because that is inherent in the regime.

Our standard in the UK is that we have to establish on the balance of probabilities that it is more likely than not that the merger will result in a lessening of competition. The standard in the US is a litigation standard, but the analysis is inherently the same. The evidential base will be inherently the same. That is also true for the European Commission. Our assessment is then subject to judicial review by the Competition Appeal Tribunal in the UK. That is a rigorous process of judicial review, and we take that incredibly seriously in making sure that our case is well evidenced and our decisions are well founded.

**Q13 Bim Afolami:** In relation to the US FTC, you were not terribly clear about the extent of your communication. Are you happy to detail to the Committee, in private if necessary, how many contacts you have had, oral and written, with the US FTC in relation to this case?

**Sarah Cardell:** We can provide further follow-up to the Committee, yes.

**Q14 Bim Afolami:** You will be able to say, “Over the last X number of months, this is the amount of discussions that were had”.

**Sarah Cardell:** Subject to appropriate confidentiality, we will follow up with the Committee, yes.

**Q15 Chair:** This debate is both obvious and anticipated, in that we, as much as you, the Government and everyone else, have to try to balance industrial policy and competition policy. There of course is a concern that you have the most well-financed global multinationals that often are the organisations that buy start-ups and scale-ups in the UK. We know that we have a problem with scale-up finance in the UK and they often have to sell out to American owners to get the capital they need. These symbolic cases might deter that or persuade people to start up their businesses elsewhere.

I am interested in another topic in the review you have announced on artificial intelligence, which is obviously a very broad term. I know that you are looking specifically at foundation models. Could you talk us through a bit about how that review might be structured, what the scope of it will be and how you are going to try to balance these risks, and whether they are PR risks, I suppose, as opposed to fundamental legislative risks?



**Sarah Cardell:** This review is a great example of the strategy that Marcus and I have implemented together over the last year, which is to bring more of a forward-looking focus to the CMA's work. A lot of the work that we do is looking at established competition problems or consumer protection issues and what we can do to remedy those. That is an important part of our work.

We also think that it has been important to shift the balance a bit to have more of a focus on emerging markets and, in particular, how we can help industry participants to shape those markets in a way that guarantees effective competition and consumer protection going forward. That is the framing.

Within that, looking at AI is an obvious example. It is highly topical. It is rapidly developing. It has the impact to transform the way that we all live and work in many incredibly positive ways. We have seen that also in the Government's White Paper. We have been thinking very carefully about what the role here for the CMA is and what we can do. We thought that it was appropriate to launch an initial review, which is deliberately framed in quite an open way, but also to do something fairly quickly. At this stage, we do not want to impose a long, formal, burdensome process on industry participants.

It is very much about opening up, speaking to a whole host of different participants, understanding how that market is evolving, understanding how the models are being used and are likely to be deployed and, within that, looking at the opportunities and potential threats to competition and consumer protection. Then we will come up with some initial guiding principles; that very much echoes the spirit of the Government's White Paper.

We have been clear that we want to focus in on competition and consumer protection issues. There is obviously a whole host of questions at the moment around AI. There are issues around safety and IP and many other issues. There is a whole landscape of regulators who will have an interest in a number of those. We want to focus in on competition and consumer protection issues. We want to do that in a constructive way, but in a rapid way as well.

Our intention is to produce an initial review by September. That would be very much the start of an ongoing process of dialogue. It is not a one-shot look at the market, but it is very much in the spirit of positive engagement, providing some constructive guiding principles so that we can all have confidence that that market is developing to deliver the best possible benefits.

Q16 **Chair:** Marcus, in your pre-appointment hearing, we all agreed that the role of chair of the CMA needed to have more of a public-facing role and a diplomat/advocacy role. In this tension between showing Britain to be a great place to start a business and secure investment for your business, and a market in which there is strong and effective competition policy,



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what work are you going to be doing to reassure investors but also ensure that the CMA is delivering on its mandate?

**Marcus Bokkerink:** There are a few things that are already in train and that I will continue to do. The first is that, since Sarah and I were both in post, we have made a step up in our external engagement with the organisations that represent the people of the UK, with businesses, the business community and the organisations that represent them, so from the Federation of Small Businesses to the Institute of Directors to the alliance for infrastructure investors, and, importantly, the advisers to businesses, so the investment banks and lawyers.

There is this direct, one-on-one engagement on how we are thinking, what our ambition is for the impact we want to have and why we believe competitive markets are so good for the economy and for investment. Those conversations are having a real impact in dispelling some myths and uncertainties that existed before those conversations happened.

The second thing is that we—not just me as chair, but the board—want to be and have started to be much more active in providing steer, challenge and scrutiny to the whole of the CMA and all the work we do. You see in the recent and current annual plan, which is more of a forward-looking, strategic annual plan, that we have been far more actively involved in helping to shape and guide that.

Hence, you see that reflected in the fact that it is now, instead of being focused on the internal ambition, focused very much on what outcomes we can point to that we want to achieve as the CMA for the people of the UK. What are the outcomes that we want to achieve for businesses of the UK? Through that, what are the outcomes that we want to achieve for the economy? We have made that very clear in very unambiguous language. It makes it easier for people to understand what we do and to hold us to account on that.

Secondly, we have been restructuring how we scrutinise and get ourselves involved in the thinking of the whole CMA on a monthly basis. Now we have a vigorous agenda looking at external developments. What is the strategy? What are the cases? What is the business model? What is the situation with the people? You see that then reflected in work choices that become more accessible and relevant to the people and businesses that we serve.

If you look at the plan and what we are focusing on, we are going to be focusing on the areas that matter most to people. You see that flowing through now. What could be more important to people, where people have more issues, than having somewhere to live? That is a core, central issue, so naturally we want to home in on that, and we have started homing in on that. Instead of doing it in a selective way, we have decided to push it in a joined-up way. We are doing a housebuilding study, but at the same time looking at the private rental sector, because there are consumer issues there too, as well as helping the leaseholders. That is an



example of getting into early development of work that, by its very nature, because it is so central to people's lives, make it more obvious and clear what we do.

The third thing we are doing is being even more clear at each and every turn of any decision to launch a piece of work or a study, and any decision to communicate potential concerns, that we are discussing with parties in a merger case, or any other investigation, emerging findings. Each and every time, whenever a decision is made, why are we making that decision? Who benefits and what is the benefit? That is coming out much more clearly.

If you combine that with the increased focus on preventative consumer protection type work, so guidance on avoiding misleading claims, online rip-offs, getting much closer to the heart of what people are feeling day to day, on both the public side and the business, it is becoming clearer. It was important for me, the board and Sarah, because it was very much a joint effort in that respect, to lay the foundations before simply going out and giving speeches, although that is happening as well.

**Q17** **Andy McDonald:** Could I turn your attention to a specific? It is around the Vodafone and Three merger. I want your views, but perhaps I could direct you to think about some of the specific concerns around that concentration. I think that it is right that Ofcom's research shows that, where there are four mobile network operators in a country, as opposed to three, there is a 23% differential in the pricing, so it can become very expensive for people.

Around that issue, there are obviously going to be very significant job losses as well. I note that the CMA's work should benefit people not only in their capacity as consumers but also as taxpayers and stakeholders in society. Employment practices are alive in that context, so I do not know whether you can cover that as well.

Critically, with CK Hutchison being based in Hong Kong, there are very significant national security concerns about this. We have been here before so many times. Could you update the Committee on whether you have any concerns in those various areas and perhaps particularise them and let us know where we are up to?

**Sarah Cardell:** The situation we are in is that, because we do not yet have that as a merger to review, we cannot give a view now of what our expectation would be in terms of the competition concerns. That would go through a formal review process along the lines that we were discussing earlier in relation to the Microsoft case.

If it went into a full and in-depth investigation, that would be undertaken by an independent panel group. They would reach the final decision. They will take into account all of the evidence they receive, including any opinions from Ofcom and submissions from the parties and any interested third parties, before reaching a view.



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That view will be a view on the impact of the transaction on competition. To the extent that there are national security concerns, there is a separate regime that now exists in relation to national security. That enables those concerns to be considered separately. Our review in relation to merger control would not consider the impact on employment because that is not something that is within the remit of our assessment as the competition agency. We would carry out a full review in relation to the competition issues.

To clarify, in the annual plan, you are absolutely right that we referenced “people” rather than “consumers” specifically. A good example of that would be the case we have at the moment, which is an alleged case in relation to wage-fixing. There we are calling out action that we will take that protects people as workers in that situation, rather than just as consumers.

The merger control regime is a little different because it narrows the focus specifically to competition issues, not employment issues.

**Q18** **Andy McDonald:** Perhaps that speaks to remit rather than anything else.

**Sarah Cardell:** Exactly, yes. It is not to dismiss the concerns; it is just not within our remit.

**Andy McDonald:** I understand.

**Marcus Bokkerink:** I was just going to link that question together with the earlier discussion. One of the prerequisites for making the UK an attractive place to do business is the confidence that companies will be able to compete and therefore competition will be protected. That confidence precisely comes from there being a really rigorous, unbiased, objective and thorough process for investigating mergers.

It is precisely for that reason that it is impossible to say at this moment in time what the view would be. We follow that same fair, objective and rigorous process of going through the evidence in the time we give each and every one of those cases. It is followed, and we are very keen to protect it. We believe—this is what I am hearing in my discussions with investors—that is one of the hallmarks of why we are attractive as a country.

**Q19** **Chair:** Just for the record, we have talked about independent panels a few times. For the benefit of the Committee, could you just explain what they are, who is on them and how they are appointed?

**Sarah Cardell:** They apply to certain aspects of our work only, in particular for our phase two merger investigations, so the in-depth merger investigations and any market investigations we carry out. It also applies for regulatory appeals.



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It is set out in statute that those particular processes need to be run under the control and supervision of a panel group. Panel members are appointed by the Secretary of State. They are members of the CMA. We have a panel chair who sits on our board but who is also chair of that group of panel members.

What happens is that in any individual case, a number of panel members will be selected by the panel chair and appointed to the group, typically three or four in any individual case. They then take over responsibility for running the investigation. They have a team of CMA staff who support them in doing that. They are the final decision-makers in those particular cases.

**Q20 Mark Pawsey:** I want to ask about a couple of areas the CMA have investigated. The first one is petrol and diesel prices. I know you reported last year about whether or not the cut in fuel duty was being passed on. I know you are currently doing a report suggesting that margins are higher than pre-pandemic levels. You are going to be reporting in July this year. I am just wondering whether you can give us a flavour of the work you have been doing.

**Sarah Cardell:** Yes, you are absolutely right. We started our market study looking at road fuel as a whole in July last year. We are coming up to the conclusion of that. We have 12 months to complete that study, and we will be putting out our final reports at the beginning of July.

We did provide a brief update yesterday on certain aspects of the inquiry so far. It is particularly focusing in on the retail sector. So far, we have seen evidence of rising retailer margins over the last four years. That seems to be particularly the case when you look at supermarkets. Supermarkets have historically been the cheapest suppliers, by and large, at retail level. It remains the case that many of the factors driving up petrol and diesel prices are external factors, including the impact of Russia's invasion of Ukraine.

Nonetheless, our evidence is showing us that the rise in margins does not appear to be entirely due to factors outside of retailers' control. We appear to see evidence that at least one of the supermarkets has increased their own internal target for margins. We are not seeing a strong competitive response from the other supermarkets.

**Q21 Mark Pawsey:** Every business will seek to improve their margins. What is wrong with that?

**Sarah Cardell:** You are absolutely right. It is entirely for a business to decide on its own margin strategy. What troubles us is we have not seen that evidence of a competitive response. Ordinarily, one might expect that if one player in a sector—

**Q22 Mark Pawsey:** Might it be the case that they have been supplying petrol and diesel at a suboptimal price for many years?



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**Sarah Cardell:** That might be the case. You may have seen in our update yesterday that we will be carrying out interviews with representatives from each of those supermarkets over the next couple of weeks. That will be exactly one of the questions we will put to them, and they will have the opportunity to explain that to us.

Q23 **Mark Pawsey:** What are the remedies you are considering?

**Sarah Cardell:** We will come out with a full set of recommendations in the report we produce in July. I will set out a couple of areas that we are focusing on at the moment.

First, we want to ensure there is maximum transparency of prices for consumers. Everybody wants to get the best deal they can. We think there is a lot more that could be done with the use of open data to produce apps, for example. People could use an app to find out, "Okay, I could drive to this station here. That will cost me this much in drive time. I can get petrol at this price". That would really open up choice and transparency to the maximum extent and hold supermarkets to account. It would then be very obvious who the higher or lower-priced providers are.

Q24 **Mark Pawsey:** I would also like to ask you about a particular report you concluded on 5 April, which affects my constituency because the supplier has a big presence in my constituency. This is the report you have done on communications network services for public safety.

You are involved in competition and markets. In this particular instance there is one customer and one provider right now. How can there be an effective market when there is only one of each? Might we not assume that in a market such as that, which is a very substantial amount of expenditure, the buyer is being properly advised and taking all the steps they can to mitigate the impact of the price are paying?

**Sarah Cardell:** That was a market investigation that we completed at the beginning of April, as you say. We did look at it as a market investigation because, although there is only one supplier and one buyer, they are operating across the market. We felt it was very important for us to take a clear look at that market to understand how it was working. At the end of the day, that has an impact for taxpayers as well.

We found that the contractual arrangements that were in place meant that Motorola, which is the monopoly provider, was able to extract, in our view, excess profits from that arrangement. That is why we have recommended the imposition of a price control. That is not something we do lightly. It is a remedy of last resort in many cases. In a situation where you have a monopoly provider and a buyer, we think it was the right remedy to introduce.

Although you might expect a buyer to be able to negotiate certain terms, the way the contracts are structured in this particular sector means they are currently left in a position where they are not able to exercise those



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negotiating powers effectively. It was the right conclusion, in our view, to introduce a price control remedy.

- Q25 **Mark Pawsey:** I want to follow that up by asking a question about something Mr Afolami asked about and Mr Bokkerink referred to, which is the reputation of the UK as a good place to do business. If a willing buyer and willing seller can come to an agreement and then an outside body such as a CMA can come and intervene, what message does that send to potential investors into the UK?

**Sarah Cardell:** These are contracts that have been entered into on a long-term basis. What has happened is the emergency services are effectively locked into these contracts at an inflated price, which is fundamentally prejudicial to them as a purchaser and ultimately to taxpayers. It is absolutely right that the CMA looks carefully at these sorts of issues.

- Q26 **Chair:** Can I just ask a follow-up about the remedies on the fuel pump price work you have been doing? Yesterday, or maybe this morning, the Energy Secretary suggested that if the CMA finds that supermarkets have been charging a higher price, he will take action. I am just not really clear on what the action would be.

Let me give you an example. If I am at home in Bristol, it has been well known for many years that the cheapest place to get petrol is at Asda in Cribbs Causeway. The nearest other place in my constituency might be the Eastgate Tesco. I have no idea what the price is at either of them or what the difference is; I do not have the foggiest. All I know is that for many years it was always cheaper to go to Asda so you would go to Asda.

If Asda has changed its price and increased it quite a lot because its business model has changed or its ownership has changed, the remedy you are offering—the app or price transparency—would give me a tool to check more easily where is the cheapest place to go. But the Secretary of State's language seems to suggest there might be more of a direct intervention on price, not just the sharing of what the prices are. Have I misinterpreted that?

**Sarah Cardell:** I have not had direct conversations with the Secretary of State in terms of what he may have in mind. The remedy we have discussed so far—this was something we floated initially at the end of our urgent review last year, but it is something we are continuing to work on—is very much along the lines you suggest. It is to empower people to make those choices on an informed basis.

Going back to the discussion we were having previously, we think that is a really good intervention that enables competition to work, rather than imposing a price cap, for example, which in a sense does not resolve the underlying issue. At the moment, our focus is very much looking at the kind of remedy that will ensure effective competition in those markets.

**Chair:** That is helpful.



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**Q27 Ian Lavery:** The CMA will have new statutory powers under the new Digital Markets, Competition and Consumers Bill. How are the preparations going at the CMA with regard to the new Bill?

**Sarah Cardell:** We have had a fairly long run-in in anticipation of the new Bill, which has given us a good opportunity to advance our preparations. We are now stepping that up given the introduction of the Bill.

Just to run you through the headline points, the Bill gives us enhanced powers across a number of different areas. On the digital side, it will involve putting the Digital Markets Unit on a statutory footing and creating a new regulatory regime for digital markets for companies with strategic market status. We have already been operating our Digital Markets Unit in an informal way, on a shadow basis, for a couple of years. We have had the opportunity already to build up that digital markets capability.

We have recruited in a number of people with a digital technology background as well as perhaps our more traditional legal and economic professional base. We are working across a number of digital cases. That expertise is already well established and we will be taking forward a next phase of recruitment to step that up.

We are also going to be establishing and growing the DMU function in part in Manchester, which is a great opportunity to build a technology hub there. We have already started that, but, again, we have ambitious plans to expand that centre up to around 200 people in total. Probably about half of those will be working specifically on digital markets work.

Alongside those operational preparations, we have also appointed an external digital experts panel to make sure we are drawing on external expertise. That will be supporting our work. We are also continuing to work with Government officials as they take the Bill through Parliament, and we have concrete plans for making sure we are absolutely ready from day one in terms of how we are sequencing initial designations and making sure we are ready to consult on conduct requirements. A huge amount of preparation is going on there.

In relation to the other aspects of the Bill, very briefly, the Bill also introduces a new and enhanced regime for consumer protection enforcement. We think that is incredibly important. We are already running consumer protection cases. We have that capability and expertise already, but we are stepping up our plans in order to be operationally ready to implement that new regime, which includes ongoing discussions with partners such as Trading Standards and, similarly, on the competition side, engaging with the regulators that have concurrent powers there.

**Q28 Ian Lavery:** You are going to have to work very closely with other enforcement agencies. How are the discussions with other agencies



going? You will have to make sure the enforcement and the protections will take place effectively under the new legislation. How is that going to work?

**Sarah Cardell:** The Digital Markets Unit gives the CMA responsibility for running that regime, but, as you say, it interacts very closely with other regulators. We have an obligation to consult with the likes of Ofcom, the FCA, the Information Commissioner's Office and others.

We are already working really closely with those regulators. We have something called the Digital Regulation Cooperation Forum, which involves those four agencies. We do a lot of work on horizon-scanning. We have done work looking at the interaction between competition and privacy, for example.

We are making sure we join up those regimes as much as possible. One of the things we have done recently is to introduce a regulatory sandbox, where businesses and innovators in the sector can come along and see what obligations they need to think about from a privacy perspective, a competition law perspective or an online harms perspective. They can do all of that in one place.

There is a huge amount of co-ordination that is already happening through that forum, and we will continue to utilise that as we go forward with the new regime.

Q29 **Ian Lavery:** Will this mean a dramatic change in the daily operations of the CMA?

**Sarah Cardell:** It is definitely a step up in terms of our functions. Overall, we are looking at adding probably around 200 people. It is a significant expansion of our functions.

As I mentioned, it gives us a great opportunity to expand in Manchester in particular. It is really important to me as chief executive that we keep a balance across our work. Digital markets is an important and, inevitably, growing focus, but it is not the only area of focus for us. I want to make sure we keep that balance and that mix, but overall it is a very positive development.

**Marcus Bokkerink:** I would also reassure you that one of the core responsibilities we take as a board is around making sure the organisation is set up with the capabilities it needs to deliver on what we have set out to achieve. The Digital Markets Unit is one example of an area that, as a board, we look at and probe on a monthly basis.

One of the benefits of some earlier decisions made by previous leaders in the CMA is that, unlike many other agencies in the world, the CMA is probably one of the most prepared for these kinds of powers, precisely because it had to operate in shadow form, as Sarah said, but also because those people who have been on board, some for years now,



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have been active in the field of digital markets through the other work the CMA does. They have a real experience base to build on.

**Q30 Ian Lavery:** Some, including legal advisers and big legal firms, have great concerns that the strengthened powers under the new Bill might mean that enforcing competition and consumer law is a huge burden on UK businesses. What support might there be available for them? What support do you intend to give to businesses that might face an increased compliance burden? Not every legal firm is saying this, but do you agree first of all with the premise that businesses may have an increased burden because of this?

**Marcus Bokkerink:** The answer is different depending on whether you are talking about digital firms with strategic market status or the consumer parts of the Bill. Shall we cover each in turn?

**Ian Lavery:** Yes, if that's okay.

**Sarah Cardell:** On the digital markets side, there is an increased burden in the sense that this is a new regime. At the moment, all firms are subject to the standard competition law provisions. The Bill introduces a new regime, which is specifically targeted at the very largest firms, firms with entrenched and significant market power with very substantial turnover. That creates a really bespoke regime, which is targeted and focused on ensuring that we can manage situations of market power and also create an environment where, as I mentioned at the very outset, we are engaging constructively. A lot of the success of the regime will be about that constructive engagement.

Hard-edged enforcement is very much the last resort. We will be using the conduct requirements to set out, at the outset, "This is the positive framework we expect these companies to adopt". Again, I would emphasise that that responsibility only falls on the very largest firms, which is different.

On the consumer side, it is about a new administrative model rather than a change of the law. There are a number of small changes to the substance of the law, but, for the most part, the underlying consumer law will not change. It is about the administrative model.

More broadly, in terms of managing the burden, I do not know whether Marcus wants to come in on our approach to guidance.

**Marcus Bokkerink:** In terms of the laws that are in place or are being put in place, we are very attuned to the fact that making life as simple as possible for businesses is really important. We put particular effort into making sure it becomes clear to businesses what the existing laws mean for them on a day-to-day basis.

We do that in a couple of ways. As Sarah mentioned, there are a whole host of specific pieces of guidance that we issue to businesses that explain in clear terms what the law means. That could be very specific



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merger guidance, which has been updated recently; specific guidance on consumer issues such as avoiding misleading claims or pressure selling; or how to do that in line with the Consumer Protection Act.

On the competition side, we published some recent guidance on enabling companies that want to collaborate and co-operate on introducing technologies that help the net zero agenda in a way that does not fall foul of competition law. That contains examples of what you can do, what you cannot do and what this means.

Similarly, guidance was issued to businesses on avoiding non-compete clauses and wage-fixing type arrangements in the labour markets. These are all specific pieces of guidance that we issue on a regular basis to make it easier for businesses, as they do their day-to-day work, to ensure they are complying with the law.

They do not create new laws; they do not create new rules or regulations. They just make it clear. That method is something that really helps. Add on top of that the increasing engagement we have with business groups. We talk to businesses and their advisers to try to understand the remaining areas, if any, where our guidance could be clearer or where it is not clear what they can and cannot do. It is a fantastic way for us to learn where we need to lean in when it comes to clarifying our messages.

Very much in that spirit, when it comes to the consumer parts of the Bill, to the extent that further specific guidance is needed on how it will be implemented, that will absolutely be published before it becomes law.

**Q31 Bim Afolami:** On the new powers and the new Bill, to what extent would the CMA benefit from greater accountability for decisions and activities, not just on process, as we discussed earlier, but on the fundamental merits of decisions? That accountability would come from Parliament and from Government. To what extent would the CMA benefit from that?

**Marcus Bokkerink:** We take accountability extremely seriously. We are accountable to Parliament. We make ourselves available at any and all times to be probed and scrutinised by this Committee on our overall work and performance and also on very specific issues.

On very specific pieces of work, we regularly have teams who come to the different committees that represent Parliament, whether that is our work on housebuilding with the Levelling Up, Housing and Communities Committee or the Public Accounts Committee, whether it is reporting to what was at the time the Digital, Culture, Media and Sport Committee around all the work in digital or whether it is reporting to the Treasury Committee on our work in open banking, et cetera. There is a lot of frequent updating and being held to account by Parliament.

We supplement that with one of the most powerful levers you have in any institution for accountability: utter and complete transparency. Every single thing we aim to do is consulted on before we finalise it; every



decision we make to even launch an investigation is consulted on. Everything is consulted on, and people can comment and give clear input on their views on that and anything we need to know about that. It is one of the most transparent regimes and systems in the world across all areas.

**Q32 Bim Afolami:** Just on that, you are accountable to Government as well. A strategic statement will come out from Government, and that is being consulted on. To what extent would you benefit—maybe you would not benefit—from having more accountability from Government to say, “This was our aim. You are doing something slightly different. How does that work?”? To what extent would you benefit from that? You have mentioned the parliamentary accountability in detail.

**Marcus Bokkerink:** The robustness and credibility of the regime is precisely because we are, as an institution, accountable to Parliament. Clearly, it is important to understand the priorities of Government because Government has levers that can sometimes help a competitive market to evolve, especially on policy. You will find that we have a very open and collaborative engagement with Ministers, Ministries and their officials because that mutual understanding is very important.

At the same time—this is a credit to all—there has been no attempt to influence the independent decision-making of panels or the board on important matters. That is exactly what makes the regime so strong.

**Q33 Andy McDonald:** I have a question around the EU. When we went to Brussels, we met with DG COMP. It was clear that they held the CMA in very high regard and were admiring of the technical expertise and experience within the organisation. That was a very reassuring conversation.

We have now gone our separate ways. The Digital Markets Bill is going to create a new regime for us here that is going to differ from the EU. Travers Smith noted the possible contrast with the EU regime, saying that our regime will only catch the biggest players, looking at the companies with strategic market status that we referred to earlier.

I want to know how the CMA is going to work with the European Commission to ensure that any regime divergence does not adversely affect firms that are trying to operate within two different regimes.

**Sarah Cardell:** Firstly, I will just reinforce the mutual high regard we have. We have continued to have really strong working relations with the European Commission, as we have with many other global antitrust agencies. That is really important for the reasons we were discussing earlier, given how many common issues we are looking at, whether it is in digital markets or elsewhere.

When it comes to the new digital markets regime, when you look at the UK regime and the proposed regime in the EU, there are many similarities in terms of the underlying concerns about market power in



digital markets, the need to have a regime that works effectively and a lot of commonality around what the solutions and outcomes may be. We are absolutely heading in the same direction in terms of what we are seeking to achieve.

There are differences in design. I happen to think—I would say this, wouldn't I?—that the UK model is a very well-designed model. It enables a more targeted and bespoke firm-by-firm approach than is the case with the EU. The EU is a little bit more of a blanket approach, a little bit more of a one-size-fits-all approach. The rules are set out, and you are in or you are out.

What we will have is a designation that applies company by company and activity by activity. We will then set conduct requirements for those activities. It enables us to take a more targeted and more bespoke approach. In doing that, we will be absolutely alive to the global context.

To the extent we are able, we will be having discussions with the European Commission to understand their objectives. Frankly, we will also be having conversations with a number of the companies. I am having those conversations already. It has been a very clear agenda topic for us to discuss the kinds of adaptations they might be making to their business models to fit with the EU rules, how that will play out in the UK and whether they will adopt the same approach in the UK as in the EU.

They ask us that question from a regulatory perspective. We ask them it from a commercial perspective. We are absolutely focused in on that. By and large, you would expect to see a lot of commonality of approach. As you see at the moment, a lot of the cases we are running already on the digital side reflect common issues across the cases the EU are running.

Of course, there will be some differences. That is inevitable. There may be some cases where the EU leads and we effectively adopt their model because it seems sensible to adopt it for the UK. There may be other situations where it applies in reverse. The Google privacy sandbox I mentioned earlier may be a good example of that. That is now being rolled out globally.

One thing that will assist with that close working going forward is putting in place a formal co-operation agreement with the European Commission. The overarching Trade and Co-operation Agreement creates a possibility for that, but it is not something that has been taken forward yet. We would encourage priority being given to that. That will give us the formal framework to be able to share information on an ongoing basis reciprocally between us and the European Commission. That will be the final lever for us to ensure as much continuity across the two regimes as possible.

**Q34** **Andy McDonald:** Does that need some advice from you, considering the review of the TCA that is coming up? Are you going to feed into that



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process?

**Sarah Cardell:** Yes. We are discussing it with officials at the moment, but we are also happy to provide further information and a follow-up to the Committee.

Q35 **Chair:** We will be looking at that in more detail, so it is quite timely that you have raised it. Thank you.

I have two very quick final questions in the nine minutes we have remaining. We mentioned earlier the draft strategic steer from the Government. We have talked a lot about the issues it covers, but is there anything you want to say to us in addition to what you have already said about the steer?

**Marcus Bokkerink:** I just want to say that it is very aligned, in its substance and content, with the priorities we have set in our strategic plan and our annual plan. That in itself is a manifestation of what I have described before: there is good dialogue and engagement, and we are all aligned on the issues that need to be addressed.

Q36 **Chair:** Lastly, in the annual plan we noted that you plan to expand the use of AI, leverage external expertise and deploy your workforce more flexibly. That mission could be applied to the whole of Whitehall, but no one has been brave enough to try to do it. What does it mean in practice and when will you be able to talk to us about how you have deployed all of that successfully?

**Sarah Cardell:** I can give you some examples of what we are doing at the moment, just to give you a bit of a flavour of it. Digital transformation is a big priority for us as an organisation. Both Marcus and I have five-year terms. We really want to take the CMA forward in terms of how we are operating. There is a huge opportunity to be even more effective and efficient.

I will give you some examples. We do a huge amount of evidence review. In any of our cases, we will review thousands and sometimes millions of documents. The more we can do that using digital, data and machine learning, the better. We are already introducing some of those processes, but there is a huge amount more we can do there.

Similarly, when it comes to intelligence-gathering, we have something called our mergers intelligence function, which manually scans thousands of newspaper reports every week to track for any mergers that have not been notified to us that we might be interested in. Again, we are now introducing an AI model that will create the ability for at least that first instance to be done using technology rather than human eyes.

That also applies to monitoring some of our remedies. We had a market investigation a couple of years ago in relation to funerals. We had remedies out there, and again we want to be able to use technology to monitor the implementation of those remedies rather than relying on



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human eyes to do that. Those are just some examples of how that is playing through.

There is a big opportunity with the new functions, the Digital Markets Unit and the consumer model for us to be digital first. It is one thing to retrofit technology to existing processes, but this is a great opportunity for us to design new processes for these new models that are utilising technology to the best.

We have the advantage of our data team. We have a team of 60 or so data scientists, data engineers and technologists who we use on our frontline casework to understand the markets we are looking at. They are also a great resource for us to utilise to make ourselves more efficient as well. That is a snapshot on the data and digital side.

In terms of the more agile use of our workforce, I have two quick examples. First, it has been a real priority for me to make sure we can be really agile in how we are prioritising the work we are doing. That requires people who can move across. They may be doing a merger review one month, and then we might want to review consumer enforcement in another month. We have introduced a model of what we are calling a major-minor. Everybody has to specialise in at least two areas to have more flexibility and to be able to prioritise and adjust the work we are doing.

The fact we are building our offices across the UK gives a huge amount of flexibility in how we can work. We have hybrid teams working across cases. It does not matter whether they are in London, Edinburgh or Cardiff. That gives us a huge amount more flexibility too.

On external expertise, this has been a bit of a theme of the discussion today, but it is absolutely critical to all of the work the CMA does that we are as well informed as we can be about the markets and the underlying conditions we are looking at. We have a lot of expertise internally, but we do not have all the answers. We want to draw in as much external expertise as possible, and we do that by using formal experts.

I mentioned the digital panel earlier. That is formed of nine experts coming from tech backgrounds, who can help us with that work. We do that through partnering. Our Microeconomics Unit has partnered with Durham University to produce academic research. We utilise academic research there. We are partnering with bodies like Which? and Citizens Advice, which can really give us on-the-ground data on what they are seeing.

We also learn from our casework. Marcus has mentioned this several times. I would also highlight the importance of transparency in our cases. We are carrying out market studies; we are doing calls for information; we are doing things like the AI review we talked about earlier. These are opportunities for us to learn from people in these sectors, who know far better than we do the detail and depth of the sectors. We are making



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sure we are open to bringing in all of that information as we are carrying out our work.

**Chair:** That sounds great. Maybe we can use you guys as a good practice case study in a few years for how we can use that across Whitehall.

We have timed out, but thank you so much for your time and your answers today. Again, we are sorry for keeping you longer than we had intended. We are very grateful to you. We will now bring today's session to an end.