



Communications and Digital Committee

Corrected oral evidence: The Digital Markets, Consumer and Competition Bill

Tuesday 20 June 2023

2.35 pm

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Members present: Baroness Stowell of Beeston (The Chair); Lord Foster of Bath; Lord Hall of Birkenhead; Baroness Harding of Winscombe; Baroness Healy of Primrose Hill; Lord Lipsey; Baroness Wheatcroft.

Evidence Session No. 2

Heard in Public

Questions 10 - 17

Witnesses

[I](#): Richard Stables, Chief Executive Officer, Kelkoo; Owen Meredith, Chief Executive Officer, News Media Association; Rocio Concha, Director of Policy and Advocacy and Chief Economist, Which?; Tom Fish, Head of Public Policy and Research, Gener8.

USE OF THE TRANSCRIPT

This is a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

Examination of witnesses

Richard Stables, Owen Meredith, Rocio Concha and Tom Fish.

Q10 The Chair: This is the Communications and Digital Select Committee and we are returning now to our short series of public hearings on the Digital Markets, Competition and Consumers Bill. We have two panels today. I will say very briefly for the first panel that I hope we are able to get from our witnesses today a perspective of the digital market from those of you who are operating in it and the impact on your businesses and consumers as you see it. I will go along the panel and ask you to introduce yourselves. Please state the name of your organisation and in a sentence what your organisation does.

Tom Fish: I am head of public policy and research at Gener8. We are empowering our users to access, control and earn from their personal data from online services.

Richard Stables: I am the CEO of Kelkoo Group. Our company started in 1999 and it was a price comparison site that allowed users to compare prices on goods that they would buy from retailers to get the best price in the market.

Rocio Concha: I am the director of policy and advocacy and chief economist at Which? Which? is a consumer group in the UK.

Owen Meredith: I am chief executive of the News Media Association. We are a trade body representing local, regional and national news publishers.

The Chair: Very good. Thank you all very much for appearing before us today. I should just add that we are now broadcasting live on the internet. A recording will be taken. The video recording and a written transcript will be made available on our website later.

I will start off with a question to you all. I will go along the panel, but I will start with Mr Stables. Can you give us your view of the state of competition in digital markets? It would be very helpful if you could give us some specific examples to illustrate your perspective.

Richard Stables: I have been CEO of Kelkoo Group since 2009. I have been suffering, along with the company, the impacts of big tech basically killing off industries. For us it was Google.

Kelkoo started in 1999. It was an internet darling, the leading price comparison site in many countries in Europe, especially in the UK. I think that it could have become a billion dollar company very easily, but Google decided otherwise. It effectively looked at vertical search, it looked at competition like ourselves, and it decided that that was a threat to it in general search. It decided to put its own service at the top of Google and demote us all off Google so that we were on page 10 or 12. Basically, you could never be seen by any users. Our company was decimated, along with the rest of the industry. I had to lay off large numbers of staff and close offices. We survived through amalgamating

with some other price comparison sites: Ciao, a very well-known brand for price comparison, and LeGuide in France.

We have been fighting the fight against Google. The first complaint went to the European Commission in 2009 by a company called Foundem in the UK. Ciao also followed in Germany at the time. The Commission took up the complaint in 2010 and it made a decision in 2017, where it fined Google €2.4 billion for having infringed anti-competition law. The problem was that that was not the end of the situation. The Commission said that Google needed to remedy the situation and Google came out with a remedy that did not fix anything as far as we were concerned. Google also appealed and went through a full merits appeal, as you do in antitrust, and it ended up at the Court of First Instance in Luxembourg, where it duly lost. Now it has appealed to the ECJ, to take it one step further. This case has been running over 13 and a half years and we still do not have legal certainty.

Why do you care? You should care because consumers are massively hurt by this. Consumers are hurt in two ways. In effect, they are missing out on seeing prices from all sorts of merchants and for merchants to compete with each other on price. When you go to a price comparison site, you typically see 30 to 40 merchants and you see the pricing. I am a tennis player. If I am buying a tennis racquet, I just want the cheapest price, because I know that I am buying a Head racquet or a Babolat racquet and I would probably want to buy from a small firm that is quite cheap. If I am buying a sofa or a television, I may have a different decision.

The second place where consumers are hurt is in the fact that retailers are getting their traffic from only one place and that is Google. You will know markets very well. If all the traffic has come from one place, you are, in effect, operating in a monopoly. Consumers are paying higher prices because retailers are paying higher prices for their advertising. The CMA recently came out with a stat that said that the UK consumer is probably paying £500 a year in excess because of monopoly pricing in advertising.

I hope that gives a little bit of a real-life example as to why you should support and pass this Bill.

The Chair: As you introduced consumers at the end, let me move now to Ms Concha and ask her the same question. Can you give us your views on the state of the market? Any specific examples to illustrate your perspective would be helpful.

Rocio Concha: Let me start by saying that I endorse what Richard has said about the impact that this is having on consumers. It is quite clear that some digital markets are currently dominated by a small group of companies that have entrenched market power. They have built very powerful ecosystems and have access to a lot of data that makes them even more powerful. With that ecosystem they are able to continue gathering more and more data, which makes it impossible for other businesses to challenge them in those markets. We also say that businesses depend on the companies that have this market power. You

can see from Richard's example that they have a big say on how successful these businesses could be or not because they are the way to get to the consumers.

Richard has already mentioned paying for advertising where, as you know, Google has around 90% of search advertising and Facebook has around 50% of the market. There are also, for example, app stores that are dominated by Apple and by Google. At the moment, the main option for app developers is to work with those two companies, one working on Android, the other one on iPhone, and they decide the rules. They charge a commission for these apps and they decide the rules on how these apps are developed. That has an impact on consumers at the end. As a consumer, we pay higher prices because of higher digital advertising and higher prices because of high commissions in the app stores.

Let me give you another example. It is not only about prices. It is also about data. A lot of data is being gathered from consumers for personalised advertising. There are some consumers who like personalised advertising and they will be happy to share their data. There are other consumers who do not want to share their data and they will be happy not to receive personalised advertising. There are not many options for consumers to do that because, again, these companies have full control of those markets. This Bill is key for consumers for that reason. I think that this Bill will allow more competition and more innovation in these markets that will basically benefit consumers.

The Chair: I will come next to Mr Fish. Data having been raised and that being your business, Mr Fish, can you give us your perspective on things?

Tom Fish: I was hoping you would come to me after that perfect segue. Thank you.

The premise of our business is that everything we all do online is tracked. The companies that Hoover up our data make vast profits while we as consumers, the owners of that data, earn nothing. Gener8 is trying to change this through our personal information management service, essentially trying to empower our users to access their data and control it, and then if they want to they can try to earn from it themselves as well.

As a small business, we are able to recognise the contribution that the big tech companies have made to lowering the cost of entry and doing business online. We also recognise the important stewardship role that these companies play within their own ecosystems. They protect us all online daily from bad actors, and they help to harbour an environment of trust and confidence that smaller businesses need.

However, the flipside of that is that they are also acting as the de facto regulators for millions of businesses up and down the country in a whole host of important public policy areas. This includes advertising standards, data protection, consumer protection, online safety, security and fraud prevention—the list really does go on. There is no doubt that the commercial incentives of these companies are not perfectly aligned with

the outcomes that we would all hope to see for our economy and our society as a whole. That is regardless of how hard they try and how well intentioned they may be.

There are also so many markets where this small number of companies are acting simultaneously as the rule maker, the referee and a player in the game. It is undeniable that there are conflicts of interest and all market participants will want to see some ongoing oversight and monitoring if they are going to have faith that there is a level playing field and they will get a fair crack of the whip.

When it comes to the challenges that Gener8 faces in these dynamics, we struggle with unpredictable and opaque app review processes. We miss out on a potential revenue stream for our browser owing predominantly to Google's dominance in search. We lose users of our browser to Microsoft within Windows because Microsoft disrespects our users' choices. We suffer from random and confusing rejections of our ad campaigns by Meta on its own platforms, making it impossible to plan any form of user acquisition strategy. We observe insurmountable barriers to entry in the mobile browser market, leading to us putting development of that product on ice. More broadly, we face friction at every turn as we try to access our users' data on their behalf.

All these issues have consequences for a small business like Gener8. We have increased costs. We try to deal with them but we also have to divert resources away from product development to fight these fires. Missing out on a revenue stream means our users missing out on gift cards and charity donations. Making it harder for us to acquire and then retain new users places a general drag on the growth and trajectory of our business. Most alarmingly, in my opinion, is the way I have seen it filtering through into the internal thinking and discussions around what we should invest in and which innovations and products we should try to bring to market in the next few months. I have no doubt that these dynamics are distorting the types of innovation that are making their way through into consumers' hands.

From these perspectives, Gener8 strongly supports this Bill and we need the new regime up and running as urgently as possible.

The Chair: Thank you. Mr Meredith, we have heard about advertising, data and other things. Can you give us a perspective, which I am sure will touch on some, if not all, of them, from the News Media Association?

Owen Meredith: I echo what fellow contributors have said. I think that they have done a great job in highlighting the challenges that this Bill will address.

First and foremost, I welcome the Bill. Members of the committee will know that we have been campaigning and lobbying for this for a long time, so we are pleased to see that it is finally before Parliament. I think that it can begin to address some of the challenges that the news industry has faced in the digital ecosystem and others across the wider economy. I hope that it can make speedy progress through Parliament.

The Second Reading debate in the Commons was a welcome demonstration of the cross-party support that this legislation enjoys.

Digital markets do not function properly for news publishers. In essence, there has been a market failure and that is why the current competition tools that the CMA has have not been able to address that. We need this new legislation to tackle it. A small handful of highly powerful companies control discovery gateways for the majority of the internet but particularly for news, across search, social or in mobile ecosystems. Fundamental to the way that they operate is that they trade on a take it or leave it basis. My members, news publishers, have no choice but to be on these platforms. It is where, increasingly, people turn to discover news, and I think that we would all want to see quality, editorially controlled news available on these platforms to counter the disinformation and misinformation that is rife across them. We end up with take it or leave it terms, particularly for smaller local publishers, which do not even have a contact number for somebody to speak to if they are having problems on Google or Facebook, for example. I think that there is huge benefit to what can be achieved and what this Bill hopes to address.

To give a specific example, in 2017 when the *Cairncross Review* was published,¹ local news reached 22% of the adult population in the UK online. Today that figure is north of 70%. We know that the market has fundamentally shifted. People are using the internet to get hold of news and information in society today, but the monetisation of that is fundamentally flawed, in part because of the monopolistic attitudes and controls that a small number of big tech firms exercise.

Looking at local news in particular, the average print reader is worth eight times more in value to a news publisher than the average digital reader. That is partly because of failures and dominance by Google particularly in the ad tech market and its operation on both the supply and demand sides. It is partly because there is not a proper recognition of the value that news brings to search and social products and it is partly because of broader trends and changes in the market.

This legislation is not a silver bullet to fix everything, but for publishers to build sustainable business models in the digital environment we need this legislation to help frame or reframe the way that digital markets currently work.

The Chair: While you have the floor, I will ask you a direct question. How do you respond to those who try to describe the solution to the situation that you have just outlined as a links tax? What is your reaction to that?

Owen Meredith: We are fundamentally not looking at a links tax. We are not asking for anyone to be charged for linking to news publishers. What we are asking for is a recognition of the value that news brings to those platforms. For example, in search, by Google being able to link

¹ Amended by witness, this should read: "in 2017 just before the *Cairncross Review* was commissioned".

through to news publishers' sites and to display a small amount of content as part of that, that delivers great value to Google with the frequency of visitors and, therefore, the data that it gets and collects about us all, which it then sells to advertisers. Even where it is not directly selling advertising against news, which it predominantly does not, the value created by having news content as part of its product is fundamental to the intrinsic value and ability to charge advertisers a premium.

It is not about a links tax; it is about a recognition of value and a greater understanding and transparency in a marketplace that we do not currently enjoy.

Q11 The Chair: I will ask one final supplementary before I hand over to my colleague, and I will direct this to Mr Stables. How do you respond to some arguments that we have heard—we may hear them later on—that limited competition is a legitimate result of consumers preferring the services that some of these large platforms provide? To put that another way, sometimes it is said that if you ask the man on the street which search service they prefer, they will say Google because Google is the most efficient form of search. That can be used as an argument against the premise of this Bill. I know that that is a bit of a crude example, but I wondered how you might respond to that.

Richard Stables: That is an interesting question. I am somebody who believes in markets and I believe that competition is good for consumers and it is good for businesses. If I was running very big tech, I would say exactly what you have just put as the question because I would use every single way in which I could delay this Bill or stop it. I will come out with all sorts of myths if I am big tech. We have already seen some of these myths in the US when they basically lobbied to try to stop legislation there. Amazon said that Amazon Prime would stop working, and Google said that Google Maps would stop working. It is amazing, because they are still both working in Europe at the moment with the Digital Markets Act that has gone into place.

You will hear, for example, that innovation will be put at risk. As I said to the Select Committee at the House of Commons last week, I am sure you have all read Orwell's *Animal Farm*. To me, it is doublespeak. If you listen to what they say, pretty much the opposite of what they are saying is the truth.

This legislation will be great for innovation because it will be great for investment. At the moment, if you are a company looking to invest in digital, your number one question is: how will I be overdone by big tech? Does big tech dominate this? Is big tech interested in this? If so, I will not invest. Why would you? In effect, let us be honest about it, legislators in Europe, America and the UK have been asleep at the wheel in looking after antitrust and regulation over the last 20 years. We have these five enormous companies that are basically running the internet. If you think that is healthy, fair enough, but I do not think that you do.

I think that you believe in competition and, therefore, to answer your question, it is a very simple thing to say, "Consumers like it and it is really good". It is a bit like saying to merchants or retailers, "Do you like the product listing ads at the top of Google?" They say, "Absolutely, yes, definitely. Do not touch that, that is where all my traffic comes from". Then I say to you, Lords and Baronesses, that I would change the question and ask, "Would you like that same traffic at 25% or 30% cheaper?" They will bite your hand off. Turn around to consumers and ask, "Would you like one more click and you get that tennis racquet, that camera, that pair of shoes, whatever it is, 15% or 20% cheaper?" and the answer would be, "Yes, I think I would actually" because we are in a financial crisis. Yes, that is how I would answer that question.

The Chair: Thank you very much. I will move on to Lord Hall.

- Q12 **Lord Hall of Birkenhead:** You have all welcomed the Bill. You have all said in various ways, "Let us get on with it". Could I point you now, however, to what specific changes you might want out of the Bill? I wonder whether we can put those into three categories and then maybe at the end ask if we have missed anything. I can see three things: the leveraging principle, the stuff around news media and, to start off with, at Clause 29, the countervailing benefits exemption. What are your views on that? If a firm that has strategic market status could argue that, "We're in breach of a conduct requirement in one part of the woods, but we can show that our actions provide sufficient customer benefit", is that defined enough in your view? Is that hard enough? Is that useful? Do you have any thoughts about that?

Rocio Concha: As a representative of a consumer organisation, you will probably expect me to say that this is a brilliant exemption because this is about consumer benefit, but it is the opposite. We are quite worried about this exemption. Even if the exemption has some wording like "indispensable", we are worried about it because we are giving an exit route for big tech to make the argument that they are in breach of a conduct requirement because that is beneficial for consumers.

We do not see why we need that exemption, because there is another clause in the Bill that says that before doing an investigation about a conduct requirement, designated companies, big tech, would be able to provide evidence about why they may be in breach. That is the point where you put that argument, but you do not put it as an external exemption, "I am in breach, but it is because this is good for consumers".

I also think that it goes against what this Bill is trying to do and what this new regime is trying to do. This regime is trying to be participatory. The CMA is working with these businesses to develop these conduct requirements and in collaboration getting the evidence. If you put in that exemption, I think that is against the whole ethos of the regime.

Lord Hall of Birkenhead: Thank you very much. That is very clear.

Richard Stables: On the countervailing benefits exemption, I have great faith in the CMA. It is a body that has put together the Digital

Markets Unit, and I do not think that we can have it both ways in some respects. If we are saying that it is a competent body and it should investigate, we have to trust that what it does and what it comes out with is in the interests of UK markets and consumers. I absolutely understand Rocio's concern about this, but if there is good reason and it can see good reason, so be it.

Lord Hall of Birkenhead: There is an alternative view that I would like your comments on. Please, Tom and Owen, chip in if you want. That comes from Professor Andriychuk from Newcastle University. He says that we should remove this clause completely—get rid of 29; he is very much in your area—because he says that it would lead to what he calls “exhaustion of ... regulatory resources” and that it will be used to bombard the CMA DMU with stuff that will bog it down for a very long time, as I think that Richard was describing. What are your comments on that?

Richard Stables: I think that is a very good argument for removing it. The thing I have always said is that if you are big tech it is delay, delay, delay. You asked what we would change in this Bill. I will say back to you that the one thing I would absolutely not change is the judicial review. We have heard that they are asking for JR-plus or they are asking for full merits.

The Chair: We will come on to that.

Richard Stables: Apologies.

Lord Hall of Birkenhead: No, that is fine. Tom or Owen, is there anything that you want to add on the countervailing benefits exemption?

Tom Fish: I am slightly more towards the camp of having faith in the CMA. Being bombarded with arguments around privacy, security and online safety will come with or without this clause. In some cases, that might be reasonable; in other cases, it will not be. Yes, I think that the CMA, with or without this clause, will have to try to look at all the pros and cons of potential interventions in the round and work out whether they will be best for competition and consumers. I am sure that it will look to take into account potential unintended consequences such as security and privacy whether or not this clause is in there.

Owen Meredith: The only thing that I will add is that I have sympathy with the other views expressed, but if it does stay in the Bill we need to make sure that the “indispensable and proportionate” element is solid and not watered down. The risk is that if you water that down any further it becomes much more a tool that is available to tech.

Lord Hall of Birkenhead: I am sensing that you are all agreeing with the professor from Newcastle that removing it might be a positive thing to do.

Rocio Concha: I certainly feel that way. There are other places in the Bill where the companies will be able to provide the arguments and show these benefits in considering the development of this counter requirement. You do not need a separate exemption.

Q13 Lord Hall of Birkenhead: Thank you. I will move on to news. Owen, this is for you, but others can chip in. We all know what has happened in Australia, with Australian media getting some large sums back from platforms to define the amount of value that it is alleged they are getting from the news. Is this Bill strong enough to allow such a result in this country if that was wanted by government, regulators and the news media?

Owen Meredith: In short, yes, but we do have some concerns, particularly around the timeframe and how long it might take to get from the passage of the Bill/Royal Assent and a conduct requirement consultation, which can take up to nine months. You then have to assume that there is compliance from platforms. I think that different platforms will take different attitudes to whether they comply or choose other routes to try to push back on those conduct requirements.

One thing that the committee might like to explore is whether the tools available in the final offer mechanism, which is designed to be a fundamental backstop at the end of that potentially long timeline, could be made available earlier in the process, either if there are tech parties that are belligerently trying to evade the requirements of the conduct requirement and the CMA can see that from an early stage or if both parties understand that this negotiation needs to happen and decide that final offer mechanism is the best way of doing that, particularly with the tools available to the CMA for information sharing. If that information sharing is not made available earlier in the process, either by moving FOM forward or by conduct requirements placing a requirement on platforms to share more data with publishers, striking an understanding of where the balance of value lies and what a fair payment would be is near impossible, because at the moment publishers do not have sight of the data.

Lord Hall of Birkenhead: This process could be speeded up is what you are saying. You could get a consensus earlier in the process if you made some amendments to the process.

Owen Meredith: Yes.

Lord Hall of Birkenhead: Is there anything else that anybody else wants to add on news?

Richard Stables: I think that it is a great example of where you can basically say the industry plus the offending party plus the regulator get together and the regulator says, "Get in a room and figure this out. If you do not, we will come in and dictate to you". Both sides say, "Oh" and both sides do a bit of compromise and come back with probably a pretty good solution. Yes, I think that is a positive thing in the Bill.

Lord Hall of Birkenhead: Finally—but you may have other ideas—on the leveraging principle, where platforms can exploit dominance in one area to achieve dominance in another, some stakeholders have said that this is not strong enough in the Bill. Is it?

Tom Fish: I will be honest. I think that it is a critical issue. We see these companies operating elements of their business globally that cost them

billions of dollars a year and they run them for free. In many cases they pay other companies to use them; for example, in the case of Google's Android operating system. It is clear that they are running certain aspects of their business to support and leverage into other markets and provide themselves with a stronger footing in other markets. I think that the inclusion of the principle in the Bill is essential. Personally, I am comfortable with how it is drafted.

Richard Stables: It is the big problem. Let us face it, some of these companies have been amazing at what they have done. Google's search engine is fantastic. What Amazon has done has been amazing. Big is not necessarily bad, but it is when you take that power and you go and squash another market because you can. That is exactly what they have done unless you stop them.

Rocio Concha: I have nothing to add.

Owen Meredith: The bar is probably set too high at the moment. We think that the CMA should be able to act where a designated company's activity in a non-designated area is related to a harm that is being caused in that area. As an example to try to help to illustrate that, if Apple was designated for its App Store but was using contracts within Apple News to force unfair terms on publishers relating to how they use the App Store, the CMA needs to be able to address that concern. I am not quite sure that the way—

Lord Hall of Birkenhead: Do you have a specific sense of where that point ought to be? You said it is too high at the moment. What is in your mind?

Owen Meredith: We can probably come back to you with some specific drafting suggestions.

Lord Hall of Birkenhead: Thank you. That has been very useful on those three areas. Is there anything else that any of you want to say about the Bill where you think some changes would be necessary?

Rocio Concha: The Bill allows for private redress. That means that at the moment the Bill allows a business or a consumer to get compensation when there is a breach of a conduct requirement or a pro-competitive intervention. That is already in the Bill.

However, we think that it is very unlikely that an individual consumer or any small business will take that route, as the current redress will allow only businesses that have a big financial capability to challenge that and get compensation. We think that there is a good opportunity for this Bill to allow for collective redress. That means that businesses or consumers can pool together and get redress for breaches of the conduct requirement or the pro-competitive intervention.

Lord Hall of Birkenhead: That is an amendment that could be made.

Rocio Concha: That is an amendment that could be made and we can send suggestions on how to do that.

Tom Fish: I think that Rocio mentioned earlier the vision originally laid out in the Furman review of this new regime being fast, agile and participative, ideally resolving issues in matters of weeks and months rather than years. The concern I have is that I do not know whether that vision, recently repeated by Sarah Cardell of the CMA, has made it into the formal drafting of the Bill.

I will take the example of enforcement of the conduct requirements. The Bill sets out the procedures and stages that the CMA will run through as it looks to investigate a breach of the conduct requirements. In my mind, there is a stage before where the CMA reaches out to the parties and tries to resolve these issues through dialogue in a constructive manner, bringing the parties together. In Gener8's experience, that is certainly the thing that we needed. Without that being mentioned in the Bill, I fear that the CMA may be nervous to adopt that approach. When it is hauled in front of the CAT on, I hope, JR appeal standard and the CAT reviews the procedures that the CMA has gone through, it will be looking at what the Bill says and not at what Jason Furman said or what I say here today. I think that is an important thing that perhaps needs to be legitimised within the Bill.

To complement that, we need the big tech companies to play ball and engage. Google has perhaps shown itself to be willing to do that in recent years, but some of the other companies might need a bit more encouragement. The hefty fines will clearly play their part, but I feel the biggest and most powerful driver of behavioural change would be an explicit expectation within the Bill that the pro-competitive interventions, the PCI tool, will be prioritised for firms that do not play ball, the ones that do not comply with the conduct requirements, that do not engage and collaborate with the CMA. Those are the firms that the CMA should go after and address the sources of their market power.

Lord Hall of Birkenhead: Thank you. Richard, do you have anything else?

Richard Stables: No.

Owen Meredith: The only other thing I would add is that in the original advice that the Digital Markets Taskforce gave to the Government in December 2020, it called for the DMU to have an interest or to have powers to act in the interests of citizens and consumers. The "citizens" bit has been dropped in the drafting of the Bill. I think that that would give the CMA greater tools, while sticking to its competition remit, to be able to look at where there are synergies across other digital market policy areas, particularly the rights of citizens pertaining to privacy, data protection and free speech. I think that that should be looked at.

Lord Hall of Birkenhead: I suppose news and information, too, or otherwise, yes. Thank you very much. That was very good.

Q14 **Lord Lipsey:** We said that we would come back to you, Mr Stables, and we will. One of the big issues in this Bill is whether, as the Government currently propose, we stick to judicial review standards, standards that apply only to process, or whether the courts can be brought in on the

substance of the matter to review what the CMA does. Could you give us your view of which of those two alternatives would be right?

Richard Stables: My view is that if I am working for big tech I will want you to put in JR-plus or merits because that will force the CMA to spend probably twice as long doing what it was going to do anyway. Then I will appeal. At that appeal I will do everything I can to have it rerun, which it will be, and then I will appeal again. If I am in a fast-moving market, that will probably take the timeline to seven or eight years, by which stage competition like my company will no longer be around.

It is important that we take a step back and we say judicial review is a standard that has worked very well in the UK. I know some of you have worked on bodies that have had this looking after what you have done. It is a world-renowned standard and it is quick and it is fair. It focuses on rationality and reasonableness, and that is what we want. We do not want to have to relitigate the entire thing again, twice, because that just delays everything. Again, if I was working for big tech, that is exactly what I would be saying to you.

Lord Lipsey: Following up on that, do you have any information on the size and scale of big tech's legal capacity when compared with that of the CMA or, indeed, any other company that may be involved in actions?

Richard Stables: It is a great question. In fact, I joked with somebody from Google a couple of years ago when I realised that it had more lawyers working for it than I had employees working for my company. If you look at the number of people working on the DMA in Europe, they are outnumbered by just one of these platforms five to one. It is incredible. They are throwing massive amounts of resource at this and that is why the legislation has to be robust. It has to look at where we can have a level playing field, not just on markets but in regulation, where you are not having rings run around you because they have thousands of lawyers and enormous budgets just to delay all this.

Lord Lipsey: Given that lack of equal firepower, maybe we should not have judicial review in this Bill at all. Maybe the decision of the CMA, subject to the usual things about transparency, should apply and we should not be allowed to nip off to the courts to get it overturned.

Richard Stables: I would not go that far because I think that you always have to have checks and balances on any organisation. I think that it is right that there is some process and the CAT is a world-renowned body that will look at this for rationality and reasonableness.

The equation for big tech will change if it is just JR because it is asking a different question. It is asking: was the process rational and was it reasonable? If I am big tech, I will say, "I will just look stupid if I go and do that because, of course, it was rational and reasonable. I will not delay it very much longer so I will probably not do that". I think that it is important to keep that because in any democracy you need checks and balances on any power and this is a good check and a good balance.

Rocio Concha: I completely agree that we need to keep the judicial review. This appeal process is key for this new regime to work. If we

change that, the regime does not work. We will have the CMA locked in legal battles and it will never be able to implement this. We will see the consequences that Richard was saying for other businesses and, depending on this, for consumers. They will not see new innovations in these markets.

The judicial review is not a lightweight standard. It is a thorough standard and it is what we have at the moment for similar decisions that the CMA has to make. For example, on market investigations it will use similar interventions as for the pro-competitive intervention, and this is a judicial review. There is also the merger decisions, which are a forward-looking assessment. Again, that is a judicial review. As I say, I think that if we change this we will undermine the whole regime, so it is very important that we keep it as it is.

Owen Meredith: It is important that this appeal process is effective, but it has to be quick and cheap to make the entire regime effective. If you change the standard, you will massively undermine the effectiveness of the regime. You can appeal at every stage of the process; you can appeal designation, the conduct requirement, a PCI. It will just completely delay the system and make it ineffectual.

Q15 Baroness Harding of Winscombe: As Mr Stables alluded to, I have experienced all these regimes when I was the chief executive of TalkTalk. While I have enormous sympathy for the arguments that you have just set out that when you face an opponent that has pockets that are so much deeper than yours the ability to delay is huge, I can remember all too clearly probably about seven or eight years ago the TalkTalk regulatory team arguing that it preferred a full merits system because they were concerned that the regulator was captured.

I want to hear your views. As I say, I start on your side on this, believing everything you have just said about the need for cheap and speedy processes, which takes you to a judicial review standard, but there is a real risk if the regulator is captured by said big companies that have enormous corporate affairs teams as well as legal teams. How do you make sure in a judicial review system that you can hold the regulator to account if it is not making the right decisions?

Richard Stables: I think that there is a balance of risk here. Which risk would I rather have? Would I rather have the risk that the CMA and the Digital Markets Unit will do what is right by British consumers and the economy and will do a good job and not be captured, or would I prefer to have full merits, where I think that big tech will kick the can down the road? For me, the scales are clearly one way, which is that I would definitely not have full merits. Yes, there is always a small risk of what you said, but I would rather take that risk than the other one for markets and consumers in the UK.

Tom Fish: I will follow on by setting out a couple of things that I think you will hear later on in the session on this issue. I think that you will hear perhaps a principled stand on the right to have this much more rigorous full merits-based appeal and how it is important to place some

checks and balances on the march and power of a single organisation. I am sure that the committee here today will appreciate the irony of those comments coming from the five biggest and most powerful corporations in the world that make decisions affecting other companies but face no scrutiny or review by an independent body whatsoever.

I think that you will also hear that the new regime is most closely akin to existing competition law enforcement and, therefore, by that logic, of course, you apply the same full merits appeal standard. However, let us remember why we are here and let us remember why this Bill was written in the first place. Hundreds of experts in competition law, economics and digital platforms from all around the world have agreed unanimously that the existing suites of competition tools are not fit for purpose in the digital age. Competition law enforcement is slow and cumbersome. It takes many years to conclude a case, by which time the companies affected have gone out of business or become irrelevant. It would be the definition of insanity in this context to take the appeal standard from the existing framework, apply it to the new approach and then expect different results.

Baroness Harding of Winscombe: Fantastic. Thank you.

Q16 Baroness Wheatcroft: Making this legislation work will require the CMA to be beefed up. We have talked a lot about the deep pockets of big tech. How on earth is the CMA to get the right people to do that job? I will start with Mr Fish because you have worked in government and Treasury. One of the problems for Treasury, of course, is that good people tend to leave quite quickly. How will the CMA cope?

Tom Fish: I worked at the CMA and I left there as well, so I hope we are not highlighting an endemic problem. I think that it will be a problem. The CMA will need to scale up and recruit at quite an unusual rate in a relatively short space of time. It might struggle to attract the brightest and best talent in the broader context that the Civil Service finds itself in. That is something to be wary of.

Relevant to that is another anxiety I have, which is whether or not the CMA will fully appreciate the scale of the problem that rests under the surface. To try to give an example, today I spoke about challenges with app store review and review of our ad campaigns. That sounds like two issues that we might contact the CMA about. In fact, over the last six months or so that could have been 30 emails, separate incidents with slightly different reasoning and results, requiring different review by the CMA. Over the course of the year I could be badgering it 50 to 100 times, and I am just one company. I do not know whether it will fully appreciate quite the level of volume once you peel back that layer and dive into the detail. I hope that it can start to build a strategy for that.

Baroness Wheatcroft: Do you think that an effective triaging system might take those 30 emails down to five or six issues?

Tom Fish: That is one mechanism that it will have to deploy. Referring to my earlier comments, I also think that it is essential that it can take

more informal interactions with various participants to try to resolve these issues.

Rocio Concha: The CMA is not starting from zero here. The CMA has been building its resources and capability in digital markets for a number of years now. It has been successful in attracting data scientists, behaviourists, technologists, economists and lawyers. It has already built that capability and we just need to see the output that it has produced. We have the digital advertising market study and the mobile ecosystem study. It has produced quite a lot of very thorough reports in the digital sector, so that shows its capability.

By the way, it is not only the capability in the UK. We have to deal with a lot of regulators. All the regulators will have to deal with digital issues because everything is being digitalised. I can tell you that it is the regulator that is in the best position to tackle this and is internationally well respected for all that capability and everything it has been producing in the digital sector.

Baroness Wheatcroft: That is a more positive aspect. Thank you.

Richard Stables: I will add two things to that. One is that I know that the Digital Markets Unit is well staffed up with some very good people right now. It is, ironically, ready to go in the way that maybe in Europe they are not because they are busy doing stuff.

The other thing that regulators do very well—and I have seen this at the CMA and I think that it will help massively—is that they bring in industry. When a platform tells you X, you bring in the industry and you sit down with the industry. The industry says, “No, that is not quite right, it is this, this and this”. There is a huge amount of extraction of information that it can get from associated industry that can help it to deal with this big problem around having the right people.

Baroness Wheatcroft: Mr Meredith, do you think, though, that once the DMU has good people there is a risk of poaching by the big tech companies?

Owen Meredith: I echo what others have said. I think that the CMA is in a very good position. We have the advantage of the DMU being set up within the CMA in shadow format and it is way ahead of the curve compared to where it would be if we were bringing the legislation forward without it having existed there. There are some incredibly talented people working within the CMA and the DMU at the moment and they are respected worldwide. Of course, there is always a risk that people leave, but we have seen particularly with tech firms at the moment that they are not necessarily on a recruitment spree.

Q17 **Baroness Wheatcroft:** They will certainly have a hefty workload. Once they are at work and they are conducting their inquiries, one of the issues that seems to be causing angst among the smaller companies particularly is how much detail of those investigations should be made available to the competition. Where do you stand on that and have you had any discussions about it?

Richard Stables: I think that what you are referring to is the secrecy of what you have been asked for. We were massively involved in the investigations in Europe and when we first started we said, "Please do not tell Google that we are helping you because we do not want it to hurt us any more". We realised that it had hurt us so much that there was nothing left to lose, so then we were in full-on warfare. In that regime, the Commission in Europe was very careful about keeping things very secret if you needed it to. It asked you about what information you had given it that it could give to other people, even to the platform, and you could redact stuff. As long as there is that regime within the UK, which is something sensible, I think that you have to step up at some point as a company. If you have a problem, you have to talk to somebody. If it cannot use that information internally and then present it to the people who are against it, even in a redacted form, I think that you are unrealistic. You have to be able to allow that.

Baroness Wheatcroft: Does anybody else have anything to add on that? No. We are getting quite familiar with redacting, so presumably there will be a fair amount of that. Thank you very much.

The Chair: I will draw this session to a close with great thanks to all four of you for giving up your time and for your clear testimony today, which is very helpful to us.