



HOUSE OF LORDS

Industry and Regulators Committee

Corrected oral evidence: UK regulators

Wednesday 29 November 2023

11.30 am

Watch the meeting

Members present: Lord Hollick (The Chair); Lord Burns; Viscount Chandos; Lord Cromwell; Baroness McGregor-Smith; Baroness O'Grady of Upper Holloway; Lord Reay; Baroness Taylor of Bolton.

Evidence Session No. 8

Heard in Public

Questions 70 – 85

Witness

[I](#): Marcus Bokkerink, Chair, Competition and Markets Authority (CMA).

Examination of witness

Marcus Bokkerink.

Q70 The Chair: Good morning and welcome to this resumed session of the Industry and Regulators Committee's inquiry into UK regulators. I am delighted to welcome Marcus Bokkerink, the chair of the Competition and Markets Authority, who before that spent 20 years advising corporate executive teams and boards on strategies to build competition advantages. You are now on the other side of the table with 30 years' experience, and we are looking forward to hearing your thoughts.

A concern that has come out of a lot of the regulators is the sheer breadth of their remit. There are so many things that they have to look at and take account of, and they have to have regard to other things and prioritise them. Coming at this as you have done recently with a clear idea of what the role should be, do you feel that your remit is as clear as it should be? Are we in danger of mission creep, which appears to be the case with quite a lot of regulators? Over the years they accrue areas where they have to make some rather awkward decisions that Ministers would prefer to pass to others. Do you feel that your remit is clear and well prioritised?

Marcus Bokkerink: I do. Before I answer the rest of that question, I thank the committee for having me here. The CMA plays a pivotal role in promoting competition and protecting consumers, and I and the board are aware that that is fundamental to the economic health and well-being of people, businesses and the economy. I know we have a big responsibility to make sure that the board of the CMA does that well. With that responsibility, of course, come responsibility and transparency; I have been clear since I was appointed that that is really important. Given the fundamental questions that this committee is asking about regulation and how that should be governed, and about UK businesses, we are keen to contribute, at least from the perspective of the work that we have been doing with businesses and consumers on the ground.

The CMA has a clear and consistent remit, to the extent that we do not find ourselves trading off conflicting objectives. That is for two reasons. The first is to do with the nature of the duty given to us by Parliament, and the second is to do with how the Government then approach that in a consistent way.

We are a bit different from sector regulators, in that the CMA is the UK's primary competition and consumer protection authority, and it is an economy-wide remit. It is about enforcing the competition consumer protection laws that Parliament has set, not setting rules and then supervising the implementation of those rules for specific sectors. To that end, Parliament has given us the single duty to promote competition for the benefit of consumers. That duty is fundamental to being able to drive innovation in the economy, to productivity improvement efforts for businesses and, really, to economic growth. Because it is so fundamental to other duties that one might think of, it is the cause, one of the

fundamental drivers—you do not need secondary or third duties of that nature.

Obviously, we have a wide range of functions—merger control, enforcing competition consumer protection legislation, conducting market investigations—but they are all underpinned and driven by the duty to look for ways to protect competition and consumers in line with the law. In the remit, there is almost an onus on the authorities—the authorities rather than the regulators, in our case—to make clear for people what that means in practice.

What does doing our job, of protecting competition and consumers, mean for the people and businesses of the UK? That is why 12 months ago when I came on board, as part of a wider review, we said, “Let’s make absolutely clear what the outcomes are that we hope to achieve as a result of that duty”. For people, that means that the work we do has to make sure that it results in consumers and people more broadly being able to have great choices and a fair deal. For businesses, it means that fair-dealing competitive businesses are free to innovate and thrive without being constrained and, as a result, the economy can grow sustainably and productively. That is part of a broader review and revisiting of strategy—how we go about prioritising and organising ourselves, which we will talk about later.

That singularity of duties is really helpful. It allows us to have consistency of purpose and consistency of application. There is one exception, which is that we have been given a separate duty by Parliament relating to the internal market and subsidy advice. That is an advisory role for government, not a decision-making role. That has been made very clear, and it is a separate duty. So that duty really helps.

The second reason why we do not have to make conflicting decisions is that the Government of the day fully understand the benefits of having an independent CMA that implements competition and consumer protection law. They seem to very much understand how that drives growth, innovation and productivity. So you will see that the strategic steer that just came out from the Government very much aligned with the priorities that we set out at the start of the year for the next three years. So I think there is alignment: the Government understand the job that Parliament has asked us to do, which results in consistency.

I hope that helps. It is different from other regulators, in the sense that we are economy-wide rather than focused on a specific sector and we have a single duty to promote competition that is fundamental to other outcomes, rather than multiple ones. That is because the regulation that we effectively apply, if you can call it that, is the simplest, most efficient and most effective one of all, which is competition: let competition thrive, and the right outcomes will come. That works for most of the economy, but I recognise, as I think the committee does, that that does not work for all elements in the economy. There are industries that are natural monopolies, especially in large infrastructure. It would be inefficient for the economy to have two, three, four sets of water pipes or grid lines

running from the same A to the same B. In those cases, you cannot use competition to create incentives, so there will be sector regulators.

Q71 **The Chair:** As you look at various markets, you have to address the political and distributional concerns of those markets. Can you do that without any political guidance, or would you expect to get better and more informed political guidance, particularly to address some of the anticompetitive ways that certain markets run to the detriment of consumers?

Marcus Bokkerink: There are two parts to that question. There are the distributional and political trade-offs that we make in our work and how we do those—and, indeed, whether we should—and the second part is about addressing anticompetitive effects, which I see as core to our role, and we will talk about that too.

There are three points. First, it is not the job of the CMA to make distributional and political trade-offs; it is the job of government to do so. The responsibilities that the CMA and the Government have are clearly delineated, and I am happy to go through them. We absolutely make choices about where to focus our discretionary work, based on a set of inputs that are not to do with distributional choice inputs. The third point that I will talk about is that we recognise that, in making those choices, some of the choices about where we do and do not focus our work end up having some distributional consequences—not by design, but they have them. We have to be aware of those and transparent about them. That is how we address that.

On the first point, as I said, it is the job of Parliament and the elected Government to make political and distributional trade-offs. That works quite well in the way that our work is delineated in terms of responsibilities. Effectively there are three types of work that we do in our relative responsibilities to government: the first is merger control, the second is enforcing competition law, and the third is enforcing consumer protection law. Those are the where the CMA as an independent body makes decisions independent of government. That is for a good reason, because it means that those decisions are not influenced by lobbying, by who has the most money to shout the loudest or by short-term expediency versus what is good for the medium term.

At the other end of the spectrum are decisions—actually, not decisions but pure advisory functions. I mentioned the Subsidy Advice Unit and the Office for the Internal Market. Those have political and potentially distributional dimensions. It is right that we can advise the Government on the competition and consumer impacts but not make decisions about what should then be done. It is for the Government to use those inputs and put into their thinking the other considerations that they might want to trade off.

Then there is the remaining category: market investigations, market studies, where we look at a whole market to see whether it is working well and whether it can work better for consumers. Those sometimes

result in levers that the CMA can pull independently, but also levers that the Government can choose to pull depending on their priorities. As an example, we did a study into retail banking to see whether we could make retail banking more open to fintech challenges and online challenger banks to give consumers and customers more choice. There are levers that we can pull to put in place an order to open up access, but there are also policies that can be set, such as whether we want smart data legislation to extend the benefit of that to other sectors. The first one we can put in place and order; it is in our remit. We cannot set policy and we should not, but we can advise on that having a positive impact for certain reasons and the Government can decide whether that fits their priorities.

Another example is the recent and ongoing work on road fuel. You saw us do a market study on whether the road fuel market is working well, in the sense of whether consumers are able to make informed choices easily about where they can find the cheapest petrol and whether the providers make that easy. We found that they did not, but it was possible to solve that by creating price transparency. One way to make price transparency work really well is to make it mandatory, so we went for the latter.

I see those as examples where there are enforcement actions that we can take, and there are additional actions to help to solve the problem that could be helpful from a competition perspective but are in the realm of policy. Another is the housebuilding study that we are doing now. Part of the solution might well be changes to planning. It is not for the CMA to design those changes, but we can recommend what would make it easier for housebuilders of all types to compete on a level playing field. Does that help?

Lord Cromwell: Am I right in understanding that the CMA never gets any advice on which mergers you should be looking at and perhaps how the Government view a particular merger?

Marcus Bokkerink: Absolutely—none whatever. As you said, there are actually set rules for which mergers we look at. That is not a choice, it is mandated, and I guarantee that in my experience there has been no attempt by any politician to have any influence on the CMA.

Lord Cromwell: Good to know, thank you.

Q72 **Lord Burns:** I will press a bit further on this question of the independence of the CMA. Very helpfully, you have set out those three groups. You said that the first is absolutely down to the CMA; it has complete independence on mergers. Then you have the advice function, and then there is the issue of market studies. I was not quite clear to what extent you were saying that on some of those issues there would be political involvement, or at least political discussion. I want to go a bit further. So far, in your experience, particularly in this third category, have you felt under any political pressure that you have found you wanted to press back on?

Marcus Bokkerink: No, very clearly. I am sorry if I did not explain that as clearly as I could have done in the first place.

What drives our decision to launch a market study in the first place? As I said, we have made quite a few changes since I came on board and since we reviewed our strategy and how we work and operate. One of those changes was to say, "Let's be very clear: if we're going to deliver outcomes for people and businesses"—as I have just described—"what are the priority areas that we need to operate in in order to be able to have that impact?"

One of the biggest areas on the people side is that if you want to have great choices and a fair deal, where does that really matter? As a board and as an executive team, it matters that we make sure that the biggest areas of need that matter the most are the ones where we are active: having somewhere to live—no. 1; being able to feed yourself and your family; being able to get around and move to your work or transport; being able to look after yourself and others; and being able to buy and sell online. Those are the five areas that we highlighted where you should expect us to be active in the next three years. As a result of that, it is natural that when we get inputs from consumers and businesses—and sometimes also from government, although that tends to be complementary—there are problems and challenges in those markets. If that fits with our priorities, we look at it. That is how that works.

On the recommendations, if we find a problem and it can be solved, usually, if it is market-wide, the solution is a combination of making the consumer and/or the customer more able and more easily to make an informed choice, because that is often part of the problem; we saw that with care homes and funerals, and with road fuel. We have to make sure that there is no anticompetitive behaviour structurally holding back innovators and challenges from competing. Sometimes some of the levers can be in the hands of government. As I say, those are policy levers that we input as a possible part of the solution, but it is not for us to decide whether they want to pull that lever versus another one that they quite legitimately will have prioritised.

Q73 **Lord Burns:** That is very helpful, thank you. What about the experience of the appointments process for your non-executive directors and senior regulatory staff? To what extent are you receiving guidance from government on those issues, and has this arisen yet during your time?

Marcus Bokkerink: That is a good question. There are two types of appointment process. The one for the chair is slightly different in that there are clear criteria, it is very public, there is an independent panel that reviews it, and there is a cross-parliamentary committee that does scrutiny. For the non-executives and the CEO, again, there is a very robust process in the sense that you set clear criteria, which are also informed by the chair—because the chair and the board tend to know what is needed—and there is a dialogue and debate. As you know, in this round of non-executive appointments, we are very keen to expand the

diversity of experience, expertise and thoughts in the board as a next step forward.

There is a very public recruitment process. The independent panel, which includes me, officials and an independent commissioner, test the candidates against the basic criteria that have been set. We then recommend those who are appointable and those who are not appointable to the Secretary of State. Clearly, the Secretary of State makes the decision.

It is a rigorous and fairly transparent process. The final decision is made by the Government of the day.

Lord Burns: Have you made any appointments under this process yet?

Marcus Bokkerink: I was going to get to that. What is important for the effective functioning of the CMA is that people who are on the board do indeed provide that breadth and depth of experience and expertise, and objectivity—it is very important that they are not ideological and do not have a certain extreme leaning, including politically. This process is designed to help make that happen, and if I think it did not, I would not hesitate to say that. So far, it has been fine.

The one thing that is obviously concerning, and it is a vulnerability that can become a risk to operations, is how delay after delay can happen in that process. I know I have a lot to learn, coming from the private sector, but I am still surprised by this. We get to situations where it is really close to the wire. We have rules; we have a quorum that we need to make decisions, and obviously you need board members in place to do that. Also, we would be very effective if we could start the onboarding and mentoring process. There are four NEDs at least coming to this board—it is a new board. I would rather not have had them all at once, but I will have to have them all at once. That can be improved.

Lord Burns: Have you been able to decide on the broad balance of skills that you are looking for with the non-executive directors?

Marcus Bokkerink: We very clearly set that up in the criteria. We wanted more digital platform experience. I bring a consumer voice from having run the consumer practice at BCG, but we want more of that too. We want more business; leading expertise in economics is very important, and leading expertise in competition law is rather fundamental too, so we want that breadth. The panel that I was a member of that did the recruiting so far has kept those criteria very much in mind, and the recommended sets very much fulfil that. I cannot tell you any more than that, because now it is not my decision.

Lord Burns: How far does being funded by the Treasury impact on your ability to act independently of government? How far do you feel that you are in a position to get the resources that you need to do the job that you are being asked to do?

Marcus Bokkerink: It does not impact our independence whatever. I do not see how it could, other than that, in theory, people at the Treasury could say: "Unless you make this decision, we're not going to fund that". It could not happen, because it is not what Parliament has set out to do; it is against the values of the CMA and the Civil Service. I would point it out and would not hesitate to tell this committee.

It is also our duty, when we are given new functions and responsibilities, as we were with the Digital Markets, Competition and Consumers Bill, to make clear what activities that means we have to do and what that means for our resources—what kind of resource will have. We then discuss that with the Treasury in a very open way. The onus is also on us as an agency, and on all regulators, to always look for ways to amplify the impact of the resources you have, and to do more with what you have got. As I said, there is a whole series of improvements in the operating model that we are putting in place, which I am happy to share, to help keep that increase or that budget down.

Q74 **Lord Cromwell:** You mentioned the digital markets Bill, which is coming down the track. I do not have it in front of me, but a specialist unit is being set up—I think it is the DMU—within it.

Marcus Bokkerink: That is right. It is the digital markets unit, although it is a whole part of the—

Lord Cromwell: My question is: who will appoint the people into that, and how will they be accountable to Parliament? That is a really important aspect of the work.

Marcus Bokkerink: Let me answer the second question first, because it is quite an important point about how the digital markets part of our work will be accountable. The digital markets part of the Digital Markets, Competition and Consumers Bill does not create a different responsibility; it is very much in line with our responsibility to promote competition and protect consumers in digital markets. It recognises that there are some markets and economic activities in the digital area where, over time, for various reasons—partly to do with insufficient understanding at the time these markets were developing, how the economics or the business models work, or whatever—there are some areas where firms have emerged that have entrenched and substantial market power, to such an extent that the hand of competition is not completely operating as it could in a truly competitive market. Therefore, some tailored, proportionate regulation is required.

It is a Bill that sets specific powers for the CMA to assign certain firms strategic market status in order to identify them first, and then to set conduct requirements in order to make sure that consumers continue to get great choices and are treated well, that innovators and challengers can continue to operate in the same market or off your market, and that there is fair dealing. There are some conduct requirements to do with transparency, open access and—

Lord Cromwell: Is it this unit that will be doing this?

Marcus Bokkerink: It is not, which is why I am going through this, because it is important to understand that it is not just a couple of people in the unit who make the decisions; the board members will, as I will go into.

It is also up to us to identify any breach, and to require the firms to stop that breach and fulfil the conduct requirements.

Those are important decisions. It absolutely should not be one unit or, indeed, the head of the unit who makes those decisions, and they do not. All those decisions in the Bill have been set as the responsibility of the board. The board is, has to be, and will remain predominantly independent; it has more NEDs than executives. That way you get the independence of inquiry and scrutiny. Setting out strategic market status and conduct requirements, identifying any breach, and setting the interventions have to be decided by the board, or the board can choose to set up a board committee. Again, that will be majority independent versus executive.

That is a long way of answering your question, but it is important to clarify that, in other words, that unit is just another unit, just like the merger function. Just like the heads of the merger function, the heads of the DMU are appointed by the Government, but the panel that interviews is made up of me, the CEO and an independent commissioner.

Lord Cromwell: That is helpful. As the Bill goes through, there will be quite a lot of interest in this unit and how it is held accountable, so that is useful.

Marcus Bokkerink: As I hope you are gathering, we have taken accountability very seriously, and we very much welcome that it is the board rather than parts within the CMA that—

Lord Cromwell: As long as the board understands enough about the digital market.

Marcus Bokkerink: This goes back to the point about why we are reinforcing the board. The board also learns a lot from the digital market experts we have in the CMA and the external experts we have on the panel. The DMU has operated in shadow form for two years now. There are 70 people in it already who have been working on digital-related market studies and digital consumer competition enforcement and so are already very deep in the markets they will be working in. So we hit the ground running.

Q75 **Lord Cromwell:** I suspect I am taking you off-track, and my Chair will slap me down in a minute, so I will leave that there. I now have an actual question that I was going to ask you anyway, which is completely different. Obviously, the emphasis on the protection of the interests of consumers is a key role of the CMA. How does the CMA measure its own performance in that regard?

Marcus Bokkerink: I am glad you asked that question. I think I said in my hearing when I was scrutinised as a potential candidate that job number one for me, if you were to judge me and the board five years on, was: "Are we having a real, tangible impact on the people we serve?" That is people and businesses, but we talk about the consumers front and centre. Achieving that and then measuring and communicating it is where the board and executive have made quite a lot of changes. There was very good progress already, I must say, and we have just doubled down on it.

We took the liberty of learning a bit from the private sector in thinking a bit more holistically. We took a step back and ask ourselves four questions. First, do we have clarity of objectives on the outcomes for consumers that we want to achieve in the first place? Secondly, do we prioritise our work accordingly—do we focus and allocate our resources to do that, because through the process that can get scuppered? Thirdly, do we deliver those outcomes in practice through our work—what are we achieving on the ground for consumer protection? Fourthly, do we measure it, and how do we measure it? It is important to get that whole chain right for it to be robust.

On the first question, I have already mentioned how we have given clarity. On priorities, we were very clear: we said that there would be five big areas of spend, as well as anything to do with being misleading, pressure selling and so on, because the best lever in a competitive economy is the consumer as long as they have informed choices.

The prioritisation worked very well, but we also realised that internally we needed to revamp our prioritisation-of-work process. There is a way of looking at a pipeline of potential work coming in, and we made some changes to that. Instead of looking tool by tool at what was happening in markets, we said, "We have these priorities. Start with the problem to solve and then decide on the best way. Is it consumer enforcement that we could use, or is this merger control investigation that's going on in any way addressing that problem so we don't need to launch a market study?" and so on. We made that a more strategic body that looks ahead on a rolling basis and, importantly, looks at board governance. I am in that committee. It reports to the board and the portfolio reports to the board. So we can have clarity that we are working on the areas that matter to consumers.

Then there is the question of whether we do the work and how we measure it. I have talked about how we do the work in areas such as having a place to live. The next question is how we measure that. Here we have taken the approach of thinking of it in two complementary ways. Thinking about performance, first, what is our impact that we can point to on the ground? Secondly, is that impact being delivered productively and efficiently? So the first question is how we are impacting the customer, in a way, and whether we are creating value for them, and the second is whether we are doing it with a good ROI.

We look at impacts in two ways. First, we look specifically at the areas where we are intervening. If we make an intervention in a specific area such as road fuel, funeral care or housebuild, what benefit have we achieved for the consumer in that area? Secondly, looking across our work, what is the combined total benefit?

That is why you will see that, whenever we come out with results of cases or of work, we now talk very clearly about the benefit that we have achieved, who benefits and what is the decision-making. For the total combined performance—the combined impacts across all our work—we do an annual impact assessment, which is an independent calculation of the direct consumer benefits of the work on mergers, consumer enforcement and so on.

Lord Cromwell: How qualitative versus quantitative is it?

Marcus Bokkerink: It is a quantitative exercise using what the OECD says is a best-practice methodology. It is forward-looking; if we have held prices down, what is the impact of that? If more innovation has come in, is that a result of what we have done? There are ways to calculate the direct results of that. It is called the direct consumer benefit, and I am happy to share the details of that with the committee.

Lord Cromwell: In essence, you are confident that you have decent metrics.

Marcus Bokkerink: We would like to take it one step further. That measures the direct consumer benefits, but a lot of the benefits of the work that we do are actually the knock-on effects. When we deter cartel behaviour—say, bid rigging in the construction sector for demolition services—you can calculate the benefit of that, because prices are brought down, but the indirect benefit of deterring other firms that might consider that is not calculable, so we do not calculate it.

Similarly, if you open up a market—for example, you get a commitment from Amazon Marketplace to no longer use data on third-party sellers that it has privileged access to in order to disadvantage those sellers—that helps other companies to compete and helps innovation. It should help the economy, but we do not calculate that. Those are all indirect benefits that we do not calculate.

Lord Cromwell: It is difficult to measure, in essence.

Marcus Bokkerink: It is difficult to measure.

Lord Cromwell: How are you doing?

Marcus Bokkerink: On the direct benefits alone, we are at well over £2 billion a year of direct consumer benefit. As I said, there is a second part of that equation, which is, “Is all of that worth it?” The productivity of us delivering those benefits is also an important metric. The Government have set us a target of 10:1—so £10 of consumer benefit for every £1

spent—and we have been running at 20:1 for the last three years and will continue to do so.

- Q76 **Lord Cromwell:** I think it was John Penrose MP who said that the CMA should be putting out an annual report on the state of competition and the consumer detriment. Do you think that makes sense?

Marcus Bokkerink: Absolutely. In fact, next year we will publish our third state of competition report. We launched the state of competition report a few years ago and did the second one last year. That one looked economy-wide, so it is aggregate. The next one will focus on certain deep dives, such as the link between innovation, productivity and competition and what is driving the rise of market power. It also has an input to government. I am pleased to say that next year we will be taking on the consumer detriment or consumer protection study that used to be done by what at the time was BEIS, and we will report on that. It is also to see how the economy overall is functioning from a competition perspective.

The best ways in which we as the CMA can try to have a maximum impact possible on that total picture are: first, to make sure that when we deploy our resources it is in the areas that are big and really matter, as I have just described; secondly, when we do that work we aim for impacts and outcomes; and, thirdly, we look ahead more and start to review markets as they develop, so that we do not have to come in years later and correct things. That is exactly what drove the review of foundation models and the AI foundation models that came out recently: to think about how the markets can develop in a positive or negative way from a competition and consumer protection perspective, and what that implies about actions that would get you to the positive outcome as opposed to the negative one.

- Q77 **Baroness O'Grady of Upper Holloway:** Sticking with the CMA's responsibilities and duties regarding consumer protection, could you say more about how you ensure that the consumer voice is there throughout that process in determining priorities, the course of investigations and—you mentioned Amazon—consumer satisfaction on the outcome and decisions? How do you check that?

Marcus Bokkerink: That is an excellent question, and ultimately it goes back to how we prioritise. A lot of our insight and input comes directly from consumers and businesses. There are three things that we have stepped up materially. The first is that the consumer voice starts from the top. One of the several changes that we have been making is that every board meeting now has to start with an external voice, which was not the case before. We bring in people from consumer bodies such as Which? and the Joseph Rowntree Foundation, because we need to start our debate by thinking, "Who are we here to serve?", not, "What is happening inside the CMA?"

The second part of that, starting from the top, is that in the board we want the consumer voice. At the moment, I bring some of that, given my

background in leading consumer practice, but we are also looking to extend that in the next round. That is what we do to set the tone.

Secondly, building on some very good work by my predecessor, we are really stepping up the frequency and depth of the conversations we have with various consumer bodies and third-sector organisations. There are quarterly meetings of our chair/CEO with the equivalents in Which?, Consumer Scotland, the Joseph Rowntree Foundation and Citizens Advice. We are seeing that there is a consumer protection partnership that combines all these bodies, Money Saving Expert, and all the different regulators, so we do a lot of interaction at the top level but even more frequently at the working level. So a lot of input on consumer challenges and issues comes from bodies that are on the ground with consumers.

We do that around the country. The other change we made is that we have a board meeting in Wales, Northern Ireland and Scotland, as we should, as well as the north of England and Manchester, where we are building a big office. Whenever we do that, we add a day to the agenda and spend the day with consumers and business in those areas. So we get a lot of input directly through the groups.

Lastly—thanks to technology we can do this—there is a lot of direct input that we can get from consumers, especially if we are working on areas that matter to them, which is what we aim to do. We set up the Green Claims Code, with well over 60,000 people responding and 340,000 people responding online and in social media. The Online Rip-Off Tip-Off campaign we launched reached well over 50% of 18 to 45 year-olds shopping on line this year, and in various surveys two-thirds of them responded that they had taken action to protect themselves from scams. It is interesting. We have launched a review into the vet market, and 50,000 pet owners have come forward and given input, so you get direct input on these issues.

Baroness O'Grady of Upper Holloway: How do you grapple with the structural problem that businesses are generally much better resourced than consumer organisations to get access, have influence and maybe relay views on decisions and the impact of decisions that you take?

Marcus Bokkerink: Business is a broad church. What I described on the consumer element we also do on the business side. We have been doubling up. We talk with many organisations such as techUK, the Federation of Small Businesses, the IoD—you name it. We are also going directly to the advisers of businesses—law firms and investment banks—to make sure that there is real understanding in the business community of how we operate and make decisions and that we understand from them what their issues are.

The vast majority of business are very positive inputters into our prioritisation because they also have challenging issues. The vast majority just want to be able to compete freely and not be constrained by dominant positions. It all adds to the same story. If you are referring to the influence of large businesses on the agenda that is in the press, that

is just a narrative in the press. We know what we have to do, and we do it to the best of our ability.

Lord Burns: I think the issue about industry and the relationship with industry has been answered.

Q78 Baroness Taylor of Bolton: Mention has been made of the new legislation, the Digital Markets, Competition and Consumers Bill. That is an additional responsibility for the CMA. Can we press you a little bit on resources—in particular, the specialists you might need now and whether you can pay the going rate for people who are in very high demand at the moment.

Marcus Bokkerink: I am glad you asked that question more broadly, not only on digital, because there are two parts to the answer. One is that, at the moment and in the very near future, I am very confident that we have a really good mix of skills and capability in the teams to do the work. Equally, I am extremely worried when I look three, four, five years out. This is why my one biggest worry now—there were lots of other worries before—is maintaining, attracting and retaining the talent we need, the specialist skills we need in the future. I will go into why that is now looking less rosy from my perspective than it used to.

At the moment, we do. It is another area that we have said we have to prioritise. Organisational resilience is critical. We can maximise our skills by taking a system view. Part of it is the capability of the skills and resources, part of it is how you deploy them, and part of it is how you make the experience so positive for them that they stay. We identified that the legal profession, the economic profession, digital and data are very important capabilities that we need to have. We are up against some of the most sophisticated and, as you say, well-resourced companies in the world when they chose to litigate a decision, and that is tough.

We have been doing the best we can to attract people through measures other than pay, in addition to the pay. The fact that we have this mission that really has a positive impact attracts a lot of people. The CMA is probably the best place you can go if you want to learn quickly about being a competition lawyer, or about economics or digital issues if you are data scientist, because the work we do is leading edge and is at the top of companies' agendas, so it is a really fast way to learn, and that attracts a lot of people. The fact that we provide flexible working, to the extent that we can, is also an attraction for people.

So, to this point, we have been able to set up a digital market unit that already has 70 people and will grow to 200. In 2019, we set up the origins of what is now the data analytics and technology unit, which has 90 data scientists, data engineers and behavioural scientists, the digital forensics kind of people who are really strong and are fantastic at working the cases but are also really helpful when we look at ourselves and how can we automate or digitise this process.

That is all in place, growing and developing, but it is a big worry looking forward. The reason is twofold. One is that there has always been a massive pay gap with the private sector. That is not new, but it has now got very pronounced in a way that it is almost impossible for these talented people to ignore if they work for a digital firm. The second is that we are now having competition for the same talent, especially at the middle and senior levels, from some fellow regulators who have a different funding model. You can do the same job at the FCA, Ofcom or Ofgem, and it is a materially different pay, with all the other benefits. For me, coming in from the outside, it seems to be an inconsistency. You would not design it that way, but it has emerged that way and it is to do with the funding.

So I will absolutely be taking this problem forward, looking for solutions and talking to various parts of government, and I am open to any advice on how to solve that, because it is my biggest worry.

Baroness Taylor of Bolton: Potentially then, from what you have been saying, you are telling people, "Come and work for us, because this is a unique experience", but then you might have a retention problem, because they can go and use that unique experience in a different area. Other regulators face similar problems, so do you think there is any scope for the pooling of specialist talent or for co-operation between different regulators, or are the remits too distinct?

Marcus Bokkerink: On the digital side, absolutely there are benefits from a pooling from a skill-building and capability-building perspective, and we do that through the digital regulators' co-operation forum, so the ICO, Ofcom, the FCA and the CMA on digital matters have this working together. However, that does not address the ultimate part of the problem. We should not kid ourselves that we are going to close the gap with the private sector, absolutely not, but I think we could aim for more consistency between the regulators.

Lord Burns: I take it you are implying that, because your relationship is different from some of the other regulators, your pay levels are lower than theirs.

Marcus Bokkerink: That is right. Our funding model is different.

Lord Burns: What sort of gap would you say there is?

Marcus Bokkerink: For some of these roles, we are talking 30% to 50%. So it is material.

Q79 **Lord Reay:** In your experience, is there overlap and duplication in the responsibilities of different regulators, including the CMA? How closely does the CMA co-operate with other regulators, including international ones, on matters of mutual interest?

Marcus Bokkerink: Let me take the last question first, because it is international, and then I will take the question about the overlap with the domestic ones, if that is okay.

There is a lot of good interaction and dialogue with our international competition and consumer protection authority peers. That is important, because a lot of the issues that we are dealing with are global rather than only local, and a lot of the markets that we deal with operate globally, so it is very useful to share insights and learning. Obviously, we make decisions for the UK, just like the US agencies make decisions for the US and EU agencies make decisions for the EU, but we have many forums for dialogue, including at the G7 level and at the international competition network level.

On the overlap between the CMA and other UK regulators, there is some overlap, but it is by design at this stage, because it can be a strength. It is in three areas: competition, consumer protection, and digital regulation. I will take each in turn.

On competition, the CMA is the principal authority for competition enforcement across the economy. In some aspects of that, such as merger controls, we are the primary regulator. You will see that the proposed merger of Vodafone and Three, which is in Ofcom's industry, is being reviewed by the CMA, so there is no overlap there.

On antitrust enforcement—that is, applying competition law—we encourage the sector regulators to apply that same antitrust law to their sectors, but we have a certain amount of expertise and experience that we can bring to them and can use if they want us to take on use cases. In all cases, it is not that we decide independently who does what; we talk about it first and then decide who does what based on the nature of the problem.

Similarly, on the markets work, the benefit of the CMA's approach is that if a market study becomes a market investigation that results in potential remedies, those decisions are made by an independent panel. Often, phase 2 of a market investigation will be referred to the CMA. For example, there is a market study into the cloud. Ofcom started phase 1 of that, but it has given the reference for the market investigation to the CMA.

So there is overlap in competition matters—we call it concurrency—but that is by design, and it is through discussion and decision together rather than duplication.

Lord Reay: You make decisions on large international mergers and can reach a conclusion that is different from the European and US regulators', as happened in the recent Activision deal. Do you face international regulatory or political pressure on those types of decisions when reaching a conclusion that is different from other international regulators'?

Marcus Bokkerink: No, and for good reason. As bodies, the remit from our respective legislators is to look after the businesses and consumers of our countries.

You mentioned differences over Microsoft and Activision. I want to clarify that in fact, the UK CMA, the EU and the FTC in the US all determined the same potential for harm in the cloud gaming and streaming market. Our systems are different in then applying solutions to that, but I wanted to point out that the identification of the problem was the same, even if the ability to put solutions in place was different. We got the solution that addressed the full concerns that the phase 2 panel had set out in that market.

Q80 Lord Reay: How does your relationship operate with regulators that have concurrent competition powers and with regulators whose determinations and decisions can be appealed to the CMA?

Marcus Bokkerink: This goes back to the concurrency arrangements for competition, where we are the primary merger control authority. On antitrust Competition Act enforcement cases, the sector regulators can and are encouraged to conduct their work, but they can absolutely call on our expertise.

We have a separate function, which is that we are the regulatory appeal body for the sector regulators. We have a quasi-judicial role in being the appeal body where parties can ask us to assess whether the decision of that regulator on a certain price setting or determination judgment was done in line with the law and accurately.

Q81 Baroness McGregor-Smith: Thinking about the impact that Parliament and government can have on regulators in general through scrutiny and accountability, in your experience, when you have been in front of Select Committees, do you think they scrutinise the performance of the CMA overall, or does it tend to be only around specific issues, and do you think there are any gaps?

Marcus Bokkerink: It has stepped up a bit. First, I am glad that it happens. I say that because apparently, before I started my role, there were several years without the chair or the CEO appearing before a committee, so I very much encouraged that on the work of the CMA in general. Now that happens on a more regular basis. I am appearing here, for example.

There are two types of committee that scrutinise us at the parliamentary level. On the general work of the CMA, it is the Business and Trade Committee, and then there are committees that deal with specific issues. On the Digital Markets, Competition and Consumers Bill, for example, we had the Lords Communications and Digital Committee, as well as the relevant Public Bill Committee and the Science, Innovation and Technology Committee. I should add that we also appear in front of some of the other national parliaments, so we appear before the Scottish Equalities, Human Rights and Civil Justice Committee on some legislation and the Welsh Parliament on the work of the internal market. We are appearing more than we used to in front of parliamentary committees, which is a good thing.

From my experience so far in the committees that I have attended, the members have been very well briefed and ask good follow-up questions, and I felt that there was a good degree of scrutiny. Looking forward, one thing to watch out for is that, as the markets that we either regulate or look after when it comes to competition though enforcement become more digital, more dynamic and more driven by AI, it will be really important to keep up the knowledge base and the input into those committees—I know it sits in this committee as well—about how those business models work, so that you can scrutinise and ask the right questions.

Q82 Baroness McGregor-Smith: That was going to be one of my follow-on questions to you about what is coming in AI automation, with the challenges of potential future staff retention and the expertise needed, which you have talked about. Have you been scrutinised enough about that so far, and is it on the agenda enough for other regulators and for Parliament at the moment?

Marcus Bokkerink: I and the board take that very seriously. It is treated as natural that we heavily scrutinise our capabilities and resources—that is what the board is there to do—and it helps that we have other scrutinisers too. You have asked me these questions, for example, which is fantastic, and I am sure that other committees will too. All I can say is that I encourage them to do that as much as they can. For example, at the end of every year we write an annual report and talk about our impact, the work we have done, whether it was in line with our priorities and what we have delivered. At the moment, we review that with government on a half-yearly basis and an annual basis, but I am happy to take that to a committee too to be probed. I know it is a question of time, but it is all there; we are very transparent and we are happy to be engaged on it.

Q83 Viscount Chandos: How robust is the CMA's governance? Is it in the right form? We heard, in our earlier session today, a former chair of Ofcom sing the praises of being a statutory corporation rather than a non-ministerial department. The advantages included the greater flexibility on pay, which you discussed earlier. That is one issue. We have touched on the role of the board and independence, but what changes would you recommend?

Marcus Bokkerink: It is a paramount issue. As I say, we have a lot of responsibility, and with that comes accountability and good governance. Holding the executives to account but also constructively enabling them to make the CMA a better place, which is the other part of holding to account, is a really important role of the board.

As a board, we have already made a number of changes that we found very helpful, because you can be quite activist in a lot of areas of an organisation if you choose to be. I will give some tangible examples of the kind of scrutiny and challenge that we brought. It is in some of the things I have mentioned.

There is a quite fundamental change in how we look at our internal objectives. The objective at the time was to become one of the leading competition authorities in the world, and to ask who we are here to serve and what outcomes we wanted to achieve. There was a quite fundamental revisiting of the strategy and priorities, so we looked at the medium term as well as the short term, replacing an annual rolling list of priorities.

There was a revamping of how we set priorities, with more board oversight on the pipeline, and quite a lot of steers and launches of ways in which we can improve how we go about fulfilling our duties. You may have noticed that there is a review process of the phase 2 merger process and how that operates. We decided to review that and see whether that can be optimised, and that is going for consultation. We thought that we needed to clarify and update the guidance to firms on how they could stay within competition law while supporting sustainability, so there is a sustainability guide. There is a deep dive on how concurrency is working; you asked whether the sharing of powers was working as well as it could. As the 10-year mark is coming up, we decided to make that a deep dive that we consult on. So we are intervening and governing as a board on areas of strategy policy and making changes there.

Then there is the internal operating model and how we go about doing our business, such as rethinking how we are using digital and data to make ourselves more effective. Can we deploy ourselves more flexibly? You may have noticed that, over the last year, some of the studies we have come out with are not six-month market studies and then you get some insights, but short pieces of work—three weeks, six weeks, or two months—and every time, we share the insights, draw some preliminary conclusions, start the debate and get some action. There is a way to be faster. Those are all just examples of things you can do as a board if you apply governance in a relatively active way.

It would be wrong for me not to mention that it has been quite a privilege to see the receptiveness and the openness of the organisation to doing things differently, learning from the outside and trying to make things even better from a very good starting point. It has been a joined-up exercise between the executive and the board, rather than a problem and a struggle.

Q84 Viscount Chandos: Your predecessor but one has made a number of suggestions, both about governance and organisation and some operational issues—for instance, advocating the return of the board and the organisation's leadership to what was envisaged by the legislation in 2013—and, within that, pushing case initiation back to the board, rather than from a pipeline steering group. Have these been absorbed or considered? Has anything changed? How do you see the validity of these?

Marcus Bokkerink: On that specific one, as I just explained, we have revamped quite materially how cases get launched: first, by setting the priorities more clearly and tangibly; and, secondly, by having that

process become one process instead of a tool-by-tool process, having it be a set of senior decision-makers at the medium term, and having the board involved, including me.

That is just one example of the many changes that I have just taken you through. I would just say: look at where we are and what has been achieved. We have changed the strategy and the objectives. We are changing the operating model and how we go about engaging with consumers and businesses. I think we are doing more work than ever. As I said, I find it to be a very receptive organisation to all of that, and I think we are achieving that and more.

Q85 The Chair: The Government have just announced a consultation to impose a growth duty on Ofgem, Ofwat and Ofcom. One of the key ingredients of this growth duty is enhancing competition. Have you had any interaction with government about how your duties will be expanded to do that? In the light of this consultation, and the earlier consultation announced in May, have you been anticipating how you will respond to that, and how you will engage those regulators to ensure that they are indeed enhancing competition?

Marcus Bokkerink: We have been very clear—and I hope I have also been clear at the outset, when I talked about our single duty—that our duty to promote competition for the benefit of consumers is the foundational duty and is the best way to drive growth.

The Chair: I think the Government are saying that they would like more.

Marcus Bokkerink: I am very confident that everything we are doing is contributing to that. I am also very confident, from the CMA's perspective, that the Government absolutely agree with that. Again, I point to the strategic steer that has just come out, which makes the very clear link, as we always have done, between competition, innovation and productivity, and therefore growth. I think the Government are very clear on that, and I am very comfortable that they are.

The Chair: Your duties, I would interpret from this, will be increasing.

Marcus Bokkerink: I really do not see them that way, to be honest.

The Chair: Thank you very much indeed for joining us. It has been a very interesting session. Any second or third thoughts that you may have for some of your responses would be very happily received.

Marcus Bokkerink: Thank you, and thank you again for allowing me to be here.