

Business, Energy and Industrial Strategy Committee

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

Tuesday 1 February 2022

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Members present: Darren Jones (Chair); Tonia Antoniazzi; Alan Brown; Richard Fuller; Ms Nusrat Ghani; Paul Howell; Mark Jenkinson; Andy McDonald; Charlotte Nichols; Mark Pawsey; Alexander Stafford.

Questions 108 - 167

Witnesses

I: Andrea Coscelli, Chief Executive, Competition and Markets Authority; Dame Melanie Dawes, Chief Executive, Ofcom, and Chair, Digital Regulation Cooperation Forum.

II: Neil Ross, Head of Policy, techUK; Camilla de Coverly Veale, Head of Regulation, The Coalition for a Digital Economy; Sunil Patel, Chief Data Officer, PwC.



Examination of Witnesses

Witnesses: Andrea Coscelli and Dame Melanie Dawes.

Q108 Chair: Welcome to this morning's session of the Business, Energy and Industrial Strategy Select Committee for our latest hearing in our inquiry into post-Brexit state aid and competition policy. The theme for today is looking at digital markets, the future of digital market regulation in the UK and the role the UK might play internationally in that space. On the first panel, we are delighted to welcome Dr Coscelli, the CEO of the CMA, and Dame Melanie, the CEO of Ofcom and the chair of the Digital Regulation Cooperation Forum. Good morning to both of you.

My first question is to Dr Coscelli. We are very conscious that your organisation at the CMA has an ever-increasing list of responsibilities. Since Brexit, you have been given merger control, antitrust control, the Digital Markets Unit, the Subsidy Advice Unit and the Office for the Internal Market. It has been a rapid period of growth for you, has it not? How is it going?

Andrea Coscelli: Good morning, everyone. When I started as the chief executive, which was literally just after the referendum in 2016, we had around 620 people in the CMA. We now have around 900, and we are projected to grow to more than 1,000 when all of these functions come in. We have definitely grown. In many ways, it happened sequentially in a way that helped us. We initially grew to make sure we could do the merger and antitrust cases that the European Commission was doing. That process is now finished, and it worked quite well. Over the last year or so, we have been working on a number of global mergers and global antitrust cases very much with the European Commission, the American agencies and others. That process has been successful.

The Office for the Internal Market then came after. The Bill was passed a year ago. We have now set up the unit. The unit is up and running. We have the powers. We have not yet received the first case, but essentially we are ready for it. For the Subsidy Advice Unit, as you know, the Bill is in front of Parliament and we have the funding to build the unit. We are halfway through that. That process is progressing well.

The Digital Markets Unit has happened in a shadow form as a sort of small version of it. The significant expansion will come with the Bill. The Bill is not in front of Parliament yet. Probably not by design, but the whole thing has happened sequentially in a way that has helped us operationally. We are quite happy with the way things have played out so far.

Q109 Chair: It sounds like you have been given sufficient funding to hire staff. Has hiring staff been an easy or a difficult process for you?

Andrea Coscelli: It depends a bit on the area. First of all, I would say that the funding from Government has been absolutely adequate. We are happy with what we have. We have had very constructive discussions



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with Treasury throughout. The funding in the three-year spending review, which, as you know, finished a few months ago, is what we asked for, so we are happy with that.

The issue, as you say quite rightly, is in converting the cash into people. It varies a bit by area. In some areas, particularly the Office for the Internal Market and the Subsidy Advice Unit, we have an advisory role. In many ways, it is a bit more like the traditional Civil Service. We have had some very good applicants and we are quite happy with the expansion there. The other issue there is that we are very conscious that these functions need to be very much pan-UK, so we are expanding in Edinburgh, Belfast, Cardiff and London.

For mergers, antitrust and digital it is a bit tougher, because the private sector market is very hot at the moment. As you know, in those areas there is significant M&A activity and salaries for lawyers have increased very significantly. We have Civil Service pay scales; we have had a pay freeze over the last 12 months. It is not super-easy, but we are trying quite hard.

Certainly, we have been reasonably successful in the expansion. We still carry a number of vacancies, so we are constantly fighting for talent. I am quite happy with where we are, but I certainly see a risk for the CMA going forward. We just need to remain competitive. We are trying various strategies. The Edinburgh office has been very successful. We have managed to grow very significantly there. We are able to pay the same as in London, so in many ways we are an attractive employer in Edinburgh. We announced a few months ago that we are going to expand in Manchester and Darlington. We are hopeful that that will help as well.

In many ways, it is interesting work; it is relevant work. We are quite successful at convincing people to come, in some cases, just for a few years, be on the right side of the argument and learn quite a lot by doing it. Post-Brexit, we are working on global mergers: we are looking at NVIDIA and Arm; we will presumably be looking into the recently announced Microsoft acquisition of Activision Blizzard. These are very interesting and meaningful cases, so it is quite attractive for people to come in. In a number of cases, people accept a pay cut to come into the CMA and do that.

Q110 Chair: Other than the digital markets legislation that you would like to see and the Subsidy Control Bill that is already in front of Parliament, are there any other pieces of legislation that you would like Government to bring forward to help you do your work or do you have everything that you now need?

Andrea Coscelli: There are essentially two pieces of legislation that we have been asking for over the last couple of years. As you say, one is digital regulation. The other one is a consultation by BEIS in the summer about an upgrade to our competition and consumer-protection powers.



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On the consumer powers, the reality is that we have powers that we think are not really sufficient to deal with the level of detriment we see. I write a number of letters to you and your colleagues about the detriment that people see, but we have to be quite selective about what we go after. The reason is that we cannot fine companies. If we find a problem, we have to threaten to take companies to court and the companies eventually just have to do the right thing. Reputationally, companies are not particularly keen to go through that process. Reputation matters and it is quite helpful, but, as a number of lawyers have told me, not having fining powers does not really make a case for compliance. Essentially, companies are sitting there and waiting to see whether we go after them or not.

For example, as you know, we are doing quite a lot of work on ground rents, developers and investors. I have received lots of letters from Members of Parliament and citizens. We have to select who we go after—some developers and some investors—because each case is a separate file. We need to prepare the file and prepare to go to court. If we had fining powers, you could imagine that other developers would sit there and say, “They are worried about these particular practices. I should just get on and fix it, because otherwise I will be fined for it”. I have a fairly large team sequentially going through it, which is not a very efficient process. BEIS is very much on board with that; the consultation is proposing things that we are very happy with. We hope this can be in front of Parliament and progress in the coming months.

On the competition side, I would say it is a bit more about upgrading our existing powers to deal with some changes, because the markets have changed since the legislation was put in place 20 years ago. That is more incremental, while on the consumer it is a slightly more fundamental change in the regime.

Q111 Chair: Dame Melanie, Ofcom is responsible for competition policy in the areas that your organisation regulates. I am conscious that yesterday the Secretary of State published the economic regulation policy paper that he wrote to us about. I was interested to see that one of the provisions in the policy paper was trying to increase competition for strategic investment opportunities, presumably including, for example, in broadband and telecoms. Do you have any initial thoughts on what that might look like for you?

Dame Melanie Dawes: Yes, we very much welcome the Government taking a look at this. The broad headings that the Government have set out seem to me to be very sensible to have a look at. I also welcome what they say about how the economic regulation landscape is working well and that the independence of our regulators is a real strength for the UK, which I firmly believe, as you might expect me to say.

When it comes to Ofcom’s work, partly because it is so clear in our duties that promoting competition is a core part of how we are to discharge our duties, we think we have a good track record over the last couple of



decades, particularly when you think about telecoms. Through local loop unbundling in the early 2000s, we opened up the retail market for fixed telecoms, allowing people like Sky and TalkTalk into the market to compete with BT's consumer arm. More recently, we have really thought hard about how to encourage competition in the wholesale network layer. We have opened up access to Openreach's ducts under the ground, which carry fibre and copper, and the poles on the street, which carry it above ground, to other operators so they can come in and make use of that. We have also set pricing rules that give the headroom that not just BT and Openreach but the rest of the market need in order to get a return on what is a very long-term and uncertain investment.

We have thought very hard about how to promote competition at the same time as making sure that the consumer is protected. Alongside that, we have empowered the consumer by supporting switching, which used to be quite difficult and is now a lot easier than it was, and making sure that you are notified by your provider if your contract is about to end, if your deal might be about to come to an end and you might want to negotiate or look for a new one. We will be very keen to engage with the Government and talk about some of what we have done but also to explore where we might go further.

Q112 Chair: One of the things in that paper was a suggestion that major strategic investments might be removed from the price control powers that you have. Presumably, that would mean that other challenger investors could come in to look at telecoms infrastructure, but you would not necessarily have the authority around setting prices. Presumably that would increase competition in the investment case, but would that be to the detriment of consumers at the end of the day?

Dame Melanie Dawes: Effectively, that is what we did with our latest review, which we published last March. We have fixed with inflation the core price of existing FTTC. That is the superfast copper products to the home, which is what most of us are still using. It is certainly what I am still using at home. We have not fixed the price of the fibre replacements. We have allowed that market to be a competitive one while anchoring for the consumer the core price, in line with inflation, of the product that we are all using at the moment. We thought that struck the right balance between providing certainty and an anchor for pricing, which is really important particularly with the cost of living concerns at the moment, and also allowing competition for the new products.

Q113 Chair: Much like the CMA, the work you have to do at Ofcom is rapidly increasing. We have worked together on the Online Safety Bill on another committee. In terms of your anticipated increase in staff count and funding from Government, are you comfortable, like the CMA, that you are being given what you need and that you are able to recruit the people you need to have?

Dame Melanie Dawes: Yes, we have had a lot of support from the Government to build up our resources ahead of time, which, as I said to



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the Joint Committee in November, is quite unusual and very welcome. It is partly because we are already regulating through the video sharing platforms legislation. It is also allowing us to build before we need the new resource for online safety as well, so that enables us to be ahead of the curve.

In terms of our numbers, it will be up to about 400 people, roughly, for online safety and our new responsibilities on telecoms security, which were finally enacted and go live in the autumn. We are about halfway through our recruitment—slightly over halfway now—on online safety. Like Andrea has said, it is never easy to recruit people into the public sector when they have been receiving commercial salaries and incentives. Ofcom has more flexibility than is available for Civil Service organisations.

What is really helping us is the mission. People are really keen to come and help build this new regime. We have a lot of expertise joining us from not-for-profit organisations like the Internet Watch Foundation, 5Rights and so on, as well as from the platforms. We have had people now start to join us from the big platforms, which is very welcome. We have recruited a chief technology officer from Amazon. I am pretty confident that we will get there. Interestingly, the hardest skill we find to recruit is cybersecurity rather than online technology. That is because that market is so hot and every single sector needs those people.

Q114 Mark Pawsey: Dr Coscelli, you spoke about the additional work that you are seeing as a consequence of leaving the EU. Could you tell us your budget before we left the EU and your budget currently?

Andrea Coscelli: The budget was around £65 million before we left the EU. We are projected to go up to £130 million, so double that. That includes the Digital Markets Unit, which in a way is separate from being within or outside the EU.

Q115 Alan Brown: Dr Coscelli, to focus on the Digital Markets Unit, you said in your opening remarks that it is effectively a shadow unit at the moment. If it is operating as a shadow unit, how does that allow you to take the correct action to make any intervention that you think is required? Is it not a bit illogical that the Digital Markets Unit has been set up, but then the Government have done a consultation on it and they are still to reflect on that? It is very open-ended: "We will do it; we will put through legislation to put you on a statutory basis when parliamentary time allows". Is a definitive timescale not also required to put you on that statutory footing?

Andrea Coscelli: That was a decision by Government. The reason I am quite happy with the situation is that we have our existing powers. It probably makes sense to think about digital regulation as an extra layer on top of our existing powers. The people we have in the unit today are helping to prepare the legislation, but they are also working on our existing cases using our existing powers and achieving results by doing so.



The second issue is that, like Melanie has just indicated, it is very hard to have suddenly, say, £20 million and be told that you should just go out and recruit 250 people to set up a new unit. It makes sense to try to do it all the time just because it is quite hard. Right now we have about 50 people out of a projected 250, and I am very comfortable that these 50 people are doing very useful things because of our existing powers. This year we have extra money to hire another 10 people, so we will go up to 60. Essentially, the rest of the funds will only come after the legislation is sufficiently advanced.

In practice, it is working. Ideally, I would like to see the legislation come in as soon as possible, but it is for Government to decide the relative priority of this legislation vis-à-vis other pieces of legislation.

Q116 **Alan Brown:** Could you outline, then, what risks there are and what interventions you are not able to take at the moment because the legislation is not there and you do not have that statutory power? It seems contradictory. You have explained that you have existing powers, but it is clear that more powers are wanted and required. I am trying to understand what that gap is and what the risks are.

Andrea Coscelli: Let me give you a concrete example. We did a big study 18 months ago on online advertising and found a number of problems there. In an ideal world, we would like to have the new powers, and be able to designate Google and Facebook as having strategic market status and impose a code of conduct on them. We think that would be plan A; it would be the best way forward. Because we do not have these powers, we are now deciding, depending on the timing of the legislation, whether we should use some of our existing powers to deal with some of these problems.

Internally, we think these powers are very much plan B, because they are slower and there is a risk that we will end up spending years in litigation, which is what has happened historically with antitrust cases. The trade-off between intervening and not intervening, and dedicated resources, is quite different with our existing powers than what we would like to do with the new powers. That is the problem we have at the moment.

Q117 **Alan Brown:** I know this might be quite difficult to answer, but do Government not share these concerns, then? From what you are saying, I would have thought that Government would want to commit quickly to bringing this legislation forward rather than just saying, "whenever parliamentary time allows". Quite often we know that "when parliamentary time allows" means it is a low priority for the Government.

Andrea Coscelli: If you think about the division of labour, in a sense I see my role as trying to explain to the Government the pros and cons of the current situation versus what we would be able to do with the new legislation. At the end of the day, it is clearly for the Government to decide in relative terms the priority of this piece of legislation versus others, which I am not across.



We have a good dialogue. I am pretty confident that Government are clear about some of these trade-offs, but at the end of the day I am clearly not in a position to decide.

Q118 Alan Brown: How well does the Digital Markets Unit compare to other international institutions such as the Federal Trade Commission? You mentioned Google and Apple there. They are quite clearly worldwide organisations. I wonder how you compare to these other international institutions.

Andrea Coscelli: This is a very important question. There are parallel discussions going on in the European Union, the US, Australia and a number of other countries. We are following these discussions very closely. We have very strong relationships there. The problem that people are trying to resolve is very much the same. If you think about it, outside some geographies, these platforms are essentially global monopolies. The competition authorities like us have come to the same conclusion that extra regulation is needed.

If you think about it, we deal with problems in the general economy. We deal with problems everywhere. There are a number of industries, like telecoms, financial services and energy, where we believe that there is a need for extra rules and regulations because the general rules are not sufficient, given the complexity and the importance of these industries to the economy. What we are saying is that the big tech platforms and other parts of the digital economy are exactly like that. They need new rules and regulations, because at the moment we are not dealing sufficiently with the problem we find. The same conversation is going on in the European Union and in the US.

What is a bit frustrating for me is that we were, to be honest, a bit ahead of the pack. There was the Furman report for the Treasury in 2019, which was very good, about setting up the infrastructure. The legislation is not in front of you yet. The European Union was a bit behind us but is now ahead of us. They are progressing their Digital Services Act, which is the equivalent of the Online Safety Bill, in parallel with us, but on the markets side their piece of legislation, which is called the Digital Markets Act, is progressing in parallel. Here, this piece of legislation is now behind the Online Safety Bill.

The French presidency is now saying publicly that they hope to finish and have the legislation in place by the summer, which is clearly now going to be before we will have the legislation in place here. It is important for Government and Parliament to realise that this is not neutral, in the sense that we are dealing with global platforms. If there is a very important piece of legislation coming in within the European Union that is creating very strong obligations on the platform and compliance costs, this is clearly going to have an impact on what we do next.

The problem they are trying to solve is the same and a lot of the solutions are not inconsistent with what we are trying to do here, but



some of the mechanisms are quite different. It is very difficult to predict the sequencing, what is going to happen there and what is going to happen here, but it would be preferable to discuss this legislation sooner rather than later. Otherwise there is a risk that we will be constrained in terms of our margins for manoeuvre in that space.

Q119 Alan Brown: Timescales are critical. If I could just move on slightly, in 2021 the CMA directed Facebook to sell Giphy, as it would reduce competition. This was the first time that the CMA had blocked a major digital acquisition. What precedent does this set for digital regulation? What impact do decisions such as this have on digital markets more broadly in the UK?

Andrea Coscelli: This is a very important theme, in the sense that it is a fact that Facebook, Google and Amazon have grown very successfully partially because they are clearly very good companies that have done lots of very good things, but partially because they have been allowed to buy a number of rivals over the years. This has never been blocked. It has not been blocked by the American authorities; it was not blocked by the European Commission before we had the powers pre-Brexit; it has not been blocked by us. This is the first time that we believe that it is not in the interests of consumers that Facebook is allowed to buy yet another rival, which is this company called Giphy.

We blocked that acquisition. The company, Facebook, disagrees with us. It has now appealed that decision, so we are going to be defending our decision in front of the specialist Competition Appeal Tribunal in April. The US agencies under the new Administration are very much in the same place as we are. They are saying publicly that they are very worried about this strategy of buying rivals early on. Historically, monopolies have been very good at scanning the horizon and pouncing on new rivals early on. We think it is very important that we police that space.

One of the reasons that we would like the special powers on mergers is that you get into a very complicated legal discussion about the level of confidence and certainty you need to have as an agency to block an early-stage acquisition. Our view is that in the early 2000s, before all of these digital platforms were created, Parliament gave us the powers to protect consumers and to protect the economy. We think we have the powers, and that is what we are doing. The appeal by Facebook is very much along these lines: "Well, it is early days. This is a new company. If you look at their business plan, they are looking at a number of things. If you look at the legal certainty in the system, this is a difficult decision for you to take". We will see with interest what the court makes of it, because it feeds into the discussion about whether our current powers are sufficient or whether we need new powers.

Q120 Alan Brown: Do you think that having the new powers that you spoke about and placing the DMU on a statutory footing is likely to make it easier for you to deal with these mergers and acquisitions?



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Andrea Coscelli: That is the plan. There are different components to the legislation. This part about having a special merger regime is a part that the Government might decide to include or not to include. There are a number of large businesses that are quite outspoken against it. It would essentially give us greater powers to interfere with M&A activity. We feel quite strongly that this is really about giving small and medium-sized British businesses the chance to expand.

I will just give you an example. Yesterday I was on a call with an entrepreneur based in the south-west of the country who has a small company. He was telling us that the current conversations that he has with investors are always about the risks that Google and Facebook might kill this particular business. He has a dependency on these businesses. Quite rationally, investors want to feel confident that they are sufficiently independent and able to survive this possible challenge. This regulation is very much about giving confidence to businesses and investors that, if you have good ideas, you are allowed to expand successfully.

If you think about it, we need growth; we need tax revenues. We think this is really important. It is very important to understand that this is pro-competitive regulation. This is about the growth of a business ecosystem. It is not traditional regulation, which some people have concerns about.

Q121 **Alan Brown:** The CMA has stated that the Digital Markets Unit should have the power to introduce data-related interventions. Clearly, consumers are always worried about how their data is used and harvested. Would that come as part of the legislation making the DMU a statutory body or would it be separate legislation that would allow you to have that intervention?

Andrea Coscelli: It would be part of the same legislation. We believe that the legislation should give us the powers to have what we call pro-competitive interventions. The problem that we are trying to solve is that some of these large platforms have an incredible amount of data on all of us. If you are trying to compete with them, that is really one of the massive disadvantages that you have.

With the proper safeguards—this is why we are working closely with the Information Commissioner’s Office in a number of these areas—we should allow new growing businesses access to some of the data to allow them to compete on a level playing field. It is really about trying to deal with the fact that today there are very significant asymmetries.

It would be very instructive for anybody who is a Google user, as the vast majority of us are, to go on Google Takeout, which is this function that allows you to look at all the information that Google has on you. If most people did that exercise, they would be quite stunned to see what is there. That is what Google has. If you are competing with them, you need to find a way to create some balance. Otherwise, nothing is going to change for years.



Q122 **Tonia Antoniazzi:** My questions are to you, Melanie. The draft Online Safety Bill included proposals to give Ofcom new powers, including fining companies and pursuing criminal action for non-compliance. You have spoken about having the flexibility to deliver the mission and the difficulties in recruiting for cybersecurity. Does Ofcom have the resources and the capacity to implement the Online Safety Bill effectively?

Dame Melanie Dawes: The short answer is yes; we think we do. We are building them, but we are under no illusions about the scale of the challenge. We are dealing with the biggest platforms; they are going to have very deep pockets. We have done a lot of engagement with the Treasury and DCMS about what we need over these next few years. That has been very constructive. As the Online Safety Bill is finalised, we will need to look at the scope and just check that the deal we have struck with the Government is appropriate for the final balance of responsibilities that we will have. That is one important factor.

We are also going to need to be very flexible. We are thinking right now about what we would do if we suddenly found ourselves with a very big legal battle and how we would be able to suddenly expand our resources. That is partly about how we pay for it, but it is also about how we find people at very short notice. We are thinking about that and we are trying to do as much contingency planning as we can.

In the end, Ofcom has a lot of existing expertise and experience, both on the commercial side and in the more traditional technologies, which we are expanding with online technologies. We have very good legal teams and good economists. We are building on a lot of strengths, but we are under no illusions about the task. It is a big preoccupation, as you can imagine, for me as chief executive to make sure we are building an organisation that is really fit for this task.

Tonia Antoniazzi: You are also trying to see the unforeseen consequences coming down the line.

Dame Melanie Dawes: Yes, exactly, to be prepared for all eventualities.

Q123 **Tonia Antoniazzi:** The Online Safety Bill has been criticised especially by organisations that you might call freedom of expression organisations. The reason why is its potential to undermine or prohibit the use of end-to-end encryption. How can Ofcom ensure the protection of consumers' and businesses' data once the Online Safety Bill is implemented?

Dame Melanie Dawes: The question about end-to-end encryption is quite a live one for the Government. It is a real trade-off. It can have great benefits for privacy—the ICO, the Information Commissioner's Office, said something about this last week in fact—but it can also create environments where nobody can see what the risks are and where nobody can see what is going on.

Particularly when you think about the grooming of children and young people, and child sexual exploitation, there are safety concerns over the



idea of an encrypted environment where the platforms do not even know what is going on and do not have the ability to see. That is the debate that is going on. As currently drafted, the Bill would not give Ofcom the ability to go in and require a particular kind of technology on encryption specifically. As I said, that debate is quite live at the moment.

Come what may, we know we are going to need to work really closely with the Information Commissioner's Office on this because of the trade-offs. It is a really good example of why we set up the Digital Regulation Cooperation Forum, the DRCF. It is an issue where we want to do as much of the heavy lifting as regulators about where those trade-offs lie rather than just leave it to the industry. That is partly because the industry does not want that confusion, which is fair enough, but it is also because we do not want them to be playing one regulator off against another.

Q124 Tonia Antoniazzi: Your report, *Video-Sharing Platforms: Ofcom's Plan and Approach*, which was published in October last year, stated that the new rules such as age verification on video platforms will only apply to video streaming services with a regional headquarters in the UK. We all know how prolific YouTube is. It is the biggest player in the video streaming industry. How does Ofcom intend to regulate video streaming platforms effectively and fairly if it can regulate only a few selected platforms before the Online Safety Bill extends its regulations beyond the UK?

Dame Melanie Dawes: Yes, you are right. About 20 services are currently in scope of our video sharing platform regime. That does include some really popular services, particularly the ones that are children are really on these days, including TikTok, Snapchat and Twitch. It does not include YouTube, because it is headquartered in Dublin. Once the Online Safety Bill is enacted, that will change. Hopefully that is only a little more than a year away now. It is not a very long period that we have to wait.

We are trying to do two things. One is to use the video sharing platform regime as much as we can. We are sweating it really hard on things like age verification and making sure that services that have a lot of kids on them are designed with those children in mind, rather than pretending that it is just adults who are on their services when we know for a fact it is also a lot of younger people. We are also looking at hate speech, things like user flagging and reporting mechanisms and so on.

We have quite an active programme with those platforms. They are quite engaged. In some ways, it is a chance for them to get a bit ahead of the curve of what is coming next year versus their competitors. At the same time, we are also talking to YouTube, Google, Facebook, Twitter and the other big platforms, and we have been doing so for a while, to get under the bonnet of how they run their services and make decisions. We have talked to a lot of the policy people and lawyers, but also to some of the technologists and product designers. We have been making use of the



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time so that we can move as quickly as possible once the new regime comes in.

Q125 **Andy McDonald:** Morning, both. I would like to ask you some questions about the Digital Regulation Cooperation Forum in a moment. Before I do, on this issue of funding, you talked about the markets being hot and trying to recruit people to come in to your services. Last week, statutory instruments were passed by this House whereby the Certification Officer, the regulator for trade unions, was given powers and a levy to raise funds to fund their organisation and the running of their offices. Has that model been given any thought? The principle has now been established; there is a precedent here. Could that become relevant? Would that give you the flexibility to compete? Is there any merit in that?

Dame Melanie Dawes: Ofcom is funded through a set of industry levies, like all the various statutory regulators. That is how the online safety regime will be funded once the legislation is in place. We are also subject to an overall cap that the Treasury sets, so we cannot go completely mad and start charging huge fees without any kind of oversight. That gives us quite a bit of flexibility, and we also have independence in how we run our budgets and what salary scales we set.

Andrea Coscelli: In our case, it is a bit of a live discussion. For the Digital Markets Unit, Government are currently consulting on whether it should be funded by a levy or by taxpayers. It would be quite complicated to run an organisation where most of the organisation comes from the taxpayer and some comes from the levy, because in a sense you need to pay people the same. It would be quite hard to run the same organisation where people in one area are paid more than people in a different area.

We are very open-minded. We are having all of these discussions. There is potentially also a way of thinking about the CMA moving outside the Civil Service and having greater flexibility on the same budget, which would have some attraction but also some complexities around pension treatment and various other things. We have some of these conversations with Treasury. It is something that we need to keep an open mind on. At the moment, as I was saying, we are reasonably okay in terms of where we are. There might be some scenarios where we are under quite a lot of pressure in a few years' time. This might be a very relevant discussion.

Q126 **Andy McDonald:** That is really informative and helpful. Turning to the forum itself, the House of Lords Communications and Digital Committee published its report in December last year. They argued that challenges remain within the forum such as its limited membership of regulators with relevant expertise. Should more regulators join the forum? What would the challenges and opportunities of an expanded membership be?

Dame Melanie Dawes: We have chosen for the moment to go for depth among four regulators rather than for breadth among many. There is a



trade-off there: you cannot do both. It is very intensive and it is a big priority for all of us four. We are putting resource into it; we are putting a lot of our own time into it. We are really trying to get our organisations to work differently with each other.

That is where we are starting from, but we have already set up a forum for any other regulator that wants to be involved. In fact, once they get a bit more of an understanding of what we are up to, most of the other regulators say that they prefer to have a more bespoke partnership, for example getting involved in certain projects or in particular horizontal initiatives. Next week, for example, we are launching a research portal where you will be able to go for all research on digital regulation from pretty much any regulator. We are starting off with the DRCF members, but the Gambling Commission and the Advertising Standards Authority are joining us next week, and I hope that will expand.

We are trying to be flexible while being pretty intensive and very committed to what we are doing among the four, because we just think it is necessary. It is a very different and a deeper form of communication.

Andrea Coscelli: It is important for the Committee to be aware that we are co-operating with some of these other regulators on specific projects right now. If you think about two of the obvious candidates, the Payment Systems Regulator and the Advertising Standards Authority, today the CMA is running joint projects with them. It is not that, because they are not members of the DRCF, we are not reaching out to them and working with them on specific matters.

Q127 **Andy McDonald:** Related to that, the Joint Committee on the Draft Online Safety Bill report in December 2021 reiterated the House of Lords Communications and Digital Committee recommendations that regulators in the forum should be under a statutory requirement to co-operate and consult with one another. Does the forum require statutory powers to be effective and to ensure co-operation between regulators?

Andrea Coscelli: Personally, I do not think so. We are working very well together. It is important to bear in mind that each of us has a very clear statutory responsibility. For me it is essential to work closely with Melanie and the other agencies to deliver my statutory obligations. It would not make any difference to us to have a statutory requirement.

You can then go into hypotheticals. You can imagine a situation where suddenly you make the wrong appointments to the boards of some of these regulators and you have a board that irrationally decides not to co-operate with the others. In that case, technically, the statutory requirements could provide some leverage. Historically in this country regulators have always worked very closely together. We run a concurrency regime on the Competition Act, and every week we have multiple calls with regulators across a number of areas. It is not a first order issue. I am not worried about not having the statutory requirement.



Dame Melanie Dawes: There are two slightly distinct things here. First, do we have sufficient statutory underpinnings to make us co-operate and support us co-operating? We have put some recommendations into Government on where some of our existing information gateways, requirements to consult and so on could be expanded beyond our existing remit to make sure they are there properly for the digital challenge. That is about making sure the pipes through which we communicate are as wide and as flexible as possible.

That is one set of issues, but it is a slightly distinct question as to whether the DRCF itself should become a statutory body. Our worry is that something that tries to set out in statute how we should co-operate and perhaps direct us in some way could get quite confusing. It could add a layer of bureaucracy, undercut our accountability for discharging our responsibilities and ultimately make it harder for our decisions to stick in court, because it gives people more reasons and more ability to challenge us.

We are quite wary about the suggestion of a body that would direct our co-operation, which is what you would be doing if you made the DRCF statutory. We are very actively working with Government on what we can do to expand and put a bit of a backstop, as Andrea was describing, around our requirements to co-operate while leaving it to our discretion as to how we do that.

Q128 **Andy McDonald:** In your current non-statutory form, can you point to actions that have been taken as a result of that co-operation that would really bolster this position of saying, “We are fine as we are; we do not need a statutory basis”? Is there anything that we can point to?

Andrea Coscelli: We have an ongoing investigation into Google on what is called the privacy sandbox. We worked very closely with the Information Commissioner’s Office under the DRCF banner. We published draft commitments by Google, on which we worked together with the ICO. We will reach a final decision on that in the coming weeks. Together with the ICO, we published a paper giving guidance to businesses about the intersection of privacy and competition. We have done work on platforms and publishers together with Ofcom, which we sent to Government a couple of months ago. We are shortly going to publish a piece of work on algorithms for the big platforms, which is something that all of us are dealing with. We are trying to have a very clear set of principles that apply across all four bodies. It is a work programme that is very much focused on delivery.

We have—Melanie should get a lot of credit for it—just hired a very strong chief executive for DRCF, who unfortunately could not be here because she is in Beijing representing the UK at the Winter Olympics. She was a senior executive at Google and she is driving forward a very clear work programme for DRCF. It is very much a focus of what we are doing. I guess you have other examples as well.



Dame Melanie Dawes: Yes. One of the concrete examples is the work we are doing at the moment with the Information Commissioner's Office on our video sharing platforms regulation and their children's code, which basically imposes new requirements on the platforms to protect the data privacy of children under GDPR. A lot of the things that you want platforms to do in terms of having safeguards for younger people in particular are similar to the kinds of things we are looking at for VSP regulation, such as age assurance and age verification.

We would like to be as seamless as possible in the future about that so that companies do not feel they have to engage with two codes on broadly the same thing. That would be a very concrete cross-agency piece of working, which is really just starting. For Ofcom and indeed for the CMA, because our new regimes are not up and running yet, a lot of this is still at what I would describe as the more strategic level at the moment—things like how we regulate algorithms and what we mean by design frameworks. It is quite technical, but it is also quite strategic. It is about getting ahead of the new issues. More and more, that will be followed by concrete regulatory projects where we are doing our jobs together more than we have ever done before.

Q129 **Andy McDonald:** If I understand you correctly, not being on a statutory footing does not mean you cannot be effective, because you are collaborating. If the regulation is there, it is inherent in the organisation itself; it does not necessarily have to be in the forum. Is that your position?

Andrea Coscelli: Exactly, yes. It is important for the Committee to bear in mind that the only way for regulators like us to do something useful for consumers is essentially to have a legal process of some sort that is supported and delivered by legislation. These are four high-performing regulators with important legal powers. We are hopefully getting additional legal powers in some areas. That is the way to achieve results. The DRCF is part of that picture, but it is always about using the legal powers around the regulators. That is why we are quite confident that the current structure is delivering and will deliver more for consumers in the coming years.

Dame Melanie Dawes: Can I just add one point? It is very important that, as four regulators, we hold ourselves to account collectively as well as individually. To be honest, we are very glad to see the interest in Parliament about that. We completely get that we need to be accountable together and not just individually. We are glad to be here today, but we would strongly support ideas as to how the DRCF can be held to account in the future by Parliament, because what we are doing as joined-up regulators is slightly different to what we have done before.

Q130 **Chair:** What would you like that to look like?

Dame Melanie Dawes: It can be a particular committee. There are proposals for a new joint committee. It could be one of the existing



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committees. There could be several committees that are interested in our work. We would just request that we do not get too over-booked. We are already trying to be very public about our plans. At the end of this financial year, we will publish a report on what we have achieved in our first year, what we have learned and how we will apply that in the years ahead. That will be something that we would be happy to account to Parliament on in whatever form. As I say, it might be of interest to several committees.

Q131 Charlotte Nichols: The G7 digital summit compendium highlighted the need for continued collaboration between competition agencies, other regulators and Governments to be able to address the challenges of digital firms operating across borders and jurisdictions. We have spoken a bit today about issues to do with end-to-end encryption, but I am interested in regulatory divergence between us and the EU, which could mean that people are able to use, for example, virtual private networks to appear to be accessing the internet from a different part of the world when they are actually within the UK, in order to circumvent the restrictions and duties that we might place on tech companies.

I will start with Dame Melanie. How should the CMA and the DRCF learn from and work with the European Commission and the Federal Trade Commission around these issues?

Dame Melanie Dawes: It is a very good question. Because of the global nature of these platforms, we have to co-operate internationally better than ever before just as we have to co-operate within the UK's boundaries. We have quite long-established and very good partnerships certainly on the Ofcom side with the Federal Trade Commission and, in our case, the Federal Communications Commission in the US.

We want to stay close to what the European Union is doing. As Andrea was saying earlier, they are bringing forward twin legislation that very much mirrors what we are doing in the UK on digital markets and online safety. We are going to have to choose where we want to diverge from what they are doing, and the legislation does that in a number of respects. As regulators, we will have choices as well. Sometimes it will make sense for us all to agree to do broadly the same thing and to reach a common international accord on that.

For example, what does good age verification software look like, if you really need to stop under-18s accessing an adult site? That is a technical technology question that does not need to be answered differently in every jurisdiction. It is just the sort of thing that we can co-operate on. Boundaries around freedom of speech, freedom of expression and harmful disinformation are more political questions where different Parliaments are going to want to draw different lines. Indeed, I suspect that there probably will not be any regulatory action in the US on that.

It is going to be complicated, but we are used to that. From Ofcom's perspective, what is interesting is that Brexit has opened us up a bit to



explore partnerships, for example, with the Australians, who are one of the only other countries that already have an online safety regime up and running, or the Canadians, who are thinking in the same way. With the Irish likely to be in a leading role on the European side because so many companies are platformed in Dublin, there is quite a strong English language axis building up around online safety, which is potentially quite constructive.

Andrea Coscelli: We are working very closely with a number of agencies very much as Melanie has said. The way that I see our role is very much to be aware of what others are doing and trying to co-ordinate when needed. For instance, if you think about a global merger like Microsoft buying a gaming company, it makes a lot of sense for us to work closely with the European Union, the Americans and others, because in many ways you would expect the answer to be the same in the different jurisdictions. It is also important to bear in mind that these companies are very large in each individual country. They are much bigger than a lot of the national companies that we believe are very important players. A degree of divergence and sovereignty is really important in this debate as well.

We see our role as trying to explain to Parliament the various trade-offs and options on the table. Ultimately, there are clearly trade-offs between convergence and divergence, and people need to decide on the basis of that. Full convergence is not the answer. These are critical questions and very important players. Interestingly, a number of countries are moving in that direction. There is a lot of activity in the US but also within member states in the European Union. People are coming to the same conclusion: if they feel strongly about regulating particular aspects of platforms, they should just do it, even if others do not.

Q132 **Charlotte Nichols:** To come back on that point in terms of trade deals, we have seen that the US is looking to push, particularly with smaller countries around the world, the section 230 provisions on platform liability. You talked about the question of which model we seek to have closer convergence with: the US model, where platforms are not liable for third-party content hosted on their sites and have a constitutional right to a much wider amount of free speech than we have in this country, or something more towards the European model. Are we looking to go further than the EU in terms of that divergence or are we looking to go more towards a US-style model? I would personally be very, very concerned about that.

Dame Melanie Dawes: Ultimately, this is a question for Government, for Parliament and for the Bill. The US legal framework asks the question, "Is this platform a publisher?" whereas the UK Bill imposes a duty of care on the platforms to their users. That has a number of implications. First, it is not just about content, although it is about harmful content. It is also about the experience—the risk of being groomed or being bullied. It is a broader concept of care and harm than just a publisher notion of content.



You are right: the US, for example, no longer has any media content regulation. It used to, but it no longer does. The UK has a long tradition of a broadcasting code overseen by Ofcom that has to both uphold freedom of speech, which we hold very dear in Ofcom, and step in occasionally—it is quite occasional—where harmful material has been broadcast. When we step in, it is nearly always seriously harmful hate speech or extremely serious misinformation. It is very rarely because people were offended.

That is a rather long way of saying that we will be quite different from the US, but a lot of people in the US are quite interested by what the UK and Ofcom are doing and quite pleased that we are going to be setting some global benchmarks here. I think they are going to want to work with us, even if they are not legislating in the same way.

Andrea Coscelli: We have looked at some of these issues from a consumer protection point of view in terms of fraud, scams, fake reviews and all sorts of other problematic things hosted on the platforms. I would find it quite odd if we were to find these things acceptable because of a historical issue in the US, which I am not sure should have a very significant impact on the choices we make here.

Q133 **Paul Howell:** I would just like to change slightly and look from a business perspective. We are concerned that the need for the regulation is all about protecting consumers and the impact there. Can I just explore a little bit about how you would work with businesses to ensure they are not disproportionately negatively affected when the increased regulation is applied?

Andrea Coscelli: It is important to bear in mind that the DMU regulation will only apply to a handful of very large platforms. Every other business would not see any change. Our view is that it will be beneficial to SMEs, because the intent and the purpose is to help them compete on a level playing field. I would be worried if businesses outside the very large platforms complained to us or to you about the legislation, because it is very much intended to help them.

As with any sort of legislation, we have no particular desire to introduce new regulations. These things are complicated and it is always very important to have a cost-benefit analysis. For a number of years we have seen outcomes that we are not happy with, and that is why we are proposing it. Absent that, we would not be proposing it. In many ways, it is going to be a lot of extra work and extra cost to taxpayers to put it in place. It is very much a cost-benefit analysis point, and we think the benefits are likely to be very large and to outweigh the extra cost.

Dame Melanie Dawes: From Ofcom's perspective, whenever you introduce a new ex ante regulatory regime, there is always a risk that it is easier for the big guys to comply because they have deeper pockets, which squeezes the little firms or the new firms that are coming through. It is always a risk. There are a number of ways that the Bill sets out



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Ofcom's obligations, which require us to be proportionate and to take into account the need to promote innovation. That will help us be required to take those things into account in our decision-making.

The tier system in the Bill means that the biggest obligations fall on the largest platforms with the biggest reach. For smaller platforms, the key thing will be that they do a good risk assessment, that they are clear what features of their platforms might be creating risk and that they are clear about how they are addressing that risk. There will be many services where there is not a lot more to do; there is very clear and good community moderation, and not a great deal more that needs to be invested in. This is about the larger platforms and those with lots of children, where speech can go very viral very quickly. By their very nature, those are the bigger platforms, where we need to see the most by way of accountability and transparency. It is an important issue, but it is one that we are very alive to.

Finally, if we get this right, we will have the capacity to support and grow a safety tech industry in the UK around the Online Safety Bill. That is a real opportunity for growth and innovation in that particular sphere.

Q134 Paul Howell: I guess there is some sort of monitoring. You talked earlier about the need to allow smaller firms to grow, expand and get through. All of a sudden, the smaller firms become the medium, and the medium hopefully become the large and get a platform based on that. You have to have observation of the changes in a business as well.

Andrea Coscelli: In our case, there is quite a long way to go for a lot of the small and medium-sized category.

Dame Melanie Dawes: At the moment, if you are a growing firm, the risk is that you are going to be bought by one of the platforms in a deal you cannot refuse. This is one of the reasons why I so strongly support the DMU, because we need to tackle that entrenched market power at source if we are going to grow an online economy that is perhaps a bit broader and more interesting than the one we have today.

Q135 Paul Howell: One thing that has been touched on as we have gone through this is the fact that you have different regulatory authorities throughout the world. As these firms are growing, they are going to have to deal with different progress at different stages. How can you help these smaller businesses get through that uncertainty stage? As you say, the EU might be slightly behind or slightly ahead; the US might be slightly behind or slightly ahead. They are trying to deal with all three simultaneously. Is there anything you can do to support businesses in that?

Dame Melanie Dawes: This is why the UK's first-mover advantage, if we can still hang on to it, is quite important. If we can set the standards first, we hope others will follow. On video sharing platforms, we are ahead of the rest of Europe. No one else has got a regime up and running



as quickly as us. No one else has anything quite like the Information Commissioner's children's code. That is already setting new standards.

As I was saying earlier, we are going to need to be very pragmatic here. There is no point in the UK having a marginally different set of standards to other countries just for the sake of it, if that stymies innovation. The other important principle of the Online Safety Bill is that, for the most part, we are not going to be mandating that this or that is a solution. The onus in the Bill is placed on companies to do their risk assessments and come up with their solutions. The circumstances in which Ofcom will be intervening and saying, "This is the concrete answer" are really very rare. It is more about increasing accountability and transparency across the industry.

Andrea Coscelli: From our point of view, it is a very valid point. Because of the constant communication with our international counterparts, we try to have convergence wherever it makes sense. We were talking about data access or interoperability before. If we end up designing that, I would hope that we can work with our counterparts to do it in a way that is consistent so that small and medium-sized companies operating across countries can access the same processes. It is absolutely one of the objectives for us.

Chair: That brings this first panel to an end. Dame Melanie Dawes and Dr Andrea Coscelli, thank you for your answers to our questions this morning.

Examination of witnesses

Witnesses: Neil Ross, Camilla de Coverly Veale and Sunil Patel

Q136 **Chair:** We are now going to move on to panel two, where we are going to welcome Neil Ross from techUK, Camilla de Coverly Veale from The Coalition for a Digital Economy and Sunil Patel from PwC. Good morning to all of you. Thank you for coming to be with us today. You all heard the first panel. It sounds like an expanding range of regulation, expanding numbers of regulatory staff and expanding enforcement powers, albeit in the context of leaving the EU. We are interested in this panel to understand what all of that means for business activity for the businesses that you represent. Does this feel like a positive or a negative thing to your organisations and are you seeing any impact at this stage in the market?

Sunil Patel: Good morning, Chair, and thank you for inviting us to this Committee. I was listening intently to the previous panel session. Broadly, what this Committee doing, in trying to develop some new regulatory apparatus for the digital markets, is really to be applauded, because we need to be able to balance protection from online harms, as



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we were hearing, as well as support pro-competition and pro-innovation across the UK. That is going to be really vital to our future growth.

There are quite a lot of challenges in how we get that right and we heard some of them in the previous session. We should really think about the right balance that we achieve. My key point, which we can explore, is about how the regulator can partner with business and industry to achieve the growth outcomes that we want for our broader economy. How can we achieve the right outcomes using regulation as an enabling factor for that? That is something that we should consider.

The large technology companies are part of our economy just as much as the small technology companies. It is really how we create the right ecosystem across the UK across all sectors, so that we can drive growth and innovation, and support competition. Those would be my opening comments.

Neil Ross: The organisation I represent, techUK, has about 850 technology companies in membership. It ranges from companies of five, six or seven people building a digital service in their room and scales all the way up to the companies that are likely to be designated as having strategic market status in the Digital Markets Unit proposals that are being consulted on.

Generally speaking, across the membership there is a welcoming of the DMU proposals, particularly when they compare it to the European Union's DMA proposals. The core strengths in particular seem to be the focus on where there is strategic market status, so this big designation that you are a very large company, but you also have a strategic status in the market, but focusing that on specific digital activities. It is not designating the entire company, but focusing in where there are concerns about competition in the market itself. Then, when you peel down from that, the code of conduct and the PCI requirements seem to be the right track for how to implement that regime.

On the whole, the approach that we get from members is asking, "How do we get this right?" The focus in that tends to be ensuring that there is a strong evidence base for action being taken, a strong evidence base for designating SMS in the first place and the fact that, if a company does drop in size or exit the SMS status, those requirements can be peeled away. By and large, there is a general welcoming of these proposals that are being consulted on.

Q137 **Chair:** You said that your members are more concerned about the digital markets legislation in the EU compared to what we are proposing in the UK. What are the key reasons for that?

Neil Ross: The key reasons are the way the DMA proposals seek to assign gatekeepers using much more blunt tools, so things like market capitalisation, the number of users and the size of the company more generally, rather than a much more evidence-led approach to identify



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whether there are competitive concerns in the activity we are talking about. It is seen as a much blunter instrument.

Equally, when it comes to dealing with concerns around competition in the UK's DMU proposal, there would be, it seems, relatively high principles set in legislation, and then the DMU itself would be able to discuss with the firms in scope a code of conduct for how to improve competition in the market, whereas the DMA sets broad-brush proposals that cut across all those companies that are regulated. Generally speaking, the view from our members is that the DMU proposals are much more targeted and, as a result, much more likely to take on anti-competitive behaviour in the market itself because of that focus and evidence-led approach.

Q138 **Chair:** Camilla, from a Coadec perspective, is all of this regulatory reform activity welcome?

Camilla de Coverly Veale: We see ourselves as an advocate for early stage start-ups, scale-ups and generally the start-up ecosystem. We are broadly supportive of the DMU. Anything that will give the CMA more expertise within these markets and more resources to uncover anti-competitive practices is welcome, because start-ups want competitive markets. They thrive in them. They believe that they will win and they will challenge the incumbents.

However, what we are slightly concerned about is that the DMU ends up clamping down on mergers and acquisition, and exit by M&A, because it is such a critical recycler of talent, capital and knowledge within the ecosystem. I am sure we will get on to this in more depth later. That is our main concern with the DMU.

There is some concern also within the ecosystem that the DMU might end up being a manager of monopolies, almost like utilities-style regulation, rather than something that helps challengers challenge incumbents. We are a little concerned about that.

Q139 **Tonia Antoniazzi:** My question is for Neil. The EU Digital Markets Act proposes a static set of rules for digital businesses, whereas the UK Digital Markets Unit approach sets out a code of conduct for businesses with strategic market status. What impact will this code of conduct approach have for UK businesses?

Neil Ross: Is this on the DMA side? Is this on the EU side or the UK side?

Q140 **Tonia Antoniazzi:** What impact is it going to have on the UK businesses if it is a code of conduct for the market? Can you pull on both of them to make it clearer for all of us?

Neil Ross: As I was saying, the DMU proposal is much more specific and, in a sense, the code of conduct requirements will be tailored to each of the individual firms that are assigned SMS status, whereas the DMA



proposals will be broad brush across a set of larger firms that the Commission designates as gatekeepers.

There is a risk of potentially double compliance here, in the sense that some large firms will have to comply with both the DMA and the DMU. However, generally speaking, because competition authorities tend to share similar solutions to these issues, where a firm is captured by the EU's DMA but equally is captured by the DMU, there will probably be some fairly equivalent requirements. The DMU may go slightly further in specific areas, but, generally speaking, while there is a risk of double compliance, it is not massive compared to other potential regimes.

Q141 Tonia Antoniazzi: That is what I was after—specific challenges of complying to two different regimes. My next question is to Camilla. There has been significant investment in tech start-ups and companies in 2021. UK start-ups and scale-ups raised £13.5 billion during the first half of 2021, including large investments in companies such as Revolut, which raised £577 million, led by SoftBank's Vision Fund and Tiger Global Management. These are two of the world's most prolific investors in fast-growing tech businesses. Will tighter regulations in these digital markets reduce the investment in the UK tech industry?

Camilla de Coverly Veale: As I said, start-ups want competitive markets, so if those tighter regulations enable competitive markets that is positive, but if they end up hitting M&A and making it harder for start-ups and investors to exit, yes, it will clamp down investment. In fact, we have done surveys with investors where we have had 50% of investors say that they would significantly reduce investment if M&A was restricted and the other 50% were not saying that they would increase it.

Then we have also had data that looked at the States, where certain states in America had clamped down on M&A, and they found a 27% reduction in VC investment across the board. I can get the proper numbers to you afterwards, but all indications suggest that, if you clamp down on M&A, you significantly reduce investment everywhere.

Tonia Antoniazzi: If you could send them to the clerk, that would be great. Thank you.

Q142 Charlotte Nichols: Neil, Tech Nation described large investment in UK businesses as an unprecedented and astronomical achievement that indicates that UK VC is pulling away from Europe and edging closer to the US when it comes to deal size. What specific challenges could UK businesses face as larger deal sizes occur alongside increased regulation?

Neil Ross: You are right in the sense that the trend in UK VC investment, but also just general investment in the UK, is to a larger size. By and large, this is incredibly positive. We always say that the tech sector is the UK's modern economic success story because of the number of people it employs and the contribution to the economy. Dealing with the fact that



tech venture investment and tech deals tend to be very large is just going to be one of the challenges of the new regime.

There are some proposals in the DMU consultation to have mergers automatically reviewed when they hit a threshold and these are talked about as being £100 million to £200 million. We would probably want to see that quite a bit higher, particularly because in Germany the threshold is set higher, and its VC tech investment and tech market is a lot smaller than the UK's.

Q143 Paul Howell: One of the things that business always needs is certainty. It needs to know the environment in which it is working. How can the Government ensure certainty in the changes to how merger control is going to be implemented to enable that? I wonder if we can start with you, Sunil. We know all the different things that are in there. It is a voluntary thing. It is variable as to who can apply, when and where, but the authorities can come in with different choices. How do you get some certainty in there that allows investment to continue?

Sunil Patel: You are right. When I speak to businesses and investors, technology is seen as probably the biggest growth engine for the next few years. The largest area of M&A activity over the coming years is going to be in the technology sector. Digital, as we know, is cross cutting. It cuts across every single sector, so it is not a separate industry or separate economy. It needs to be managed and regulated across everything because it is pervasive.

When investors are investing in technology, they look for a couple of things. They look for certainty and they look to try to reduce their risk. They consider the regulatory regime and policies that we have. Is it better to invest here, in a European Union country or elsewhere? Having the right collaborative environment for investment into technology is one thing that can drive a little more certainty for us in terms of how we go forwards.

Secondly, we are going through quite a lot of developments in our regulatory landscape, with the National Security and Investment Act, the Online Harms Bill that we were talking about earlier, and the tighter powers of the CMA and the DMU coming in. Most investors are not really aware of these developments. They do not have the bandwidth to focus on these things. They will only come to be aware of these things at the point that they are legislated and implemented.

Going forwards, there is a real opportunity for Government and the regulators to have much more of a collaborative relationship with the investment community, the tech start-up community, etc, so that we can get more certain outcomes, which is your question: how do we get certainty? How do we work together in a joint ecosystem where investment is coming in, supporting innovation and competition, and driving the outcomes we want in terms of where we go? It is important to be really clear what we want from investment and M&A, and then to use



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our regulators, the systems and the policies that we have to support that going forwards.

Q144 **Paul Howell:** It is, if you like, a roadmap of where regulation is likely to go, to give some underpinning.

Sunil Patel: Exactly, because it is very complicated at the moment. It is changing and developing. We have heard about the EU developing its policies. The US is also looking at this. We are looking at this. Every country will be looking at this going forwards. Keeping some flexibility and, in a collaborative way, working with the investment communities and the technology industries, which are going to be vital to our growth agenda going forwards, is really important.

Q145 **Paul Howell:** Before I move on, just to broaden the question a little bit, because I was going to go where you went anyway, you have different regulatory authorities existing and they could move at different rates at different times, but also interpret things differently and come out with different outcomes from two different perspectives. When you have that situation going on, how do you think that will manifest itself in terms of mergers and acquisitions within the UK?

Sunil Patel: Each jurisdiction will clearly review a merger or an acquisition based on its own needs and priorities, so it is very possible that, looking at the same facts and figures on a transaction, different territories could reach different decisions or outcomes on a transaction.

Q146 **Paul Howell:** We have seen examples both ways, have we not?

Sunil Patel: We have seen examples of that in the recent past. It is important to understand the impacts of having divergence. If, say, the UK blocks a transaction that the EU has approved, are we denying the consumers of the world the benefit from some innovation or additional service because that transaction does not go through and whatever the business case for that transaction was does not get delivered to the broader market? That is one thing we have to look at on that side of things.

Equally, if we were to block or not support a deal that was approved elsewhere, that would create additional frictions and costs for all of these businesses in terms of how they operate. We talked about the compliance burden and what people may need to look at, but this is quite a complex ecosystem in terms of how we are going to have to manage it and there will be impacts of different decisions.

Timing is one of the things. We talked about it a little bit earlier. How can we harmonise the timing of some of the competition agencies and outcomes? That has an impact on investment. I am not saying that we have to reach the same decision. We clearly will not, but how can we explain the decisions that we arrive at to our consumers and marketplaces from an innovation perspective, a consumer choice



perspective or a competition perspective? We have to better educate and upskill the market in terms of how we are making these decisions.

Q147 Paul Howell: You are quite right: the more alignment in terms of timescales, the better. Also, from what was commented earlier, and I would like to hear your observation on this, it seems that we really need to be pragmatic about the joining up of the different regulation authorities as much as possible in making sure that the threshold for divergence is significant. Rather than thinking, "Yes, just because we can, we will do something different", they should think, "Let us have a real solid reason as to why".

Sunil Patel: Yes, there should be some real reasons as to why we are ending up with divergent outcomes in certain situations, but being able to explain that is going to be really critical, both back into the business community and in the general investment community.

Q148 Paul Howell: That becomes part of the certainty, if you can give a clear understanding. Is there anything you would like to add to those points, either of you?

Neil Ross: It was pointed out by the regulators that there is a lot of international co-operation in this space. Where evidence can be shared and regulators can co-operate across borders, that will help similar outcomes be achieved. If you think about the Furman review that was launched in 2019, it led a global discussion. Many of the themes are present in the EU's approach and the UK's approach. These are the kinds of initiatives we would want to see that are very evidence-led and focused.

The DRCF in particular is something that my members have warmly welcomed. It is a far more appropriate approach than a single regulator for the digital sector, but this is an ongoing challenge. There will be more digital and tech regulation in the next five years than there was in the previous 50, and that can even expand to telecoms and various different areas. That is, in a sense, natural because the economy is digitising more, but it is important that we get the balance right whenever we implement these things, because of not only the importance of the services that we use every day, but also the role that the companies that operate in the tech sector play in the economy.

There was an estimate by DCMS that looked at regional tech ecosystems across the UK and said, "If these are well supported, we could generate another 625,000 jobs across the UK in the next five years". That is hugely important if we think about the growth of this country, particularly post-Brexit.

When it comes to getting this certainty for businesses and making it easy to access, the legislation is going to be the name of the game here. If you look at the way the CMA has increased its focus on mergers, it has increased quite significantly in the last few years relative to where it was



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in the late 2000s, so the regulator has a lot of scope and rightly so, because it is independent, to expand the way it focuses on mergers and acquisitions.

Where we will get the certainty for businesses is if, in the legislation that goes before this House, there is a focus on the evidence criteria that is needed, the depth of the studies that are needed to assign the codes of conduct and then the amount of evidence that needs to be gathered to instigate a pro-competition intervention. That is where you will get more certainty for businesses and, as Sunil has talked about, a better look on the UK's investment prospects overall.

Q149 **Paul Howell:** Is there anything from your perspective where there is a particular risk of this divergence of outcomes or an opportunity from it that you would want us to be aware of or flag up?

Camilla de Coverly Veale: Yes, divergence certainly keeps me up at night. It does not necessarily matter the speed at which the EU and the UK are doing this, as long as, at the end, we have two systems that cohere and start-ups can scale in the EU. We have a very highly valued market, but it is small, so start-ups need to scale. They need to go to the EU and to America. We want to maintain a system whereby start-ups are incentivised to launch their products here. In that sense, there is nothing more to add from those two.

Q150 **Mark Pawsey:** One of the messages I am getting from our witnesses in the previous session and this session is that the regulation here is important to protect the smaller businesses, which are at risk of being taken advantage of, for want of a better expression, by some of the bigger players in the market.

Mr Patel, we heard from Dr Coscelli in the previous session that a concern for investors in small organisations might be that a bigger corporation might kill the business. Can you give us an example of that? Do you know that that has happened? Would Camilla know of an instance when that might have happened?

Sunil Patel: There is very little evidence that is proven at the moment that large technology companies when they have acquired these small technology companies—

Q151 **Mark Pawsey:** They might not even need to acquire them to do this, might they? They might just have enough clout to recognise the idea of a small entrepreneurial start-up and, by means of advertising and their clout, put them out of business. Can they do that?

Sunil Patel: There are two sides. If I take the investment side, these large tech companies also invest in small technology companies.

Mark Pawsey: We are going to come on to that.

Sunil Patel: I agree a little bit with what Andrea said earlier, but also it could be these large tech companies that are providing the investment



into these technology companies. It is worth underpinning and recognising that. A small company scaling up and trying to become a larger company, a medium-sized company and a big company can do that organically, but it can also do that through mergers and acquisitions. It is a viable route that small technology companies and investors look to exit, typically. Investors are often investing in small technology companies so they can get an exit of that technology company through an acquisition.

Q152 **Mark Pawsey:** You think it is a perceived fear rather than an actual fear.

Sunil Patel: It comes down to your earlier question: where is the evidence that an acquisition has stifled innovation or stopped competition? It is very hard for us to prove that it has or it has not.

Q153 **Mark Pawsey:** Does either of our other witnesses have any evidence of that happening?

Neil Ross: It is a difficult counterfactual to show, because, again, generally speaking, across the literature, the evidence is quite weak on this question of killer acquisitions. Equally, the UK has just had its best ever year for tech start-up investment. We just did a survey of our members where more than 50% said they wanted to increase their investment in the UK relative to last year and 80% said that they had a positive outlook for the year ahead. I am not sure there is hugely strong evidence to say that, without the legislation, innovation and competition is being decreased.

Camilla de Coverly Veale: As Neil said, the evidence for killer acquisitions is very low.

Q154 **Mark Pawsey:** Are we trying to protect against something that never really happens anyway?

Camilla de Coverly Veale: It depends. Again, as Neil said, we have had so much investment recently and investors would not be investing if they did not think start-ups could challenge incumbents. Certainly, there is bad practice by bigger tech companies and investors want action within that, as do start-ups, but, in terms of acquisition, no. The sort of thing that we talk to investors about and that we see is, say, bigger tech companies copying products. Microsoft copied Notion, for example, but that is not necessarily something the CMA can do anything about. You could argue that Notion did not have a particularly good moat around its product.

Neil Ross: Just to come back on that point, the question around M&A is not the only question when we talk about competition. There are other parts of the code of conduct and the pro-competition interventions that could address that in different spaces, exactly to some of the points that Camilla made. Equally, what is really important to remember, which is littered throughout both the Furman review and the CMA's own research, is that digital markets, because they have these companies that are



placed in a strategic market status, provide significant benefits for consumers. The question is a balance of consumer benefit, because a lot of people get services that are very innovative for free, and taking steps to ensure that other companies can push through and replace them through the natural order of competition.

Q155 Mark Pawsey: Mr Patel, you referred earlier to big tech companies supporting smaller start-ups. I remember visiting a few years ago a couple of establishments where a big tech company had made workspace available for smaller entrepreneurs to develop their ideas. This was free of charge to these entrepreneurs and I remember at the time asking myself, "What is in it for them? Why are they doing this?" It became apparent that the reason was that they would encourage maybe a dozen start-ups. One of them may have a really good idea. The rest may fall by the wayside and the big tech company was poised to then acquire that intellectual property. Is that a good thing? Does it happen anywhere else? Why should we encourage it or permit it in this sector?

Sunil Patel: It is part of understanding the breadth of this technology sector. These technology companies are very big and they offer many different services and activities to their consumers, so one thing is unpacking what they do and what they offer. In many cases when there are platforms, they are offering the ability for other people to create innovations on their platform. Amazon is an outlet for lots of small to medium-sized businesses in the UK that would not exist if Amazon did not exist. Google is the same and so forth.

They are creating an easy way for certain people to transact, create small to medium-sized businesses and deliver services to their local community. That is one side of the technology company and that is why they may be offering things in the regions and the communities to allow people to develop software or technology.

Q156 Mark Pawsey: There is something in it for them, is there not? They want to snaffle up the good ideas.

Sunil Patel: You are a user of their platform. Absolutely, there is something in it for them, but, net-net, the benefit is greater to the smaller company by using their technology.

Q157 Mark Pawsey: Neil and Camilla, do you think that this activity is a good thing or a bad thing?

Camilla de Coverly Veale: The problem with asking that question is that, if you talk in isolation about one company snaffling, say, one start-up, you are not looking at the whole ecosystem. If you prevent companies from supporting smaller start-ups, you are going to end up clamping down on any start-up entering that sector and investors investing in that sector. With start-ups, because 90% of them fail, you need an awful lot of churn, and so you risk stopping anyone from starting any challenger. That would be our principal concern with that.



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Neil Ross: The point I would pick up here is that, if you speak to any tech company, this is the number one issue: "I find it very difficult to get skilled people with digital skills to bring into my company to grow and expand". I would agree with Sunil's point about the net benefit. As you say, while it is not fully philanthropic, large tech companies create these clusters to try to upskill people, so that they can hire some of them, but equally a sufficiently large number are upskilled that they can then go and work in other parts of the digital sector. That is a net benefit to the UK economy as a whole because there is such a significant skills shortage in our sector.

Camilla de Coverly Veale: I forgot to say this earlier, but there is no saying that that big company in your scenario would be able to buy the small company. They can say, "No thanks".

Q158 **Mark Pawsey:** They will offer so much money that the entrepreneur will always say, "Yes, thank you very much", will they not, in the real world?

Camilla de Coverly Veale: The start-ups we talk to want the moon. They have often re-mortgaged their house and asked their friends and family for money.

Q159 **Mark Pawsey:** If somebody comes with a big cheque, of course they are going to go for it.

Camilla de Coverly Veale: Not the start-ups we talk to. Sometimes it is a strategic business decision. Yes, sometimes they have another idea that they want to go off and pursue. It is not automatic; that is what I am trying to say. They do not just say, "Yes, buy me please". They do not start to be bought.

Q160 **Mark Pawsey:** Many of them are in that environment because they know it is a possibility that that may happen. I am arguing that that does not happen anywhere else in any other business environment, to the best of my knowledge.

Sunil Patel: A lot of start-ups are created with that express desire to be acquired at some point. That is clear and that is where investment comes in, because, as I said, they are looking for the exit. Where we can be smarter and more intelligent is placing conditions on mergers and acquisitions that benefit the regions, the local economies and what we want. At the moment we are tending to approve or deny a merger or acquisition. We block it or approve it, and off it goes into the free market, but there could be more conditions placed on mergers and acquisitions around creating jobs and developing the right jobs in our regions to support our levelling-up agenda. These are the types of interventions that we should be exploring and starting to consider.

You are absolutely right. Digital is nothing like anything else that we have ever experienced, so the old models will not apply to regulating or managing digital. Digital is hugely competitive. It is globalised. It



transcends all our borders and it will cut across every single sector. It needs really new thinking and new policies to support our growth agenda.

Q161 **Mark Pawsey:** Are the criteria for the CMA to block a merger and acquisition currently in the right place or should they be changed?

Sunil Patel: At the moment they are in broadly the right place. I agree with the DMU needing to come into force and being legislated for. We need something specifically for those larger SMS organisations, but I would favour a flexible approach that we can use with digital, which we can evolve and tailor.

Q162 **Mark Pawsey:** The downside of a flexible approach is that you have no certainty. We have just had a session with my colleague about the benefits of certainty. If we have a flexible approach, nobody knows what is going to come down the line.

Sunil Patel: No, it is not flexibility in the regulations—the regulations are defined—but in how things are considered and developed as they go forwards. Technology will continue to evolve, so we will need to continue to evolve parts of our regulatory setup and so forth. The DMU is a good start in terms of where we go, but then we will also need to evolve that as we develop going forwards.

Neil Ross: On the trade-off between certainty and flexibility question, you can have both in a sense. If the question of certainty comes to the scope of the regime, the amount of evidence it has to gather to sign that code of conduct and the time it takes to evidence a pro-competition intervention, for example, the flexibility is how it goes about enforcing. One thing where we have seen a quite positive response from our members is this more participatory approach to regulation. Interim agreements have come up, which is exactly the kind of thing that Sunil was talking about.

Again, on the merger question, we welcome the DMU. We want it to be legislated for. To get the right balance on the merger and acquisition point, the CMA's merger enforcement powers should really be focused within which the area that the company is designated as having strategic market status. There is a benefit to large companies competing with one another for general consumer benefit, but equally you want to ensure that you are focusing the regime specifically on where a competitive distortion has been found.

Q163 **Charlotte Nichols:** Professor Amelia Fletcher, the professor of competition policy at the University of East Anglia and former member of the Digital Competition Expert Panel, stated that the UK may be behind the EU in not having draft legislation, such as the Digital Services Act and the Digital Markets Act. Is the UK in danger of falling behind the EU and other countries in digital markets regulation due to the lack of legislation, particularly for the Digital Markets Unit?



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Sunil Patel: I do not think we are at risk of falling behind. This is a hugely complicated area and, as we heard earlier this morning, all territories and jurisdictions will be considering what they do in this space. The US opened a consultation only last week in this area. I would not say we are massively behind. There is some sequencing that was talked about earlier.

It is important we take the due time to get this right. Investment is flowing into this country right now into the technology industry. Over the last 12 months, we have had more than some of our European counterparts combined. Certainly at the moment, the environment is good for growth and investment, and we are seeing that from my perspective and the businesses that I talk to. We need to get the regulations correct and they need to be thought through in terms of the questions that we are going through and considering today.

I am not sure it is a race. That is the wrong way to look at it. We need to get it right, and getting it right from a pro-business and collaboration perspective is the test. If we are just looking to police something, that is one thing. We are looking at setting up policies and regulations that support us as digital evolves, develops and continues to grow and expand across all of our economy. That is the important part.

Q164 **Charlotte Nichols:** Just to come back on your answer before I bring the other two panellists in, you talk about the amount of money that is flowing into the UK tech sector at the moment. Are you concerned that that is because of the lack of regulation here compared to in other markets and that effectively we are the Cayman Islands or Switzerland of tech regulation?

Sunil Patel: No, we are certainly not that. It is flowing in for several reasons. First, we have a very active tech start-up ecosystem across the UK, so we have a lot of talent and innovation in our country driving a lot of these start-ups. Secondly, we have the ability in the UK to attract foreign investment. Often other countries do not have the same ability. We heard the example of SoftBank investing into the UK. We have the ability for external investors to invest in UK companies or UK start-ups. That is really important.

Up until now the CMA and the various regulators are considered to be pro-business and have a good international standing. That is really important in terms of where investors put their money. Finally, there is a lot of Government support available for investors. It is the package of measures. We have got something right at the moment that is working for investment into technology.

Neil Ross: I would agree with Sunil's point around the UK not being behind. The focus here is to get this legislative framework right rather than copying and pasting what the DMA is doing. The feedback from our members is that the UK has a much better, more proportionate and balanced approach than what is currently being considered in Brussels.



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On this question of investment, if I spoke to any of our members, I do not think they would describe the UK as under-regulated. They accept regulation, but they would not say that this is a light-touch market. The things that really drive up investment are our phenomenally dynamic cities, a really strong connection to universities, the excellent skillsets and a favourable tax regime in many places for tech companies. While the M&A regime is important for investment across the whole, it is those other factors that are more significant to drive investment into the sector. We need something a bit more like an industrial strategy or a full digital strategy for tech to really drive that forward, which the Government are thinking about releasing later this year.

This is an incredibly busy space. The National Security and Investment Act, which has just come online at the beginning of this year, as well as the proposals that are being shaped up around data protection and online safety, will have a big impact on the market. Our members would like to see more effective scrutiny as those new regimes come into force. In the submission to the Budget last year we recommended that the Chancellor set up a working group with investors, tech companies and others to monitor the implementation of these regimes. The question of a parliamentary committee to scrutinise that was discussed earlier by Ofcom, which is something that we would welcome.

Q165 **Charlotte Nichols:** You are not the only sector that is lamenting the lack of industrial strategy for your sector from the Government at the moment.

Neil Ross: It is something I have heard elsewhere.

Charlotte Nichols: Camilla, is there anything you would like to add?

Camilla de Coverly Veale: No. I agree with Neil.

Q166 **Charlotte Nichols:** How can businesses successfully engage with and implement the significant changes within digital markets, such as the new competition regime for digital markets, the new national security and investment regime and the impact of the Online Safety Bill? What support is needed for those businesses to transition effectively?

Camilla de Coverly Veale: In terms of Government support, the basics with start-ups always are that you want regulations to be as clear and as focused as possible. Tech giants have the ability to influence the process and they also have the ability to absorb all regulatory costs. Regulation can end up being a moat. All these things are not news to you.

In terms of what is specifically coming down the line, start-ups end up being quite confused sometimes by what Government want from them, so having a coherent tech strategy where the Government sit and think what they want out of the tech sector and then how they can implement it would be something that start-ups want.



For example, a week or two ago the Home Office launches a campaign against end-to-end encryption and then the very next day the ICO, the data regulator, comes out and says, "End-to-end encryption is good for privacy and security". Regardless of what you think about those policies, start-ups end up sitting there going, "The Government are sending out smoke signals and we do not know what they want us to take from that". We would definitely like a coherent strategy from Government and then thinking on how we implement it.

Charlotte Nichols: Neil, is there anything you want to add?

Neil Ross: Yes. I knew I had written four things down. Generally speaking, co-ordination between regulators is seen as massively important to manage this. The DRCF is hugely welcome. Camilla has raised an excellent point around this question between competition and data. That is an area where there are different views among the regulators. The MOU between the CMA and the ICO is welcome and there should be continued working on that.

The other one that I have said repeatedly throughout this Committee is setting clear timetables for the implementation of the regime and clear evidence gathering thresholds. That just helps companies pace and engage with it.

There is some good work the Government are doing on setting general high-level principles for digital regulation. The Government had the plan for digital regulation, which it announced last year. There was something in the Brexit opportunities paper that came out yesterday, which again is generally welcome, but ultimately the Government have to hold themselves to account on that one with the assistance of Parliament.

The last one is effective resourcing for regulators. This came up a lot in the previous session and we see that as enormously important, for the regulators not just to fulfil their existing obligations, but equally to do the different supplementary duties they are often given, such as due consideration for innovation and economic growth. Sandboxes and testbeds are really important to our sector, and effectively resourcing the regulators is important to make sure these work.

The reason that is important is that effective regulation works when there is good dialogue between businesses, the regulators and the Government. At the moment, because there is such a significant tranche of regulatory activity coming through, lots of our members, particularly the challenger firms rather than the largest firms, talk about being effectively slightly overwhelmed and unable to provide the evidence into Government, Parliament and regulators to make effective decisions. That sequencing, transparency and co-ordination is really important just for good regulatory principles more generally.

Q167 **Chair:** That brings us to the end of the session. All of your organisations survey your members, and this is the bottom line, really: given



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everything coming down the track, is this moving the dial in a pro or negative investment direction? I just want to ask if any of you have any views on that, or whether it is just not on the radar of your members yet and it is too early to know. Is all of this work going to increase investment, decrease investment or is it too early to know?

Sunil Patel: It is generally heading in the right direction. Most of our members, as I said earlier, are not fully aware of the minutiae of the details that are going through. Really bringing together a strategic steer across Government about all of the way that digital and technology is going to be managed and regulated is what I hear most in terms of what our members and businesses want.

Neil Ross: Generally, we are heading in the right direction, but the jury is still out as to whether it has a net impact of less or more.

Camilla de Coverly Veale: It is too early to tell. The proof will be in the pudding.

Chair: Thank you so much. Thank you to all three of you for your evidence today. We will now bring this session to an end.