



Communications and Digital Committee

Uncorrected oral evidence: the Digital Markets Unit

Tuesday 8 February 2022

3.35 pm

Watch the meeting

Members present: Baroness Stowell of Beeston; (The Chair); Baroness Buscombe; Baroness Featherstone; Lord Foster of Bath; Lord Griffiths of Burry Port; Lord Hall of Birkenhead; Baroness Harding of Winscombe; Lord Lipsey; Baroness Rebuck; Lord Vaizey of Didcot.

Evidence Session No. 3

Virtual Proceeding

Questions 22 – 29

Witnesses

I: Chris Philp MP, Minister for Tech and the Digital Economy, Department for Digital, Culture, Media and Sport; Harry Lund, Deputy Director, Digital Markets, Department for Digital, Culture, Media and Sport; Niall Mackenzie, Director, Consumer and Competition Policy, Department for Business, Energy and Industrial Strategy.

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Examination of Witnesses

Chris Philp MP, Harry Lund and Niall Mackenzie.

Q22 **The Chair:** Welcome again to the Communications and Digital Committee. Welcome to Chris Philp, the Digital Minister, Harry Lund from DCMS and Niall Mackenzie from BEIS. I am very grateful to all of you for being here. Indeed, it is a busy day for you, Minister. We are very grateful that you have found the time to honour your commitment to us. We noted the announcement today on age verification, which is clearly an important and very welcome addition to the online safety Bill. We are looking forward to the arrival of that Bill soon.

Today we want to focus on the other side of the equation and the competition issues that also need addressing urgently in respect of the large digital platforms and search engines. As you will know, these were matters we raised in two recent reports on the future of journalism and on freedom of expression online.

We also noted the media reports a day or two before we had our hearing last week, which suggested that this legislation was coming forward. We are keen to get an update on that. Perhaps that is the best place to start. When are the Government planning to put the Digital Markets Unit on a statutory footing?

Chris Philp MP: Thank you very much indeed for the invitation to appear here this afternoon. Despite my early start, and my onerous and at times painful duties this morning, this is an extremely important thing to do. There was never any question that I would do anything other than appear as agreed.

Before I come on to the Digital Markets Unit, thank you for your comments about the online safety Bill and today's announcement on age verification. I would like to pay tribute to those Members of the Lords who served on the Joint Committee that made recommendations in this area, which we followed. In particular, Baroness Kidron is a persistent and persuasive campaigner on this issue. The changes we announced today are a tribute to her work and that of many other campaigners.

On the question of today's subject and in particular your question about plans for legislation, which, among other things, intends to put the DMU on a statutory footing and introduce a new pro-competition intervention regime, subject to the Government's response to the consultation, we plan to publish a response to the consultation in the fairly near future, by which I mean a matter of one or two months, that sort of timeframe. The consultation ran through last year. We received and analysed responses through the autumn. Clearly, the first step is to publish that response.

We want to legislate as quickly as possible. Just to be completely candid, we are currently in the latter stages of discussions—I hesitate to use the word "negotiations"; let us say "discussions"—with colleagues across government in PBL and elsewhere about the programme for the third Session. As soon as we have confirmation of DCMS's Bills for the third

Session, we will let the committee know straightaway. As I sit here today, we do not have final cross-government agreement. I cannot give you any firm news other than to say that we are pushing very hard to do it as quickly as possible, which I hope gives you a sense of where our priorities are on this.

Q23 The Chair: It is helpful to know that much at least. Compared to other places, particularly the EU, where they have been legislating the content issues and the competition issues simultaneously, it concerns us that we are not doing them in parallel here, particularly if it means the UK ends up being a rule taker rather than a rule maker. Certain expert witnesses have been at pains to stress that the way in which we are planning to approach this as a nation would be, in their view, superior to that which is coming out of the EU. The delay to this is concerning in that context, never mind the impact it might have on respective industries.

Chris Philp MP: Yes, I agree with both the points you made. In relation to the online safety Bill, it is our intention to introduce that updated piece of legislation in the current Session. We will make a number of improvements to that Bill to strengthen it, one of which was the one announced today. We are working on others at the moment. That will definitely be introduced in the current Session.

I hear the points made about the digital competition legislation. The point about not letting the Europeans overtake us is one that we are acutely aware of and that we are discussing with our colleagues across government. We make exactly the point that you just made. I would echo the point that you made, which we believe strongly, about the superiority of the approach we are taking here compared to the European one. Our approach is more flexible and proportionate; it will better enable innovation; it will avoid the risk of squashing developing tech businesses. It is better than the EU approach, which runs the risk of stifling innovation and being rather blunt.

Given that we think our approach is more pro-innovation and pro-growth, we are keen to get it on the statute book as quickly as we can. We are acutely aware of the point that you and others have raised.

Lord Griffiths of Burry Port: I would be interested to know where the problems lie in this cross-government response to these proposals. Is it just money?

Chris Philp MP: No, it is not money. As you will know, the Government have to look at parliamentary time and OPC capacity. Legislative drafting is something of a specialism; you cannot just hire them on the open market, as you would with other skill sets. It is simply a question of prioritising among departments the various Bills they want to take forward. DCMS is very strongly making the case that this needs to be done as quickly as possible, for all the reasons the Chair mentioned a moment ago. It is not a financial issue; it is parliamentary time and OPC capacity.

Baroness Buscombe: I just wanted to suggest that we make it clear, because we are broadcast here, what we mean by “this Session” and by “PBL”, for those who might be listening or reading what we are saying. “This Session”, we assume, means literally within weeks now. We are in February. If the online safety Bill is to be in this Session, it will probably be before May, say. “PBL” is part of the parliamentary process to decide what makes sense for the introduction of Bills. I just thought we should make that clear.

The Chair: I appreciate it. We need to be reminded to speak in plain English. Thank you.

Q24 **Lord Lipsey:** It is probably fair to say that the general criticism of the CMA—it is criticism combined with congratulation—is that it has been very good at producing effective analysis in this field but, partly no doubt because of a lack of legislation, less good at taking action on the excellent analysis it has produced. Would you share that view? What would you like it to do to make it better while still waiting for the legislation?

Chris Philp MP: When you refer to its excellent analysis, I assume that is a reference at least in part to the market study that it published in July 2020. In the case of Google for search and Facebook for display advertising, it found that there were monopoly or near monopoly forces at play resulting in substantial overcharging to small businesses and consumers that amounted to, that study estimated, some £2.4 billion. That is a considerable sum of money.

I have a couple of views here. First, it is critical that we do move forward with these pro-competitive interventions. The purpose of those is to try to pre-empt the rise of problematic situations where monopoly or near monopoly positions get exploited to the point that consumers and small businesses get overcharged by requiring actions to be taken such as data sharing and opening up what would otherwise be restricted operating environments, which makes sure that market dominance does not get abused from a pricing perspective. In that sense, prevention is better than cure. That is the purpose behind the pro-competitive interventions.

It will take a certain amount of time to legislate, even assuming a third Session introduction. Even if that is achieved—I hope it will be—it will take time to pass that legislation through both Houses. It will no doubt quite rightly get carefully scrutinised, and then there is the implementation of it thereafter. In the intervening period, there are existing powers that the CMA can exercise, such as market investigations and the powers under the Enterprise Act 2002. The CMA is independent of government, so ultimately it is a matter for it to decide what action it should take. So long as current practices persist, all of us are acutely aware that there seems to be strong evidence, particularly via the July 2020 market study, of overcharging that is causing economic damage to UK citizens and UK small businesses in particular. I am sure that is being very carefully considered by the CMA.

I would also take the opportunity to say something to those companies, particularly Google and Facebook. Given that this issue is getting so much attention, quite rightly, from parliamentarians and beyond, it is within their power themselves to take actions to address the mischief identified by the report. I would strongly urge them to do so. It certainly is not too late. I strongly take the view that in this area, as with online safety, where there is evidence that they are not taking appropriate action to remedy the mischief—so far they are not, as far as I can see—legislative and regulatory intervention is both desirable and, in fact, necessary.

Lord Lipsey: That is reassuring. It brings me to another point, if I may, which is about the legislation. They are able to do things, as you have just described, in the meantime, which is good. In the case of the online safety Bill, nobody would dispute that we have gained enormously from having a Joint Committee looking at it in detail. Even if government did not get it perfect first time, the scrutiny by that committee has been extraordinary. Would you be able to commit to or at least consider doing something similar with the legislation in this area, where again you would find that an enormous contribution could come from both Houses in a Joint Committee?

Chris Philp MP: I could certainly consider it. I would be rash to commit without having consulted my colleagues and superiors in the department and across government. I am certainly very happy to consider it. Yes, I would agree that the process of pre-legislative scrutiny by the Joint Committee was very helpful indeed. The changes announced today and other changes have resulted directly from the work that committee did, which was incredibly thorough and incredibly thoughtful. The DCMS Select Committee did a report as well in the House of Commons, which we studied carefully.

Perhaps the Chair could clarify, but I hope the work that this committee is doing now will get written up in some form that we can look at before we publish our consultation. I wondered whether you plan to publish anything.

The Chair: We are not planning to do a formal report on this non-inquiry investigation, as it were. It is just a follow-up to what we did before, but it is my plan to write to you and set out what views we have taken on the basis of this session and those we had last week.

Chris Philp MP: That would be incredibly helpful. We would strongly welcome that. It would be a helpful input to our work. We are finalising our response to the consultation literally as we speak. If we could get such a letter relatively soon, that would genuinely inform our thinking. As we just heard, we have found the process of the Joint Committee on the online safety Bill genuinely helpful. There is no question that the Bill will be substantially improved as a result. We really want to draw on the expertise of this committee and the witnesses you have heard, as we frame our response and then the legislation later.

The Chair: If we think we are influencing what happens in government,

you can be absolutely sure that we will be writing to you in order to influence in that way.

Chris Philp MP: You definitely are.

The Chair: That is good to know. Can I just clarify one thing that you said before in case I misunderstood? When you were just responding to Lord Lipsey, were you suggesting that within CMA they have not taken action against the likes of Google and Facebook in the context of the news providers and that they should?

Chris Philp MP: The point I was referring to was the mischief identified in their market study of July 2020, which may have included some references to news providers but was more general. It talked about the potential overcharging of consumers and small businesses, so it goes beyond just news providers, in relation to Google's near monopoly of search and Facebook's quite dominant position in relation to display advertising. From memory, it identified £2.4 billion of potential overcharging. That is what I was referring to in particular. There are existing powers sitting on the statute book today that the CME could exercise in that area, either via a market investigation or under the Enterprise Act 2002.

The Chair: What we have heard from our last session with them is the case for them not carrying out that work while they are waiting for the legislation, because the legislation would give them greater flexibility to hold these companies to account in a more effective way. The issue we are driving at here is that, although that may be so, there will be a long time between now and the legislation coming into force. We cannot wait for ever for action to be taken. There is a real tension there that needs to be properly addressed.

Chris Philp MP: That is a fair point. There are two approaches. One is ex ante, trying to take action before the mischief occurs. The second, the current regime, is more ex post, seeking to impose remedies after a problem has occurred. They are not necessarily mutually exclusive. One could do both.

Q25 **Lord Foster of Bath:** I have some difficulty with thinking that potentially overcharging customers by £2.4 billion is mischief. Leaving aside the language, a lot of the discussion we have been having is about the regulatory framework that is being developed. We look forward to seeing the final detail of that. However good the regulatory framework is, I am sure you would acknowledge that its success or failure depends on having an equally good enforcement regime.

We would be grateful to hear your thoughts on that enforcement regime and, in particular, about magnitude of fines and whether there should or should not be included some mechanism for holding senior managers to account. In that context, given that we are dealing with very large global companies, how would that regime work?

Chris Philp MP: First, the point about the language is a serious point. I use "mischief" as a legal term. To put it in plain terms, it is outrageous. I want to be completely clear. It is outrageous and unacceptable that our citizens and our businesses in the United Kingdom are getting ripped off to the tune of £2.4 billion a year. It is unacceptable and outrageous, to be completely clear about my views on that.

We do not have a settled position on remedies and sanctions, because we have not responded to the consultation. Again, we will study the view of this committee, via Baroness Stowell's letter, very carefully, particularly if we get them quite soon.

The Chair: Hang on. We are holding you to account here, Minister.

Chris Philp MP: My apologies. We consulted on powers that would allow the CMA to fine these companies 10% of their global turnover, which is potentially an astronomical sum of money. Typically speaking, it would be more than their UK turnover. Normally, UK turnover is less than 10% of their global turnover. That is the same figure as we have in the online safety Bill.

We also consulted on or consider options to go beyond that. In some regulatory environments, there is senior management liability. As you will know, there is senior management liability in the online safety Bill specifically in relation to information requests. If a named individual does not yield information that has been requested, they are personally liable for that. Clearly, in some respects, the online safety Bill is regulating matters of criminality such as threat to life. It is a serious bit of legislation. This is very serious as well, but it is clearly economic rather than relating to criminal matters. We need to weigh that up carefully as we respond to the consultation.

There are also backstop powers that we are consulting on. These are potentially quite extreme measures to do with break-up and denial of service. We have consulted on a whole range of things. We have to calibrate the measures that we adopt carefully to the harm we are seeking to combat. That is what we will be weighing up with, I hope, the benefit of this committee's opinion.

Lord Foster of Bath: I am grateful for your response so far, but what we have learned is what we knew from the consultation. We have heard from a number of people who have responded to that consultation. I wonder whether you could go a little further and give us an indication of your own thinking as to how you are likely to go ahead. That will help to inform us in how we can help you.

Chris Philp MP: You are tempting me.

Lord Foster of Bath: I am.

Chris Philp MP: Your offer is very tempting. In the interests of propriety, I should probably not pre-empt or pre-judge the Government's response

to the consultation, which is subject to collective agreement, write-round and all the rest of it.

I do not want to be tempted down the path other than to say that a 10% of global turnover fine is the bare minimum. In terms of other measures, we need to balance the severity of the measure against the harm we are considering. We do not want to make the UK an unattractive place for people to do business. At the same time, we want to make sure that these firms comply and do not mess us around.

Lord Foster of Bath: Could you just take that one stage further—I understand why you cannot say more—in relation to the fact that many other countries are looking at these issues? Germany has already taken action, other countries are looking at it, we have seen what happened in Australia and so on. How does all this fit together in terms of international co-operation on these issues, including on the enforcement regime?

Chris Philp MP: We are conscious of other countries legislating. We have discussed the European Union's proposed Digital Markets Act already and we are studying the enforcement mechanisms in those Bills. To go back to a previous point, I should be clear that denial of service options are in the online safety Bill but not in the consultation. Break-up options are in the consultation for this competition arena, just to clarify that.

In relation to co-operation, we do talk a lot to other regulators. Back at the beginning of December, we organised a meeting of like-minded Governments from around the world and major companies called the Future Tech Forum. It was at the Science Museum. Lord Vaizey may have been at that forum.

Lord Vaizey of Didcot: No, I was not invited.

Chris Philp MP: I apologise.

Lord Vaizey of Didcot: I read all the reports with intense interest.

Chris Philp MP: We will make sure an invite comes in your direction the next time we organise it.

Countries such as Singapore were represented. There were also people from the European Union. It was an opportunity to talk to other Governments about these regulatory issues and how we can work together. If one jurisdiction can have an effect, it is quite likely that companies such as Google will copy and paste their response globally. There is an opportunity for progress in one jurisdiction to ripple across the world.

We shared ideas. The Australians, for example, have done some quite interesting things in this area, which we may talk about later, in relation to news content. We shared ideas and we talked about how we can co-operate. We are very active in those international fora as a Government to make sure we are as joined up as we can be.

Lord Foster of Bath: If this international co-operation is so important, as you describe—I would entirely agree with you—why has it not been a feature in trade deals other than in respect of the deal that is being discussed with the EU?

Chris Philp MP: Regulatory co-operation is not always or often a feature of trade deals, although in the example you mention it is, because we have a very close shared history. Harry or Niall, do you want to comment on the point about extraterritorial enforcement and the interaction between trade deals and regulatory co-operation?

Niall Mackenzie: I am happy to. On regulatory co-operation, as Andrea may have told you in the previous session, the CMA is in regular contact with the FTC, the European Commission and others. They share information where appropriate, but there are safeguards to make sure that commercial information does not bleed across regulatory boundaries needlessly. They do a lot of co-operation that way.

In terms of trade deals and co-operation agreements, there are agreements on both competition and consumers. In particular, the recent trade deal with New Zealand had for the first time a specific chapter on consumer issues. We have co-operation agreements with a wide number of countries. We are yet to start the formal negotiations with Europe in terms of a co-operation agreement on competition, but we have plans to do that for the trade deal with America and with other countries in due course. It is part of the trade negotiations, although it is usually a separate legal document.

Chris Philp MP: Do you want to say anything about extraterritorial enforcement?

Niall Mackenzie: The House of Lords in particular usually scrutinises very carefully, when we bring the Bill forward, exactly what powers UK regulators have to enforce overseas, given the sensitivity in the UK of allowing other regulators to enforce in the UK. If the committee has views on that subject, it would be extremely helpful to have them. I would expect that to be a lively topic of debate in your Lordships' House when the Bill comes before it.

Harry Lund: As well as the Future Tech Forum, which the Minister talked about, it is worth mentioning that the UK, under our G7 presidency this year, led some global conversations about digital competition. Specifically, the G7 countries agreed to a set of shared policy objectives in this area. That was instigated by us. Alongside the Future Tech Forum, the regulators—the CMA and their counterparts in other G7 countries—held a forum to look specifically at enforcement and how they could work together on this. Those global conversations are starting, and they will need to continue.

Chris Philp MP: Our G7 presidency was last year. Germany, which is this year's G7 president, is taking forward many of the conversations that we initiated.

Harry Lund: We are talking to them at the moment on that but, yes, I hope so.

Chris Philp MP: The American federal trade commissioner appointed by President Biden in June last year, who has some quite constructive and forward-looking views on these topics that are much aligned with ours, attended the Future Tech Forum here in London in December. I sat on the panel with her discussing some of these issues. Andrea from the CMA was there as well.

Q26 **Baroness Buscombe:** Thinking of this session and our previous session with the CMA, we have a serious cultural issue here with regard to our relationship—Governments around the world and citizens—with these tech companies. Should we be focusing on this a bit more?

Something happens to people when they are employed by these platforms: they become extraordinarily pious. Of course, they are extremely well paid, but they seem to undergo a personality change. Is that something that we should also think about? I speak as a lawyer: I am always worried about legislation that might be draconian. You say you do not want to introduce legislation that will squash new companies or in any way compromise innovation. That is incredibly important. Should we be doing more in tandem, in our relationship—in everyone's relationship collectively—with these platforms?

What we are talking about with the online safety Bill is criminal. To a large degree, what we are talking about here is economic crime. We talk about the billions that our small businesses, the people who work hard and pay their taxes, have not received that they should have. They are being hugely compromised. We have apparently dropped our economic crime Bill. I hope that is just a little hiccup. That is very important to the citizens of this country and on a global level.

Chris Philp MP: Yes, it is very important. I probably share your observations about former colleagues who have crossed the divide. I cannot imagine who you might have in mind. There is an issue with particularly the very largest global tech firms exercising market power and social influence for their own commercial benefit to the detriment of our citizens and small businesses.

In the online safety arena, the testimony of Frances Haugen, the Facebook whistleblower, to the *Wall Street Journal*, the US Senate and our Parliament through the Joint Committee here was very compelling in shining a light on how Facebook, or Meta, knew about the damage its algorithms were causing but chose knowingly to ignore it because it was making money. Similarly, we now know they are egregiously overcharging our citizens and our small businesses to the tune of £2.4 billion a year, as per the market study. Without question, there is a very serious issue in both online safety and economic crime, as you put it.

They have failed to deal with this voluntarily. These issues have accumulated and built up over the last approximately 20 years. They have been reinforced by unbelievably powerful network effects, the

benefits that accrue to companies that get critical mass. These are almost unique problems that have grown up for this small number of large companies. We now know that they will not deal with this voluntarily, so we will have to legislate, as we are doing here, via the online safety Bill and via the competition regulation.

In doing that and in fixing the very serious problems that have arisen, it is critical that we do not throw the baby out with the bathwater. One of the enormous strengths of the UK is its ability to attract and to grow tech businesses large and small. One of my duties as Minister for Technology and the Digital Economy is to foster that ecosystem. We are doing it really well; we can be proud of it. Last year, we raised £29.4 billion of private capital into tech. That is by far the highest figure of any European country. It was double the country that came second, Germany, and three times the country that languished in third, France.

Similarly, our public markets were hugely active. There were 37 tech IPOs, which is the most active tech stock market in Europe. A new unicorn, a new billion dollar company, was created every 13 days last year. It is critical that we do not do anything that jeopardises that.

I think we can do that. We can curb the excesses of this very small number of gigantic firms while not stifling the innovation and the growth that are so essential to our country's future jobs, future growth and future productivity. I am completely confident that we can do both those things.

The Chair: A moment ago you said that you may want to share some ideas on news content. We are moving on to more practical things to do with the Digital Markets Unit. Just before we do, was there something you wanted to say?

Chris Philp MP: There was recent press speculation a week or two ago referencing some measures taken by the Australian Government on mechanisms to make sure that large platforms fairly compensate news content providers and publishers—newspapers and that kind of thing—for content that appears online. The Australians have come up with some legislation designed to try to make sure there is fair compensation.

The media sector is under quite a lot of financial pressure. It is fair to say that we are studying some ideas in that area. That is likely to be addressed in the consultation response.

The Chair: I am sure that will be welcome news to the news publishing industry.

Q27 **Lord Griffiths of Burry Port:** Congratulations on surviving the pounding at the hands of Nick Robinson this morning and getting your message across despite that. It is quite an art.

My question is focused on the resourcing of the unit. Before I get to that, kind reference was made earlier in this conversation to the insights of the Joint Committee and the helpful way in which they were integrated into

and enriched the current Bill. We went on to say that we are not producing a report here, but a letter would be written. On the other hand, we have just produced a report. We wait a long time for our reports to have time to be discussed in Parliament.

The report, *Digital Regulation: Joined-up and Accountable*, made some important points about what might be done between now and the time when the DMU will have statutory backing. It is only a couple of lines; I am sure you will be patient with me. It recommended that the regulators' current approach to co-operation be formalised, with the creation of statutory information-sharing mechanisms to facilitate joint work between regulators and better enable the pooling of scarce intelligence-gathering resources. The committee also recommended that, mindful of the limitations individual regulators and the DRCF, about which we had a lot of discussion, face in building up their own horizon-scanning capacity, the DRCF should strengthen and formalise links with industry and academia.

It seems to me that those are some practical suggestions as to things that can be formalised and made ready for immediate use once that illusory statutory endorsement arrives. This ought not to be a fallow period. Perhaps we could take significant steps towards readying ourselves for that other day. What do you think about that? This is the committee already having sat on this and wanting to share that with you.

Chris Philp MP: We had a very extensive conversation about the Digital Regulation Cooperation Forum a month or two ago. The formation of the DRCF itself followed recommendations that this committee or one of its predecessors made two or three years ago. The DRCF is an important step forward in co-ordinating regulatory activity in the digital sphere between the regulators that contribute to it, including the CMA, the ICO, Ofcom and the FCA. Those are the four principal ones, but others get involved. That is up and running. It appointed a chief executive relatively recently who has a very strong private sector background.

I would like to see the DRCF doing more. You mentioned engaging more fully with industry. I would certainly want to encourage them to do that. In terms of formalising their mechanisms through a memorandum of understanding or something, we are currently considering the recommendations of your report. When did we get that? Was it a couple of months ago? We are going through that report and formulating a response. In the meantime, finding ways of getting the DRCF to be a little more active and engaged is definitely something we would welcome.

On the question of putting it on a statutory footing, I would strike one cautionary note. Given how rapidly technology is evolving, how quickly these issues are moving and, consequently, how quickly the regulatory response and framework is moving, anything fixed too rigidly in statute runs the risk of becoming rapidly obsolete. It is the kind of thing that one would want to legislate for once the landscape had settled a bit. I am very open to discussing and debating this, but my initial instinct is that at

this moment there are so many moving parts that it would be quite difficult to legislate in a way that one could be confident is future-proof.

I just mention that as a thought to keep in mind, but I am very open to continuing to debate this question as we respond to your report and frame our response to the consultation. Did you want to add to that, Harry?

Harry Lund: Just to reiterate, this is a live question. One of the things that we consulted on for the digital competition regime specifically was how the regulators should work together considering various potential tools from the informal all the way up to the formal. We have online safety and we have this. The landscape is moving very quickly. We need to make sure that each regime individually has the tools it needs but also that they all fit together. Yes, this is very much something that is live, which we need to come back to continually.

Lord Griffiths of Burry Port: I am really very grateful to hear that consideration is being given to these steps. I do understand that there are moving parts. Of course, that will have to change. This is not a fallow period; it is a time when all the factors are in play. I was seeking reassurance that such steps as can be taken and ought to be taken are and will be taken.

The question I was asked to put is not that at all. This will be a really very pricey operation, by common consent, with the number of staff that you will have to employ and so on. How is it going to be paid for? There is a suggestion of a levy on users, which is a mechanism that has worked in other places, such as in Ofcom recently. What is the Government's thinking on how we bring it forward and undergird it financially with the necessary resource?

Chris Philp MP: That is a very good question. In terms of resource levels, I understand that the DMU currently employs between 55 and 60 people and there is active recruitment for another 10 to 15. Once filled, that will take the DMU to 70 people in total. Ultimately, I understand that the intention is to build that to 250 people in total, covering expertise such as legal, economics, data specialists, technical experts and corporate service functions, many of whom will be, I believe, based in Manchester, thereby supporting the Government's levelling-up agenda.

In terms of how that gets financed, in the recent three-year spending review funding was provided through to 2024-25. A levy to provide financing thereafter, or even concurrently with that, was consulted on in the consultation that ran last year. Therefore, settling a position on that will be part of our response in the coming weeks. As you say, a levy is something that is done in other areas. I am powerfully struck by the fairness and appropriateness of those being regulated to pay for it rather than the general taxpayer.

Lord Griffiths of Burry Port: It will be time intensive. Will Hayter is still over there. On a previous occasion, he has told us about how difficult it is

to get people with the right skills, qualifications and experience in a market where I am sure they can be paid a lot more in other places. It is quite an exercise to build a department from scratch. There is a lot of crossover and interoperability with other regulators, which you hinted at. They have already gone down that road and you have learned from them. It is fraught with difficulty. This is a specific and discrete area of work and activity. Do you have brave people who can do all of this?

Chris Philp MP: I have just noticed Andrea sitting behind me.

Lord Griffiths of Burry Port: One of them is retiring later this year.

Chris Philp MP: I certainly hope we do have brave people. I presume that was a question that you also asked the chief executive earlier. Yes, we need people who have the expertise to understand what is a very complicated area, to deal with very large corporations that have substantial resources and to have the courage to stand up to them and represent the interests of our citizens. If our citizens are getting overcharged to the tune of £2.4 billion a year, it requires action. We are relying on the CMA and the DMU to take that action on behalf of all of us.

Lord Griffiths of Burry Port: Thank you very much. I have asked all my questions, appropriate and inappropriate.

Q28 **Baroness Harding of Winscombe:** I have quite a general question. I have been reflecting on something you said earlier and want to check whether I have understood or misunderstood it. You gave a really passionate description of why it is so important to tackle the market abuse that we are seeing from these big tech companies. Then I think I heard you say, "But it is really important that we foster innovation as well". The reason I want to ask this question is to challenge the "but".

Chris Philp MP: It is an "and" rather than a "but".

Baroness Harding of Winscombe: Exactly, and that is why I wanted clarification. It is really dangerous to assume that you need to be kind in regulation in order to have innovation when the opposite is true. You need to prune hard in order to get the growth.

Chris Philp MP: Yes, that is right. I made that point very powerfully, I hope, in response to your question. It is an "and" rather than a "but". The two are not mutually exclusive. You can tackle market abuse and, at the same time, foster innovation. In many ways, the two are mutually reinforcing. Where you have companies taking a near monopoly position, not only do they sometimes abuse that to overcharge users, typically individuals and small businesses, but they sometimes abuse it to stifle innovation by squashing new entrants or creating barriers to entry such as keeping data very tightly held or having what amount to walled gardens that prevent innovation occurring.

Besides being good in its own right and preventing financial abuse, challenging abuse of market dominance also enables innovation and competition. It is very much an "and".

Baroness Harding of Winscombe: I just wanted to make sure that was clear.

Q29 **Lord Lipsey:** I and the whole committee, I hope, recognise your warmth towards the idea of a levy, although you were not committing. It is worth just considering whether a levy is enough. If the CMA is still bound by the Civil Service pay scale and so on, it may not get the flexibility from the levy that we would like it to have. I am particularly concerned that we should not get into this dangerous position where people join the CMA for three years as part of their career path, learn from that an armoury of weapons to fend the body off and then go off to take a large salary from the private sector to represent it.

Will we give the CMA the necessary flexibility in offering terms and conditions as well as giving it, through the levy, the necessary money to do it?

Chris Philp MP: Can I perhaps turn to Harry or Niall? The CMA is a non-ministerial body. Is it bound by the Civil Service pay scale?

Lord Lipsey: They did say so earlier. That is what I am going on.

Niall Mackenzie: As a non-ministerial government department, it employs civil servants. In your letter, you might want to ask the Treasury whether it is minded to change the rules. These are the Treasury rules. For a public servant, as many of you demonstrate, it is not always about the money. As the previous witnesses were saying, the challenge of the job and the reward you get goes a long way.

Chris Philp MP: It is an important point and one we should carefully think about.

The Chair: It is a very important point. Thank you for raising that, Lord Lipsey. While we are just on about the effectiveness of the CMA, can I bring us back to the recruitment for the chair vacancy? Mr Mackenzie, I understand that you are the independent chair of the recruitment panel for the chair of the CMA. It would be helpful to get an update from you on where we are with the recruitment for that role.

As I understand it, BEIS is also responsible for the recruitment of the CEO of the CMA. Noting that Dr Coscelli is leaving in July, along with all the pressure that is currently on the CMA, never mind the expectation of it as far as what we want it to do in the future, where are we with the recruitment of the leadership?

Niall Mackenzie: I am not the independent chair, as a BEIS official. We have an independent panel member as well.

The Chair: I beg your pardon. I looked on the Cabinet Office appointments thingy and I thought I saw that you were the chair.

Niall Mackenzie: I am indeed the chair, but it would be stretching it to say that I am independent. There is a process. As Andrea said in the previous session, the post has been advertised again. There has been a

strong field of candidates. We are in the process of shortlisting people for interview. In the normal way, the panel will then make recommendations and my Secretary of State will then make the appointment. It is under way; we are making good progress. The nominated candidate also has to go in front of the BEIS Select Committee in the House of Commons.

That will take some months, but the end is in sight. It will be a matter of months. I would not want to speculate as to how long, because it is quite a process, as those of you who have been through the public appointments process will understand.

Lord Vaizey of Didcot: We do not understand. It does seem to take an inordinately long time for no discernible reason. You get this hour-long interview and then you wait for months and nothing happens.

Baroness Buscombe: It takes eight or nine months.

Niall Mackenzie: It certainly should not be that length of time.

Lord Vaizey of Didcot: Then they reopen it.

The Chair: Let us hope that Mr Mackenzie is more efficient in leading the process for recruiting the CMA chair than others are for recruiting the chair of Ofcom.

Niall Mackenzie: The ultimate decision is not mine. I am running a process, as you understand.

Baroness Harding of Winscombe: It might be harsh to make Mr Mackenzie responsible for the whole end-to-end process.

Lord Vaizey of Didcot: It is the only chance we get, Dido, is it not?

Niall Mackenzie: The chief executive is a Civil Service appointment, so that process will start shortly. We are very keen that the new chair is involved in the process. That will delay the permanent appointment slightly. We are keen to make sure that the chief executive is appointed as quickly as possible, but we think it is essential that the new chair or the chair-designate is involved in the decision-making process. The two individuals will have to work very closely together, and we want to make sure they are a good fit.

The Chair: I want to make an important point, which does not really need saying, but it is worth saying on the record. A regulator such as the CMA being absent of a permanent chair, with the prospect of a chief executive about to depart, is a situation that needs resolving speedily, even more so, as I say, because of all the issues that we are talking about. I am saying that to you, Mr Mackenzie, knowing the limits of your responsibility.

Lord Vaizey of Didcot: Yes, we are not blaming you.

The Chair: Minister, although you are not the appointing Minister in the context of the CMA, I am sure you will understand and relay that

message back to the relevant ministerial colleagues.

Niall Mackenzie: I can assure the committee that my Secretary of State is fully aware of that and is determined to make sure that there is effective new leadership as soon as possible. He is very grateful for the work that Jonathan Scott is doing at the moment to keep the organisation going effectively, working well with Andrea.

The Chair: Very good, thank you.

Chris Philp MP: Might I ask my fellow witness a question, if that is in order? It probably is not. Is there any risk of a gap between the departure of the current chief executive and the arrival of the new one?

Lord Vaizey of Didcot: There will be a gap—a year's gap.

Niall Mackenzie: Yes, there is a risk, but there are plans in place to bridge that effectively.

The Chair: It is a genuine risk, it is a proper risk. It needs to be properly understood within Whitehall. The organisational leadership issues are often not properly understood by those who are responsible for making the appointments. Please relay the force of the committee's view on this. We will include this in our letter to you, Minister.

Chris Philp MP: I can hear from the noise around the table how strongly and unanimously members of the committee feel on this topic.

Lord Vaizey of Didcot: We appointed our chair immediately when our previous chair departed.

Lord Foster of Bath: It took minutes to get a Minister responsible for Brexit opportunities.

The Chair: Anyway, let us not digress. I will draw this to a conclusion. Thank you so much, Minister, for giving up your time on a very busy day, and to Mr Mackenzie and Mr Lund. It has been really helpful to get some clarity from you about what you hope will be in the legislation. You have given us a strong indication that you are doing everything you can to ensure it is part of the next Queen's Speech. We certainly feel it must be, because of all the serious issues that are currently unresolved.

As I said earlier, even if it is in the Queen's Speech, what is none the less concerning is the time it will take for that legislation to be implemented, for the DMU to be staffed up and everything else. We need the CMA to act on and to find ways to address some of the pressures that industries and consumers are having to cope with, without waiting for that legislation. That is not a good enough answer for some of the real problems that people are grappling with. Thank you very much.