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ONLINE PLATFORMS AND THE EU DIGITAL SINGLE MARKET

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Witnesses: Martin Bailey, Corneliu Hoedlmayr, Claire Bury, Vesa Vanhanen, Peter Mihok,
Guillaume Lorient, Nicholas Banasevic, Dan Donesie and Michele Voznick

USE OF THE TRANSCRIPT

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Members present

Lord Whitty (Chairman)
 Lord Aberdare
 Baroness Donaghy
 Lord Green of Hurstpierpoint

Examination of Witnesses

Martin Bailey and **Corneliu Hoedlmayr**, DG CNECT, **Claire Bury**, **Vesa Vanhanen** and **Peter Mihok**, DG GROW, **Guillaume Lorient** and **Nicholas Banasevic**, DG COMP, and **Dan Dionisie** and **Michele Voznick**, DG Justice and Consumers.

Q95 The Chairman: I was waiting for your colleagues to come back in, but if you would like to kick off by explaining who you all are, we will explain how we intend to conduct this. Thank you all for coming.

Claire Bury: I am Claire Bury. I am a director from DG GROW, or DG Internal Market, Industry, Entrepreneurship and SMEs. I have two colleagues with me from that Directorate General. I have with me Peter Mihok, who is the colleague sitting at the back there, and also Vesa Vanhanen who is deputy head of unit dealing with the digitisation of the single market. Both Vesa and I are authorised to speak for DG GROW if needed, but, as we discussed before everyone arrived, we will try and keep it to three main speakers, with assistance from our colleagues if necessary. Martin Bailey will speak for DG CNECT.

Guillaume Lorient: My name is Guillaume Lorient. I am a director in DG Competition. I am the director in charge of markets such as information, communication and media, which includes investigations on various types of practices—anti-trust, mergers and state aid as well.

Nicholas Banasevic: I am Nicholas Banasevic. I am head of unit in DG Competition in Guillaume's directorate, responsible for anti-trust cases in the high-tech sector.

Dan Dionisie: Hello and good afternoon. My name is Dan Dionisie. I am head of unit in the DG Justice and Consumers, the unit for Consumer Markets, and I am here representing the Directorate for Consumers.

Michele Voznick: My name is Michele Voznick. I am also from DG Justice. I am here to assist Dan and my colleagues. I am from the data protection unit.

Q96 The Chairman: Thank you all very much. We are members of the secretariat of the Internal Market Sub-Committee of the House of Lords EU scrutiny committee and one of the issues on our agenda is the digital single market. We have decided, in our wisdom or otherwise, that one of the most interesting dimensions of the Commission's initiative in this area and the consultation you are engaged in is the platforms part of it. We have therefore come to Brussels, and are taking evidence in London, to talk about that dimension. Obviously, it spills over into other dimensions in the digital single market and we recognise that you are also in a process and do not necessarily have a definitive position. The consultation is there. We are at the beginning of our process and you are a little further on, but the consultation has not yet ended, so we do not necessarily expect definitive views from you on all issues.

The way we are going to deal with it is this. There are rather a lot of questions listed here, but we thought it would be useful if we just did the sessions in groups—the headings—so that I will deal with the context and then we will move on through definition, competition, regulation and the sharing economy. We will not in that sense have 19 questions, or whatever it is: we will have groups, or topics. I hope that does not cut across your preparation to any great degree.

Could I perhaps just kick off on the context and ask you why the Commission decided to have a significant and separate part of the digital single market initiative related to online platforms. To what extent was it driven by demands that had reached the Commission, or wherever, from consumers, from small businesses, from the traditional industries or from Member States and their Governments? Why do we get there? We probably need to disentangle issues related to the performance of the single markets from the industrial policy dimension, which is also clearly important, but there is a concern that Europe is not competing on digital platforms and that, while there may be issues of competition and data protection, there are also issues of whether European industrial policy should intervene more substantially in order to create, if you like, rivals to the big American, largely American, digital platforms. We need to address that and the accusations of protectionism and anti-Americanism that may arise. That is the range of things for context. Who would like to kick off on that?

Martin Bailey: Thank you very much for this opportunity. We agree with the Lords on the central role of online platforms, their increasing central role in social and economic life and

their importance in a thriving internet economy. In fact, there is hardly an area of economic and, arguably, social interaction these days that is left untouched by platforms in some way. We know they bring benefits to consumers and suppliers, allowing market participants to exploit the advantages of digitisation, e-commerce and beyond. They have changed the manner in which digital content is distributed. Where did this demand to look at it come from? Platforms are constantly raised in the context of almost every discussion about digital by all parties. There is not one specific party. It is constantly discussed. As such, our comprehensive assessment of platforms is one of the key 16 actions and initiatives underpinning our DSM strategy. Platforms are a key driver of growth and their importance is increasing all the time. We also note that large websites—only the top 1% that are present in several Member States—account for nearly 50%, 45%, of all the internet traffic and this concentration is on the increase. That is the answer to your first question. Do you want me to develop that? You mentioned the United States and Europe.

The Chairman: How far is this concern related to the industrial policy in the sense that you feel Europe is falling behind in this area?

Claire Bury: I will focus more on the industrial policy, but there is a sequence between the beginning and the industrial policy.

Martin Bailey: Exactly. We understand that there could be a first mover advantage on certain platforms which may have started off in regions other than Europe. That said, there are a number of important innovations connected with the platforms, such as the globalisation of the TCP/IP protocol at Soun¹ and Spotify's business model. Spotify is Swedish, as you may know.

The MP3 encoding technology, SAP's NetWeaver platform and a number of other platforms and technology-related platforms are also developed and based in Europe, so it is not exclusively a US phenomenon, nor is the underlying technology. As to what we are trying to get out of it, from the digital single market strategy perspective, it is our broad attempt to respond to a number of challenges that are associated with the digital economy today. As I said, all industries are affected, online and offline, small enterprises, big enterprises, EU and

¹ TCP/IP (Transmission Control Protocol/Internet Protocol) is the basic communication language or protocol of the Internet. It can also be used as a communications protocol in a private network (either an intranet or an extranet). When you are set up with direct access to the Internet, your computer is provided with a copy of the TCP/IP program just as every other computer that you may send messages to or get information from also has a copy of TCP/IP.

non-EU companies. The broad aim of the digital single market strategy is to ensure that the efficiencies associated with the digital world are maximised, at the same time as ensuring that fundamental rights, such as freedom of expression and guarantees such as privacy, are enjoyed by EU natural and legal persons and that they are properly protected.

Claire Bury: If we take the wider question of industrial policy, the digital single market strategy talks not only about the platforms, where we say we are launching the consultation, but about the fact that we need a range of EU measures to make EU industry competitive and put it at the forefront of what is happening in terms of ICT and automation. Here we are thinking more broadly about sustainable manufacturing and processing technologies that are going to be important for Europe's competitiveness as a whole. Obviously we need IT companies that can compete globally, but we also need to make sure that our traditional companies—the more traditional industries, which can be automotive, mechanical engineering, food processing, you name it; it could be any part of the industrial fabric—are able to benefit from what is happening in terms of digital innovation. There is a problem in terms of investment with those companies. There is an investment gap, estimated at around €230 billion at the moment. As an example, EU investments in digital technologies over the last 10 years have been a third of what was invested in the US.

The agenda behind the DSM is not protectionist. It is about building up our companies to make them more competitive so that they can compete on the global scale. The kind of measures that the Commission has in mind would be to do with scaling up investments, making sure, through the various funding programmes that we have, that we are supporting and promoting that scaling up of investments, not just SMEs, which are obviously crucial, but we need them to grow into bigger companies. There is catalysing the digital transformation, getting all businesses across the spectrum to use that digital transformation—not just patches of it but all of it. Assuming some European leadership on the platforms, there is also the interoperability question, making sure that we have interoperability so that we are able to leverage the platforms as well. Then there is understanding the business opportunities: a lot of companies do not realise what the potential is and how they can scale up. Last but not least is skills. We are concerned about building up skills within the workforce so that businesses can indeed digitise their processes and that Europe can benefit from that.

Q97 The Chairman: Thank you very much. Has there been any particular reason why the first movers were all in America and there has not been any response from Europe in this

field—or not much? There have been attempts at responses, but, on balance, as compared with other sectors where the Americans have had some technological advantage but there has been a response from Europe, or at least in part, in this industry there does not seem to have been a successful response from Europe, unless we count eastern Europe a little bit and Allegro.

Martin Bailey: There have been some first mover advantages in the US, but not exclusively. I pointed to a number of examples of key technologies that have their origin in Europe. One can also look at Skype as another example; that was purchased by Microsoft. It is one of the very commonly found applications on your smartphones and other devices. It is of European origin. As Claire said, not in a defensive or protectionist mode, we acknowledge that there is a lot of room for improvement and that is why we are having a very carefully calibrated strategy to target a number of areas where we can give extra help, refocus policies and, more broadly in the digital single market strategy, to try to alleviate burdens on businesses, particularly smaller businesses that want to operate cross-border. Part of our examination is to try and uncover some of those barriers that may be legislative, regulatory or technical, or they may be standards. It is about them helping us to identify those and, as far as we can, seek to lift them, or at least to alleviate them. That regulatory burden—or non-regulatory burden—might be one of the reasons why there are first mover advances that are better exploited in the US.

The Chairman: Thank you very much. We should probably move on to definitional questions.

Q98 Lord Green of Hurstpierpoint: As to the definition of platforms in the entire digital single market, we were interested in the way you chose to frame the platform question, interested by some of the examples you gave and by some of the ones that you omitted. I will mention a few of them. I would be interested in your reactions or your descriptions of the thought processes that led you to the outcome. If you take newspapers and broadcasters, for example, virtually all of which now operate online, why were they not included in the list of examples of kinds of platform? Operating systems—we have talked a little bit about it already—one might argue are so often the mechanics of online platforms. Might they not have been usefully included? Then, as an example of something that we did not think was very obviously a case for inclusion, Netflix is a purveyor of services online, but it is not itself a platform; it is not two-sided. Do you have any comments to make on how you framed the definition and, in general, thoughts on how regulation might reasonably

apply across activities as diverse as search engines, social media, music-streaming services and a ride-sharing app?

Martin Bailey: The first general comment is that the Commission has not yet arrived at a definitive definition of platforms. Platforms can arguably cover almost every aspect of the internet and computer software. Neither is what we set out in the consultation document an exhaustive definition and we have deliberately invited comment where we might have got it wrong or where we want to nuance it. It is certainly not fixed. As to your specific point on operating systems—Android, iOS and Windows—these might also be considered platforms. We will see what the respondents say on this. We had pointed to Spotify and Netflix. Arguably they are not a multi-sided platform; they are not a two-sided platform. They purchase transmission rights and then they sell them on to customers.

Lord Green of Hurstpierpoint: Yes, they are no different from Tesco, although Tesco is of course delivering a physical good, which neither of those two is, and some of it is dealt with physically in the supermarket but they also sell online and they buy from suppliers. The relationship between supplier and consumer and them in the middle is exactly the same.

Martin Bailey: Yes. One could argue that Tesco online is also a platform with the business that it does—the buying and selling—online. But this definition is not fixed and we will have to alter the contours accordingly. We are also looking into whether we need a definition of platforms. We will also consider whether there is a need for a narrower definition of platforms that may apply to certain markets, certain sectors, certain types of platforms. Again, the jury is still out on that.

Lord Green of Hurstpierpoint: You surely need some kind of definition, otherwise you end up with a description of all online business, which does not seem to be a very useful way of going about this. If you end up with a definition that includes the likes of Tesco, or indeed Netflix, that are buying from some source and then selling to another source—and they do both of those online—it is still not the same as being a platform.

Martin Bailey: There are arguments that go either way on platforms, whether they are within and without. We will consider all the comments on those. Even Netflix has commented that it is not a platform. Others say it is a platform, so we are still to decide on that.

Lord Green of Hurstpierpoint: It is only a platform in the sense that any business online is a platform.

Claire Bury: I would underline here that we are at the stage of opening the consultation. It is quite natural that at that stage we open very wide, but we understand the point you are making about the need to take account of different kinds of business models and so on if we take further action.

Martin Bailey: To add to what Claire said on the regulation, there is a general disclaimer at the moment because we are right in the middle of our consultation.

The Chairman: That is understood.

Martin Bailey: We cannot speculate on the forms of regulation or possible regulation. It is too early in the day.

The Chairman: We will probably touch on that later on. Can we move on to the questions relating to data, which is obviously a major issue?

Q99 Baroness Donaghy: I do not know who is dealing with data.

Claire Bury: I will speak and take guidance if necessary.

Baroness Donaghy: It is just so I know who to look at. The General Data Protection Regulation is intended to take personal data protection into the digital age, as we know. Why is the Commission looking at data issues separately as part of its platform consultation? Are there issues specific to how online platforms collect and use data that the GDPR will not address? We are particularly interested in the value, if you like, of the data and the extent to which the consumer, although they think they are getting a free product, are possibly neglecting the fact that the information that they impart in order to sign up to these various things has a money value, even if it is only in advertising revenue.

Claire Bury: First, I have to say that the existing legal framework already guarantees the protection of personal data. As you mention, it is being updated now. We have a General Data Protection Regulation that is in the process of being negotiated. We want a regulatory framework that ensures the protection of personal data and consent to use of that personal data where it is necessary. We also want a balanced system that means that data can move along the value chain and be used by businesses through technology and business models. Obviously, those business models are changing rapidly at the moment. That needs to be taken into account.

We are aware that businesses use a lot of data that is not personal data as such and that does not concern identifiable persons. Therefore, we are looking at what obstacles there might be to using that kind of data, and at enhancing the legal certainty around using that

sort of data. Issues in this context might include the security of data that is generated and the creation of standards in relation to the storage and transmission of that data. To interject, the question you raised about what use can be made of personal data maybe comes up in your next question about the transparency arrangements around the data. While at EU level this transparency of data by the platforms as such is not specifically regulated in and of itself, we have the general regime that applies. We also have some recent jurisprudence that gives us guidance about levels of transparency. There have been two recent court cases. One is the case C-131/12 Google Spain, the so-called “right to be forgotten case”, and case C-362/14, which is the Schrems case. These cases have given guidance on what levels of transparency are needed for citizens to be clearer and sure about the use to which their data are being put.

We know that the platforms exercise a certain amount of selection and processing activity when they handle the data. In most cases, this can be beneficial and can bring innovation. But this can impinge on the rights and interests of individuals in the way that you were suggesting. Therefore, we may need to look at further transparency in that respect. In terms of what we have proposed at the moment—if I could highlight—we have clarity about the right to be forgotten, so controllers need to delete the data at citizens’ requests, and the right to know when data have been hacked: companies have to notify within a certain period if data have been accessed in a non-authorised way. There is the right to data portability for easier transfer between the service providers. There are also clear conditions for international transfer, of course, when data might be transferred out of the EU into third countries, and clear rules on the obligations where cloud computing is used in terms of transparency.

Baroness Donaghy: Thank you. That covered the next question. You used the word “consent”. Of course, that does imply a knowledge of whether that transparency is working or not. I am not quite sure how knowledgeable people really are about their rights even now, even before your consultation exercise is completed. To what extent is transparency the key to this and to what extent do you think opacity is the key to the rather dominant position of some platforms? I am going back to your word “consent” because I was intrigued by it.

Claire Bury: I know you are going back to the word “consent”, but I am trying to think carefully about what I say in relation to the other point that you are talking about where you

involve dominance, which then complicates the situation slightly. An example of recent work we did on comparison tools shows us that not all price comparison websites are transparent about the business model or how they perform the comparison. Out of more than 1,000 comparison tools that we looked at, less than 40% of them were providing a description of their business model and only 37% were providing an indication of the relationship with the providers that they compare, 18% indicating the frequency of the data uptake and 11% giving their market coverage. There is therefore a gap between what some of the websites are presenting. This is one of the issues that we are very conscious of, but I would not make a specific link in that respect with this question of dominance. We are talking here about more general questions of the way that the platforms are using the data and so on.

Baroness Donaghy: I suppose it is a political comment, so it is difficult for you, but you do not necessarily think that opacity is a tool that is used by those who are in dominant positions.

Claire Bury: We would certainly encourage more transparency. The general regime gives us transparency along the lines of what I have explained, but one of the reasons why we open a consultation is the need to look more specifically at what is happening with the platforms, the way they select and use the data and what transparency there is around that.

Q100 Baroness Donaghy: I am going to push my luck now a bit more: what do you think the range of possible actions is, from the most heavy-handed to the lightest touch that would be possible?

Claire Bury: You will understand at this stage, I think, what I have to hide behind². First, as I just said, we have to understand how the data are used before we consider what response we need. The General Data Protection Regulation that is currently being negotiated already is taking place in a climate where there are certain technological developments that we were not aware of when the original data protection Directive was adopted. Specifically on the question, if I come back to your point about consent, there is quite a debate among the Council, the Parliament and the Commission about how exactly consent should be defined, whether it should be unambiguous or explicit. Once that is clarified, we would need to look, in the light of what evidence we gather in the consultation, to what extent there may be more specific issues relating to what the platforms do with data.

² The witness wished to clarify that she was referring to the Commission's own ongoing consultation on online platforms.

Martin Bailey: To add to what Claire said, we have devoted a whole section in our consultation to access to information, how clearly it is displayed and whether it is understandable. We also ask a few questions on reputational systems, trust mechanisms, reviews, ratings—all these sorts of issues—and transparency mechanisms, online and already inbuilt on the platforms. As we are at a very early stage of our understanding, we cannot comment on regulatory responses at all, but we hope we are asking the right questions and we will get the feedback from the consumers and users.

The Chairman: Most of what you said is about how data are used, their transparency and whether the data and privacy legislation is up to date in terms of the technology and so forth, and indeed issues of whether it is being enforced properly. That would apply to the whole range of companies and certainly all sorts of digital activity to bring it into the digital age, but is there also a particular problem of what one might call the dominant platforms? In the same way that the market share of economic activity, if you like, might present a competition problem, does the share of the data being dominated by a particular company give them a particular advantage over and above the need for consumer protection for everyone?

Claire Bury: I will say something general and Guillaume can qualify it. Clearly, in the business model that has been used, the more data you have, the more data you are able to generate.

The Chairman: There is a network effect.

Claire Bury: Exactly. Then there is a network effect. The point to make as well is that you have to distinguish between the personal data, where we have the data protection rules, and other data and also the fact that we want to promote innovative business models and the use of data. We know that being able to use this data value chain is going to be crucial for European companies in terms of being competitive and leveraging the information that they have. There is a balance to be struck between the two, but maybe, Guillaume, you want to say something more from a competition perspective.

Guillaume Lorient: From a competition perspective, our experience is based on a case-by-case analysis. I can think of different types of cases where we saw that, for example, in a merger transaction like Facebook and WhatsApp, the fact that one of the companies had a lot of data. In this particular market, it did not look like an insurmountable barrier to entry, whereas in other markets—and we have ongoing investigations—obviously the amount of data as an asset that can be gathered by a company can give it a competitive advantage that

you have to take into account in your market analysis. Such assessments must be based on a market-by-market analysis.

The Chairman: That probably does take us into the broader area of competition, and whether there is a crossover between the two.

Q101 Lord Aberdare: We have quite a few questions in this area. I will run through the whole gamut, then you can respond and we can take it from there. I am looking at both DG CNECT and DG COMP to give a view on some of these issues. To run through the range of questions, first is this concept of “gatekeepers”, which, as I understand it, is applied to particularly dominant online platforms. I was interested in understanding a little more about what that means and what its implications might be. Second is the problem that smaller businesses encounter with platforms and whether you are beginning to think about mechanisms to tackle that, such as a dispute resolution mechanism. Third is the question of how you assess competition in the online platform field and are the existing range of competition tools likely to be able to do whatever job is seen to be necessary or is it likely that you will have to look at extending the range of existing tools? Finally, the area in which I am rapidly becoming our principal questioner is the question of price parity clauses and what impact the decisions that Germany and France have made are beginning to have, but, since this crosses the boundaries within the EU, there is the question of whether the Commission should be the primary authority in terms of price parity issues. I do not know how you want to tackle those.

Guillaume Lorient: I will start with your first question, then I will leave it to Martin to answer the second question, which is more linked to the consultation. Then I will try to come back on your other questions.

On your first question, relating to the term “gatekeeper”, I would like to take a step back. It is a term that has been used by some stakeholders in the context of the digital single market strategy, but from a competition law perspective it is not a term that has a legal significance. Certainly, it should not be confused with the notion of dominance, which is the central legal notion in our anti-trust activity in relation to single-company conduct. As far as our competition analysis is concerned, it is good to recall that market power itself is not an issue in the sense that dominance that is acquired through internal growth is not illegal. I leave aside the merger control part, which is all about gaining dominance or market power through external means, but I guess we are more focused on the anti-trust side of it. It is

only if there is misuse of that market power through anti-competitive conduct that a competition authority, and particularly the EU competition authority, would have a problem. That applies across sectors and companies, whether we are talking about platforms or not.

Once this principle is clearly set out, it is important not to generalise. When we examine the activities of a platform under the current EU competition rules, the assessment of whether this platform—or company, indeed—has market power, whether it can be considered dominant, is an analysis that is performed on a case-by-case basis in light of the legal, economic and technical evidence that we have to gather, which may be challenging, but it is done within that framework. Then we take into account the possible barriers to entry in this specific market, as we would in any other market. That depends on specific market features, whether they are online or not. If it is determined that an online platform has substantial market power, we need to go again into that assessment as to whether there is or has been an ongoing abuse of market power. We have to look into the market specifics in the light of the conduct in question and the type of effect it has on the market.

Our experience is that abuses can manifest themselves in very different ways. In high-tech markets generally, over the years we have investigated—and sanctioned sometimes—a range of very different practices. You have heard of the past cases, about Microsoft, where we talked about tying, interoperability and access to information. I called it a platform in the Microsoft case because that is so often a reference. We have the well-known ongoing investigations on Google where we are investigating different types of practices. On the search case, it is about possible anti-competitive leveraging through preferential treatment in general search results. The Android investigation has been opened recently but it is on different types of practices about potential exclusivities and so on. From a competition perspective, we are focused on the practices that we are aware of and it remains to be seen whether there is a broader issue beyond.

Q102 Lord Aberdare: Do you want to comment on whether the tools that you have are likely to prove adequate? One issue is that some of the cases you have mentioned take a very long time to go through the standard process and this is a very fast-moving market. We have heard from a number of witnesses in a number of national contexts that they are looking at interim measures and ways of being able to react rather faster. Is that something at Commission level that you have looked at and think might be necessary?

Guillaume Lorient: There are different questions within your question. I will try to be as exhaustive as I can. There are different dimensions in your question. First is the question of whether competition policy is flexible enough. Then there is a question about timing in a fast-moving market and so on.

On the issue of whether competition policies can be applied, essentially, in these high-tech markets, we need to see that, on the one hand, you have very constant principles enshrined in the treaty, primary principles on agreements and abuses, and, on the other, a set of legislation and the guidance to apply these principles, as well as some policy guidance. We see that the concept and the tools we have in competition law have proved flexible enough to adapt to different sectors, different market realities and also different practices, such as the one I was referring to, in order to conceptually address that. Obviously, the challenge is that we have to deal with them on a case-by-case basis. We have to look at each market's specificities and each practice that comes in, in the specific market situation.

One issue has been whether competition can deal with apparently free products: are there free markets? Can you deal with multi-sided markets? As far as we are concerned, the answer is that we have shown, through cases, where they are in two-sided markets. I referred to the Microsoft case—and Nick can certainly elaborate as one of the primary case handlers in that case—but also recently there were merger cases such as Microsoft/Skype, and I referred to Facebook/WhatsApp, where you have issues about two-sided markets, about how you evaluate the market shares on each basis, advertising markets and so on. There are challenges, but we feel that the concepts of competition can address the issues we have been looking at. We believe that European competition law provides an adequate framework to deal with the competition issues in the area of platforms in terms of the first part of your question relating to the conceptual basis.

As to the issues about timing, about fast-moving markets and the perception that competition authorities might not move as quickly as the markets themselves, which is essentially your question, first, the cases are often complex and it is critical to get it right. I am not saying that other markets are not complex. It may very well happen there as well. We have a system of administrative law in which we may impose penalties. We first have to find infringements and then we may have to impose penalties. Companies may appeal these decisions to the Court of Justice and therefore it is critical for us that the rights of defence are properly ensured, so that we give the time and examine the submissions by the parties

concerned properly, and that our analysis, subject to judicial review, is technically, economically and legally sound. That puts timing in perspective. In the light of that, it is clear that we have to have extensive investigations in those cases and that we devote a lot of care and time to make sure that we have proper decisions.

The challenge in fast-moving markets is that we have to ensure that innovation can flourish, whether it is from incumbents or challengers. That is the critical objective. The way you intervene is very important. You do not want to disincentivise those innovations, so there is a balance between timeliness and effectiveness and making sure that innovation can prosper in the market. There have been cases also where we intervened quickly and decisively in high-tech markets. We have in mind the e-books cases, the agreements between publishers and Apple. We have in mind the critical cases in standard essential patents in Samsung and Motorola, which was the first time we dealt with IP issues in the context of standardisation. These cases were finalised within two years. We want to emphasise that drawing a general lesson on competition policy on the basis of one case where indeed there was a long time devoted to negotiations and settlements is a shortcut that is not necessarily, we think, generally good to make and it is true that in other instances the fact of having achieved commitments successfully has brought an end to a potential infringement very quickly in high-tech markets, some of which I have quoted. That would be my answer to your questions.

Lord Aberdare: I would be interested in the perspective of Mr Bailey, particularly given where, as you rightly emphasise, the aim of all this is to try and make sure that EU-based businesses can flourish and grow and maybe develop some large-scale platforms as well. You are talking about making sure that things are not going wrong, but we need to make sure that things are being promoted and stimulated at the front end, which I guess is much more what the DSM is all about.

Martin Bailey: For that answer, giving the positive impetus, I refer to Claire's earlier answers about the elements that we want to push on the DSM to help our companies grow and flourish and setting the best market regulatory conditions where necessary. I reiterate what Guillaume said about the importance of a very thorough investigation made on the basis of very thorough legal and economic analysis, and of course we support that. They are complicated markets and they cannot be analysed overnight. It requires intensive work.

Your Lordship also referred to the question on smaller businesses and smaller businesses on platforms. I want to address that. Concerns have been raised that certain terms and conditions are being imposed on businesses, traders, those who trade on platforms and on competitors of larger platforms, terms and conditions that may be perceived as unfair. At the moment, these are being addressed by specific national legislation or action by national competition authorities. You gave the example of price parity clauses, also known as “most favoured nation” clauses where they set a price that cannot be bettered by other sales channels of the supplier. We have seen examples used by platforms in hotels or energy providers and such things. They are currently being treated nationally. France has passed a law, the “loi Macron”—excuse my pronunciation—which prohibits generally these clauses, and the German competition authority, the Bundeskartellamt, has acted against some of these clauses on a case-by-case basis. That is the situation on the treatment of those clauses. The public consultation also looks into these issues. We are carrying out this investigation. We would like to hear from more respondents and in the sectors we do not know about as yet. We are still in this learning process. We need to understand as well whether there are systemic problems in the markets. We do not know this yet. We are asking the questions to try and come to some form of conclusion on this. You also referred to dispute resolution mechanisms. This is something we have also included as an issue in our public consultation. We understand that this could be a way to address a multiplicity of disputes in an efficient manner. It could also allow for maximum flexibility for corporate policies, things like codes of conduct and ethics of companies. In reference to your questions of lighter-touch regulation, of course it could be a more lenient form of intervention than any other more heavy-handed possible regulation. To refer to my earlier caveat, we do not have any views on this yet. It is all part of the results of our consultation.

Lord Aberdare: We probably want to move on.

The Chairman: No, I am still on this topic. Mr Lorient, you mentioned merger policy. Could you say another word or two about that? One accusation in this area is that companies buy up the competition in advance, and any threshold for considering the merger policy, which then we have at national competition authority level or at European level, is not so much the current valuation of what might be a relatively small company, but the potential of that company to develop markets that are being swallowed up by the larger platforms. Do you have a view on that in terms of the merger policy and tools you have available?

Guillaume Lorient: Basically, in the merger regulation that is adopted with the unanimity rule—it is a legal basis that requires unanimity between Member States—the current turnover thresholds and the rules for jurisdiction for the Commission are set out in a way that companies need to have a certain turnover, which means—

The Chairman: That is what I mean.

Guillaume Lorient: —that indeed the primary jurisdiction does not allow the Commission to catch directly companies that have a low revenue. That said, there is a referral mechanism and a case like Facebook/WhatsApp was referred to the Commission precisely in order to look at this market. Member States, therefore—I think the UK was one of them—referred the case to the Commission for us to look at it. We looked at it; we made an extensive market analysis. It worked. It is then beyond my personal view as to whether we should change this threshold with the unanimity.

Lord Aberdare: I can see it would be an uphill battle.

Guillaume Lorient: I would be happy to have a conversation on that, but it goes a bit beyond my mandate. I am just trying to deal with the cases I am referred to. I am happy to deal with them.

The Chairman: Can I also have another go at the crossover between competition issues and data issues? You mentioned it really because for the normal individual consumer there is no price. For misuse and abuse of dominant market position the most obvious criteria are in relation to price, and there is no price for the consumer except that the consumer is donating their data and the use to which that data may be put. Is there a need for a new criterion as to what market abuse is in these circumstances and would one of those criteria be the use of the data, or the potential use of that data?

Guillaume Lorient: I am asking my colleagues how we want to deal with this.

Martin Bailey: You should answer on the competition aspect, but just as a general point as part of our assessment we are also looking at the extent to which data as such are a form of currency—a form of payment. We think it might be but we might be wrong, so that is something we want to get more information on.

Guillaume Lorient: Maybe we will have—how do you say it in English—

Claire Bury: —a double act.

Guillaume Lorient: Nick will start and maybe I will say a few words.

Nicholas Banasevic: Thank you. It has been shown in mergers in particular where data issues have been examined in a few cases. Beyond Facebook/WhatsApp, there have been cases like Microsoft/Yahoo and a few others where the merger regulation has been able to take account of data issues in the prospective analysis. In what we call conduct cases, where we look at, for example, potential abuse of dominance cases—in other words, conduct that has taken place or is ongoing that is ex-post analysis—it comes back to the principle Guillaume outlined. The competition tools are equipped to deal with the issues that come up on a case-by-case basis without needing to change, and you yourself, Lord Chairman, mentioned the issue of whether people in practice pay for something that appears to be free. That can be looked at on a transactional basis. We can look at whether data may be part of a barrier to entry in a dominance analysis or a more general asset. In that sense, data issues are not new to the online sector. Supermarkets have been using data for decades, so I think the same answer applies. To the extent that there are issues, you can look at them with the current competition tools.

The Chairman: The next batch of questions are interrelated, but I will ask Baroness Donaghy to—

Claire Bury: Lord Chairman, can I add something that might be helpful? I was just reflecting on what else we could add. On the personal data side—we talked before about the General Data Protection Regulation, which is being negotiated—I think there will be certain changes that will give back control to individuals in some cases, in particular as regards data portability. It is not what you were talking about before, with the data feeding more data and the network effects and so on, but the portability and how to get your data from the controller, which in this case would be the platform, and then being able to move it to another. So there are developments in that area as well. It is not connected to this dominance issue, but it goes back to what you were saying, to fill in a bit on what you were asking for. The Baroness was asking about the relationship between the data and the consent in relation to the use of the data.

The Chairman: Thank you very much. That is helpful.

Q103 Baroness Donaghy: There is an overlap here. I am coming back on this regulation issue. You put up a particularly robust defence about the current mechanisms. Is there not a perception that competition authorities do not move quickly enough to allay concerns about dominant platforms? Is that more a perception than a reality, do you think? What extra

resources do you think would be needed to handle complaints regarding large online platforms? Is it really just a question of whether it is competition or not?

Guillaume Lorient: Again, there are several questions in your question that we have not discussed before, but essentially it is perspective on timing—your first question was about timing—and then we can maybe discuss case by case, Facebook/WhatsApp, Microsoft/Skype, cases that have been dealt with quickly. You may have in mind Google, which took longer and I referred to a long period of negotiations that failed. Is it compared with competition in general or to this case? My argument would be that it is a specific case issue. At the same time, I said—and I am repeating a bit—that conduct cases in this area that may raise new issues are complex, some less than others, but we believe, that we have the tools and the concepts to deal with issues that are a problem from a competition point of view. That is what we are trying to do. Obviously, there are challenges for the teams for every competition authority, basically, not from the Commission, but I believe that we are properly equipped to do that.

Baroness Donaghy: Some of these platforms can afford to play the waiting game, can they not? In terms of the time taken, you are absolutely right that complex cases should be done thoroughly and properly, to give people a chance to come back. I am wondering about the balance of advantages and disadvantages in this approach. They can set aside an amount of money just in case something goes horribly wrong in the case. In the meantime, they are developing their industry or structures so that it is not even recognisable from the start of the particular case.

Guillaume Lorient: Can I answer that question? There are two aspects to which I would like to react. First, there is an important distinction to be made between merger control and anti-trust, ex ante and ex post. In ex ante, merger control—

Baroness Donaghy: Yes, this has come up quite a lot; we are just getting to grips with it.

Guillaume Lorient: —we get information quickly from large platforms because they have an incentive to give the information. In conduct cases, whether it is a platform or other big companies, to be very honest, in other sectors it is challenging to get the information. For any public authority, you need a lot of investigation and smart people to find out what you need.

That is irrespective of the business. When you have new, complex issues, it is challenging for competition authorities to predict the development that you may see now in some markets,

not all of them. But to ex ante tell you that such a market would have evolved in a certain way is not always obvious either. There is an ex-post exercise to be made as well in these markets where we see developments that are a concern for the competition authority, which may be very different depending on the markets we are talking about. I hope that answers your question.

Q104 Baroness Donaghy: My last fishing expedition is: when we were talking to others in our Select Committee, comparison was made about what factors influence the Americans in these developments and whether there are factors that we could either duplicate or recreate. One was an entrepreneurial instinct; another was private venture capital to assist start-ups. Do you have any comments on the different ways we could promote this dynamic competition in the European market and the most obvious one of reducing the barriers, where in America they do at least have a single market and we are striving on the foothills, if you like, of one here? Do you have any comments on any gaps there might be that we could fill?

Claire Bury: Maybe I will start and then you can complement if you want to. When we talked about the digital single market before, we explained that we still regularly receive lots of evidence about the barriers in the single market and needing to bring those barriers down. Alongside the discussion on the platform, there are a series of measures in the digital single market strategy that are intended to do just this. That would be, to give one example, increased certainty around the contractual rules that apply to sale of digital content or goods online so that both businesses and consumers have a clear idea of what the situation is and we do not have a fragmentation or a patchwork of different legislations that apply across the Member States. That is clearly one of the key objectives of the digital single market strategy. You mentioned start-ups. Quite a bit of work has already been done on start-ups, but, again, now in the single market strategy, which complements the digital single market—the single market strategy was adopted two weeks ago—we have specifically put the focus on start-ups and looking at the regulatory barriers that they face as well.

You mentioned venture capital. There you will see their ideas about having maybe a fund of funds that will partly be funded at European level as well to try and make sure that there is enough capital or access to that venture capital that these kinds of companies need. We know from the OECD figures that 60% of start-ups go out of business within the first three years of their existence. Keeping them alive in that period and beyond is very important if

we are ever going to get companies that will grow and be of a size where we think that they are able to compete both within the internal market but on a global scale as well.

Martin Bailey: Just to complement the first part of that, on the digital single market we are looking at 16 actions that may be said to interweave in addition to the proposal on a contract. We understand that per country it can be €9,000 for the cost of compliance to work out how much—essentially, legal fees—we will have to pay lawyers to work out what you have to comply with as a small business. Clearly, if we have a regime for contracts that is common as far as possible across Europe, the cost can be substantially reduced. Another one that we are looking at is measures in the area of parcel delivery. Also, there are proposals to reduce the administrative burden relating to VAT. DG Competition is also carrying out an inquiry into e-commerce. You may want to elaborate on that. We are also looking into the area of geo-blocking, the barriers that may be imposed based on your residence or nationality, which may not affect just consumers: it may affect businesses. You may think of restaurants sourcing ingredients or builders sourcing various materials. We are looking at—I do not want to say a patchwork—a number of simultaneous actions that together may ease some of the burdens and barriers that are currently faced by companies trying to operate across border.

Specifically also on platforms, we are looking into each sector of the platform economy to understand better the drivers of the dynamics of platforms as well as the mechanisms of entry, switching and considering, if it is appropriate, courses of action to alleviate that. At the moment, there does not appear to be any one-size-fits-all rule applicable to all situations. That is basically what I want to say. Perhaps, in addition, because I know that you are possibly going to touch on the collaborative economy—

The Chairman: We will get on to that, yes.

Martin Bailey: To anticipate one part on that, the Commission was asking questions on the obstacles for development and scaling up for collaborative economy businesses, whether they are also compliant with requirements like membership of chambers of commerce, et cetera. This is also an area we are looking into, but Claire will speak later on about it. That is an example of the barriers.

Claire Bury: Yes. I think you have a couple of questions on that as well.

Q105 The Chairman: Thank you very much. I go back to one particular question my colleague asked about resources available to competition authorities, but it also applies to

those who are dealing with industrial policy. Certainly, if one of our colleagues, who is not with us at the moment, were here he would advance his theory—it does not necessarily mean we all agree with it—that all the people who are knowledgeable about the digital economy are either working in a garret developing a dynamic start-up company or already working for Google or some other, one of the big boys.

Baroness Donaghy: They are certainly not working for bureaucracies.

The Chairman: They are certainly not working for bureaucracies. His view is that the competition authorities and the state agencies in general will always be disadvantaged in this field. His conclusion would probably be that, nevertheless, you should not give up trying. This is an area where most of the skilled people are under 35, or possibly under 30. Do you find it easy to attract into the European agencies staff who have some experience on the private sector side?

Martin Bailey: Generally, of course, it is a challenge to attract the best talent. Certainly, from my perspective, where I work, we have people with private sector backgrounds, people who have worked in tech companies and people who have worked in professions across the city in multinational environments, so we have not suffered, I would say, from a lack of expertise. Perhaps it is a comparative question for DG COMP as well. They may have similar barriers to attract people from the private sector into DG Competition.

Guillaume Lorient: I do not believe that we have a problem with recruiting good people from the private sector or elsewhere. We have been working on challenging cases like—I am quoting the main ones you may have heard of—Microsoft and Intel, and big merger cases. It is a challenge for public authorities to recruit the best people: we have the best British here. Many other markets are complex as well so it is a general challenge, but I do not believe that you need to have created a start-up to understand and gather information on the market realities. There are very different realities in fact in other markets.

The Chairman: That is reassuring.

Martin Bailey: One of the advantages for the Commission in general is that we see people at every stage, every line of command, if you will, from the start-ups right up to the larger companies. We see the regulatory authorities, the competitors, the traders and we see the engineers. In my team, I have a number of engineers and they talk about equations and algorithms with each other. We can field a level of expertise that can understand—or we hope to seek to understand—all the levels of the value chain.

Q106 The Chairman: Can I ask you one very specific question and a general one? We have had discussions with the digital council—Conseil National du Numérique—of France, one of whose propositions was that we should create a platforms ranking agency. They told us—I am not sure who “you” is in this context—that they had had some discussion with the Commission and that the Commission was very interested in this idea. Are you aware of this and how it might work out in practice?

Martin Bailey: Broadly, the Commission has taken no view on this, but it is one of the questions we have included in our consultation, whether we think a ratings scheme—one issued or supervised by an independent agency—would be a good solution to improve the situation. As I said, it is in the consultation and we have no view either way.

The Chairman: Thank you for clarifying that. The more general point is that we are in an era—we were talking about new initiatives from the Commission and the regulatory authorities’ end that may be on competition and related issues or maybe, to use the old-fashioned term, industrial policy to develop European expertise and enterprises within this area—where one of the problems in the world market is that fear of heavy-handed intervention from the European agencies may deter international investment into Europe in these areas just at the time when we need them, whatever the ownership of the companies involved. I assume you are sensitive to this, but it is an issue that has been raised with us by a number of witnesses.

Claire Bury: On that point, the message is not a protectionist one. As I said earlier, it is a very positive message. We want a general environment that maximises the incentives for the big and the small and encourages inward investment within the EU. We want start-ups to thrive, as I mentioned. We want to stimulate innovation through the digital single market strategy setting out the right conditions but also through other policy initiatives, through funding and so on. I mentioned that that should be supportive. The idea is that, if we can have a regulatory framework and an environment that has fewer barriers to it, that gives business opportunities and through those business opportunities all can benefit. It is definitely not a protectionist agenda. It is a very positive, dynamic agenda. We are sensitive to the concern that you mentioned, but the digital single market is anything but protectionist.

The Chairman: Can we now go on to the sharing economy?

Q107 Baroness Donaghy: Can you talk us through the approach that has been adopted to the collaborative economy, the Internal Market Strategy, and the reasoning behind it? It

seems that Member States are being allowed to take very different views on this. Is that a genuine issue of subsidiarity or is it because social and political differences are too great to overcome?

Claire Bury: I already mentioned the Single Market Strategy—now we have gone back to the old-fashioned term—which builds on the Digital Single Market strategy. Obviously, there we focused on the platforms and we see that in the collaborative economy we have the platforms acting as innovators and creating businesses which are challenging existing businesses. For example, in markets such as taxi firms or hotels, we have seen that the collaborative economy is now, through new business models, providing new challenges. That is also why we are looking at it in the Single Market Strategy because it is not just about the online environment; it is about the offline environment as well.

The challenges that we identified are, first, regulatory uncertainty. It seems that some of the existing rules do not fit the nature and the features of the collaborative business models and it is not always clear how those existing rules should apply to the new business models. Secondly, there are claims of unfair competition, that those who are in the collaborative economy benefit from a lighter regulatory regime and have an unfair advantage through that rather than the regimes to which normal traditional service providers are subject. Thirdly, we have the consumer protection and reputational systems. Again, I think we go back to this challenge of transparency about how we can be clear what the rights and obligations are of all the parties involved. Also, there is how to use user review mechanisms in addressing this information asymmetry that we can see in the business of consumer transactions.

There is also liability: another question of the extent of the platforms' responsibility when they are facilitating the provision of services, in particular who should assume the final liability, although, as we mentioned, rules on data protection already provide some certainty about liability, both in terms of those who are controlling the data and what they should do with it. In any event, we need to be clear that the platforms in the collaborative economy have to comply with the consumer protection rules and a number of existing rules that are relevant and need to be applied. Last, but by no means least, of course there are labour, tax and social security issues around the collaborative economy. The collaborative economy is changing the way labour market patterns work and it has an effect on the tax and social security arrangements.

Our strategy is, first, to gather information through this consultation—the collaborative economy is part of our consultation on the platforms—and to try and identify the problems and possible solutions. It is right, and was inherent in your question, that if Member States introduce different kinds of rules and regulation this leads to fragmentation. There are different rules in different Member States. That again is a situation of having barriers to companies operating in a seamless way across the single market. We are very much aware of that. The concern of the Commission as well is to ensure that we do not hamper innovation in the single market. We see this collaborative economy as an important innovator, an important generator of wealth and an important contribution to the economy. We do not want that to be hampered through regulatory barriers that might come through the Member States acting in different ways.

In the Single Market Strategy, we thought the first thing to do—now we are gathering evidence but we already think there is some scope to clarify the existing rules, the EU rules that apply. These will be Directives, like the Services Directive, the E-commerce Directive, data protection rules and consumer law, like the Unfair Commercial Practices Directive, the Unfair Contract Terms Directive and the Consumer Rights Directive, as well as maybe in some cases the relevant treaty provisions that might apply directly, not just secondary legislation. We want to look at where there might be regulatory gaps and how they can be addressed, but we do not want to favour one business model over another. Again, we will keep this technology-neutral. We are about promoting the collaborative economy.

Some of the flexibility in labour provision and use may pose challenges as far as tax and social security arrangements are concerned. We are very much aware of that and that is why we have asked questions on that as well. One thing it is important to stress—again it was inherent in your question—is that here we have to strike the right balance between bringing down the barriers so that companies can operate in the internal market, but also subsidiarity and proportionality because a lot of the time these new collaborative economy models are regulated even at a local level within the Member States rather than at national level. We are trying to strike a balance there between giving guidance on the existing framework, to the extent to which it applies, helping the new business models develop. We are currently mapping what is happening across Member States. There is a huge amount going on at the moment in Member States. We are mapping all that at the moment as the background for any guidance that we give.

Baroness Donaghy: Can I follow that up? Obviously, we all understand that there is that conflict and the requirement to get the balance between flexibility and subsidiarity, but at the same time I feel there is some consistency around regulation and behaviours across the piece, otherwise what is the point in having a single market? But there are shockwaves in this area that are sending some industries reeling. They are not prepared for it at all. It is difficult to see how some of them can be protected. We heard only yesterday that there is a car-sharing company in France—

Claire Bury: BlaBlaCar.

Baroness Donaghy: —originating in France that is now rivalling the SNCF in its market pull, which is phenomenal, is it not, in such a short time? Yet, in America, where it has probably gone a few steps further, you have Uber workers taking Uber to court because they are saying they are employees. They are almost getting to the other side of this rough sea. I am not saying that the outcome, whichever way it comes, is necessarily going to have relevance here, but it shows how quickly these things change and how big the shocks are. I am trying to search for where that balance is between subsidiary, flexibility and protection. The role of the Commission, especially across your directorates, is incredibly important, is it not? It is very heartening that you are all here—

Claire Bury: Speaking with one voice, as it were.

Baroness Donaghy: Or doing your best to.

The Chairman: It is going rather well, actually.

Claire Bury: When the Single Market Strategy was announced a couple of weeks ago, Vice-President Katainen and Commissioner Bieńkowska spoke about this. These developments are happening, and you are right that there are some shockwaves. Commissioner Bieńkowska said it would be like trying to stop the printing press. These developments are happening. The point is being able to respond with clarity and guidance, where appropriate, for all those who are involved in, and are affected by, them. Hence the fact that we are looking at the platforms and the way that they operate, but also at the more traditional service providers and the impact that it has on them. We come back again to this point of needing to give clarity within a reasonable period of time so that business models can evolve but others can take account of the developments too.

On the collaborative economy, the Commission is trying to provide, through the guidance, something that may go into the marketplace relatively quickly and be able to help

developments. Again, as we have stressed several times, it needs to be all these instruments working together. The competition law instruments need to be involved when relevant. As to the guidance, we are not currently telling Member States how to legislate and we are not proposing a new legislative framework on the collaborative economy. We are saying the first step is guidance on the extent to which existing law is relevant. Some of that is in the process of being adapted, like the General Data Protection Regulation. The new business models are taken into account with that. As to other pieces of legislation, such as the Services Directive or the E-commerce Directive, the E-commerce Directive is 20 years old now, so even though it stood the test of time relatively very well, because it was very much principle-based, not going into detail, we see that there may be, as the regulatory environment evolves, a need for guidance as to how those principles apply in specific situations.

You mentioned the labour law implications. Obviously, as well, this is an area where we have to respect the division of responsibilities between the EU level and the Member States. Probably the classification of what kind of employment relationship is there from a contractual perspective would be for the Member States. We see this happening across the Member States, that there are these questions. You referred to what is happening in the US. This is something that the Commission is aware of. It will be included in the issues that we will look at in the guidance, and, to the extent that we can, we will try and give clarifications where relevant.

The Chairman: There are difficult issues of subsidiarity as well as of disruptive and social consequences more generally. To take the taxi driver—I have to be a bit careful because some of my best friends are taxi drivers—it is not just national competence: every city in Britain has different rules and histories, and the same round the world, I guess, around taxi cabs.

Claire Bury: But a lot of these business models are being rolled out globally, of course.

The Chairman: That is true, yes, exactly, but they have different effects in different contexts.

Claire Bury: Of course.

Baroness Donaghy: The issue of trust is very important on all these issues of online companies. I think people are a little bit conflicted, are they not? They do not really trust the engines that they use. They might tick a box just to get through to the next page and not quite appreciate that they have signed all sorts of things away, but they just want to get at

the product. On the one hand, they are opening themselves out to some exploitation; on the other, they love the freedom that this gives. To some extent, that issue of trust could be quite devastating if one of these companies ever breaches it in some way and something really big could end up disappearing within a couple of years. None of us knows. That is the whole point about all this. We are talking about 20-year-old e-commerce and this is, in no way, going to be 20 years, is it? This is going to be two, three and four before you see another different dynamic set of things. I wonder how you respond to that. Your clear guidelines are fine, but how relevant will they be to your start-up company or your taxi driver who has lost his job or whatever? How will you be able to respond quickly to those sorts of situations?

Claire Bury: To go back to your point about striking the right balance, we have to deal with those issues at European level where we see there are wider implications. We know already from our legislation that, for example, the Services Directive sets certain parameters about authorisation schemes for allowing companies to set up. To the extent that it has been decided that those issues should be dealt with at European level, it is appropriate that we should give guidance on how that will apply more directly, mostly to national authorities but it might also be relevant to local authorities. We are very much acting in concert with the Member States too. The regulatory framework is changing very quickly in the Member States, to the extent that it is indeed, as you said, regulation that can apply maybe even in different ways in different parts of the UK. We need to accompany the Member States in what they are doing. That is why we think it is very important to have an overview of what is happening in regulatory developments in the Member States.

The Chairman: Thank you very much for all of that. Do any of my colleagues have questions on areas we have not covered?

Q108 Lord Aberdare: This is probably not an appropriate question for the Commission; I do not know. In the Digital Single Market strategy, you have 16 initiatives. It looks very much, as a whole, a package to be welcomed. Is there any process whereby the Commission measures its success in this kind of thing? Clearly, there are issues of whether you have met targets when something has been launched and when something has been agreed and all those mechanical things. Maybe this is an impossibly private-sector view of things, but are there measures that you are beginning to put in place, such as, "These are the things we will track over the years as to whether the percentage of cross-border transactions has increased or

the parcel costs are beginning to converge”? Is that something you look at? If so, is it something that you might publish in due course, “These are the specific areas where we think we can measure some forward progress”?

Martin Bailey: First, on each of these initiatives, we have to conduct a thorough impact assessment. There will be some forward-looking, if you like, and assessment of the likely economic impacts, social, economic, industrial and digital. In fact, following the publication of the better regulation rules on 19 May, there is now a digital fitness test that is to be part of the impact assessment process. Specifically on the success or otherwise of these measures, we have foreseen a digital single market implementation report. I believe this will be done on a yearly basis. We will focus on a number of areas according to priorities and monitor, as best we can, the progress within Member States. We might move to country-specific recommendations where we feel that things could be done better. Those are the first concrete things that spring to mind.

Claire Bury: Plus, we have the impact assessment upstream and evaluations downstream. Through the impact assessment, we say what we think we are trying to achieve through the legislation and it has to be very clearly measurable as well. If we say we want to bring down a barrier, we have to show what the impact of bringing down that barrier will be in terms of improved opportunities and costs. It obviously goes through the negotiating process. We have the legislation adopted and we also now have very clear guidelines about evaluating the impact of the legislation once it has been adopted. You mentioned parcels. There, the Commission has committed to produce an initiative by the middle of next year. We are in the process at the moment of completing the impact assessment to see more clearly what the form of that initiative would be. In so doing, it has involved us evaluating very clearly what our starting point is in terms of what we do not know about costs of parcels and what we do know and where the problems lie. Also, in the Digital Single Market strategy, the Commission has said very clearly that we hope that that could be adopted quickly. We will very quickly, within two years, review the impact of what has been done. There are, I think, now very clear timescales—a very clear upstream assessment and very clear downstream evaluation within which proposals are supposed to be produced and within which we will measure whether or not they produce their results.

The Chairman: Thank you very much for that and thank you all for your contributions. It has been very helpful. We will keep in touch. If there is anything that occurs to you or you think we should see in terms of your subsequent work in various areas, please let us have it.

Claire Bury: Can you remind us of the timetable of your work?

The Chairman: Early next year I think is the best I can do at the moment. It partly depends on availability of witnesses and other things. In effect, we want to complete the substance of our questioning and meeting people by the end of the year, and we would hope by February or March to produce something, but do not hold us to that.

Claire Bury: We will stay in touch with the clerks as well so that they know how we are progressing with the consultation.

The Chairman: Thank you very much and good luck.