

Select Committee on the European Union

Internal Market Sub-Committee

Corrected oral evidence: Brexit: competition

Thursday 19 October 2017

10.10 am

Watch the meeting

Members present: Lord Whitty (The Chairman); Lord Aberdare; Baroness Donaghy; Lord German; Lord Liddle; Baroness McGregor-Smith; Lord Mawson; Baroness Noakes; Baroness Randerson; Lord Rees of Ludlow; Lord Wei.

Evidence Session No. 3

Heard in Public

Questions 38 - 45

Witnesses

[I](#): Ms Kate Bell, Trades Union Congress; Ms Caroline Normand, Which?; Professor Steve Fothergill, Industrial Communities Alliance.

Examination of witnesses

Ms Kate Bell, Ms Caroline Normand and Professor Steve Fothergill.

Q38 The Chairman: Good morning. Welcome to this session. We are looking at the implications of Brexit for competition policy and related policies on state aid et cetera. Rather than you giving a statement, I will ask a general question to open, but first please introduce yourselves.

Ms Caroline Normand: I am the Director of Policy at Which?. I am sure you know about Which?, but briefly we are the largest consumer organisation in the UK. We have 1.7 million supporters and members, and we work in an entirely self-funded manner on behalf of all UK consumers.

Professor Steve Fothergill: I am a Professor of Regional Economic Development at Sheffield Hallam University, but I am also National Director—that makes me chief officer—of the Industrial Communities Alliance, which is the association of around 60 local authorities in the

older industrial areas of England, Scotland and Wales. We lobby to get funding and policy for regeneration of our areas.

Ms Kate Bell: I am Head of the Economic and Social Affairs Department at the Trades Union Congress. We represent UK unions and more than 5 million people.

Q39 The Chairman: Thank you all very much. My first question, which you can interpret generally, is about the situation hitherto. Do you have evidence or views on whether competition policy, both at UK and EU level, is working under the current frameworks? If there are failings, are they UK national authority failings or EU failings? Post Brexit, do you think there are areas where we could change the UK approach to our benefit? Some of your evidence, particularly from Which?, refers to failing markets but without a huge amount of detail. Others have told us that there are particular markets in which competition has not kept up with changing structures or changing technologies. The Committee itself not long ago had a report on online platforms, which, as we know, is quite a contentious issue at European level. There may be other markets. Perhaps you could give us an overall view, from the point of view of your organisation, on whether the present system is working, where it could be improved and what happens post Brexit.

Ms Caroline Normand: I would start with consumers. Consumers spend over £100 billion a month. They are critical to the economy, and in spending they obviously support business, manufacturers and employees. Their spending is driven by confidence. One of the key tenets of UK law that underpins that confidence is having a well-functioning competition regime. It is one of the building blocks from which things start. Obviously, having a competition policy that works helps to drive efficiency, produce choice and make sure that there is entry into and exit from the markets, and consumers get what they want. Obviously it is not everything, so it is important to say that that is where it starts. Therefore, from our perspective, it is really important post Brexit that we have well-functioning, well-resourced, independent competition policies.

As you say, not all markets are working well in the UK by any stretch of the imagination. Our consumer insight tracker shows that consumers continue to be worried about energy prices—65% of them in our latest tracker. The level of distrust in home phone and broadband services, for example, is currently at 23%. It is really low. The CMA and other competition authorities and regulators have a really important job to do in reviewing and monitoring these markets and making sure that they can pinpoint and analyse where any harm or detriment is coming from. We think that is incredibly important. For us, everything starts with understanding what is going on in the market and the detriment to consumers, and doing a thorough analysis of that.

We do not think that you need a fundamental change in our competition policy rules, anti-trust rules, merger rules and other rules on the competition side. Having said that, we do think that we need to look at the approach that is taken. That may first be the CMA's in the inquiries

into energy and banking. We pointed out some deficiencies in the speed at which the CMA operated, but also, frankly, the bravery of some of its decisions and the way it looked at what was going on. While it analysed and got right some of the problems in financial markets, for example, it did not step up and say that it would do anything about unarranged overdrafts, which the FCA has now picked up. That is a small example, but it is representative of some of those issues. Nor did the CMA get on to looking at the appropriate remedies quickly enough.

The CMA and the competition authorities are one part of the picture. They are where defining a problem can start and action can begin. We also think that the regime as a whole needs to make sure that the players in the CMA and regulators are as joined-up as they can be so that there is an holistic approach. Obviously, once the CMA comes up with its views on energy, it is really important that it works closely with Ofgem and that Ofgem picks those up. We need to use the whole suite of tools in the toolbox, again to make sure that we solve consumer problems. We have the competition rules, and we need to use them. We have regulatory rules, and we need to use them. There are other tools in the toolbox, and we need to use them, but really clearly, with an eye to where the consumer problems are. We need to focus on making sure that we know where those problems are and that we have done all the analysis and asked consumers and understood. We need to ensure that we do not make guesses and try to solve a problem that is not there, while causing a problem that does not need to be caused. There is a big opportunity coming out of Brexit to make sure that we look at this in an holistic fashion. Which? also thinks that the competition elements of the CMA's powers are essentially fit for purpose and that it needs to use them.

Finally, you mentioned the way in which markets are developing and consumers are purchasing increasingly online. Our competition authorities absolutely need to keep up with some of the challenges that are posed by online purchasing, the use of data and so on. They need to continue to put as much effort as they can into that and to make sure that they apply the rules in a way that fits the way consumers act today.

Professor Steve Fothergill: My local authorities come into this whole issue from a very particular point of view and with a specific interest in the way the EU competition rules that are embodied in the EU state aid rules affect what we can or cannot do to promote regional economic development here in the UK. The present EU rules on regional economic development, which are part of the suite of state aid rules, are far from perfect. If we were to write them, we would write a different set. But the fundamental problem that we face in Britain at the moment is less the EU rules and more the failure of the UK Government to exploit the present rules to the full. If you look at the statistics, you will find that, for example, Germany spends about four times as much on state aid in relation to the size of the economy as we do, and the French spend twice as much as we do. Particularly in England, since the discontinuation of the Regional Growth Fund, there been no significant tool to take advantage of the leeway in the EU state aid rules to promote jobs and

growth in the less prosperous parts of the country. So, yes, it is not perfect over in Brussels, but that is the main problem that we have faced here in the UK recently.

Ms Kate Bell: We largely agree with Steve's perspective on the state aid rules, but one element of the competition regime that the TUC is particularly focused on and where we think there is a need for reform is the mergers and takeovers regime. When the Government set out their proposed reforms of the competition regime in 2011, they said that one of the key aims of competition policy was to enhance productivity and economic resilience. Obviously, we are not doing particularly well on either of those measures at the moment. We have had flatlining productivity for a decade, and as for economic resilience, levels of business investment and consumer wages are not particularly strong. We do not think that the UK's competition regime is solely responsible for this, but we do think that our mergers and takeover regime is one of a number of aspects of corporate governance that perhaps encourage a focus on short-term shareholder returns over the long-term performance of the company, as one of the ways to avoid a hostile takeover is to keep the share price high. We know that the pressure to deliver short-term shareholder returns has an impact on economic decisions. In a recent survey by the Bank of England, 80% of publicly-owned firms agreed that financial market pressures to deliver short-term returns to shareholders have been a barrier to investment.

Our proposed solution to the mergers and takeovers aspect is one that we argued for long before Brexit was thought of, and it is the introduction of a test for mergers and acquisitions relating to long-term company interest. We have argued that that could be administered either by a new mergers and acquisitions commission or by the Competition and Markets Authority. Of course, there are other aspects of what look like market failures in the UK. Rail fares, for example, are around 11% of monthly earnings in the UK as opposed to around 3% in Germany. But, again, we do not think that that is a failure of EU competition or state aid law, rather than how the UK has chosen to act within that framework. Very much like Steve, we think it is the UK Government's responsibility to deliver a competition regime that can enhance productivity in the way the Government say they want to.

The Chairman: Thank you all very much. We will return to some of those issues.

Q40 **Baroness Donaghy:** What opportunities do you think Brexit offers the UK to design a national competition policy that develops local and regional business?

Professor Steve Fothergill: Can I take that question, because it is probably most firmly in my territory? It is very unclear at the moment, because the leeway that we may or may not have on EU state aid rules to promote regional and local economic development depends to such an extent on the outcome of the negotiations over in Brussels. Broadly speaking, if we are looking to have pretty unfettered access to the single

market, we might expect that part and parcel of that deal is having to accept the EU's own state aid rules pretty much lock, stock and barrel. The more we move away from that unfettered access, the more likely it is that we will have leeway to design our own distinctive rules here in the United Kingdom. It is fairly unclear at the moment which way the cookie will crumble.

Ms Kate Bell: The reforms that we want to see could already be achieved on a domestic level. We talked about a new mergers and takeovers commission. We think there is significantly more scope for using the state aid rules and for using public procurement to deliver regional and local economic development. We have already seen Wales and Scotland starting to use that type of approach of requiring local or community benefit clauses in their public procurement. That is one approach. If we are looking for ways to develop our local and regional economies, that is a significant way forward and one that we can achieve under existing legislation.

Ms Caroline Normand: This question on state aid is not one that Which? is qualified to answer, but I would say that we want to see a competition policy that encourages innovation and encourages companies to enter markets and to grow. In a sense, that is exactly what you would hope to see at a local and regional level: supporting consumers and the things that they want.

Lord Liddle: Accepting what you have all said, that the main problems as you see them are in the way the UK implements the rules, Professor Fothergill, you said that you did not regard the present state aid rules as perfect. Would you like to expand on that? I am interested in this subject, because one of the asides I picked up on in Jeremy Corbyn's speech to the Labour conference was when he talked about the freedoms that we would be able to have outside European rules if we were no longer subject to them. What is your view of how significant these freedoms might be?

Professor Steve Fothergill: It is not just our view that present EU rules on allowing aid for regional development are not perfect. Having worked with the present UK Government—or rather the Government pre-2015 when the present rules were being set up—I know that they did not regard them as perfect, and that there were desirable improvements that they were unable to achieve through negotiation. If you want me to be absolutely specific, I can identify a number of areas in which the present set of EU rules are a problem for the United Kingdom.

I will just flag up three areas. One is that in defining the allowed scale of support for regional development, the EU looks at the inequalities across the whole of Europe and says, "Oh well, Britain is mostly fairly prosperous, so you can't have much eligibility to give regional aid". On the other hand, from a narrowly British perspective, it is the disparity within the country that is important.

A second problem with the existing rules is what is called the aid intensity ceilings. Across most of Britain now, the ceiling for the financial

assistance that you can give companies to help promote investment is only 10% of the cost of a capital project for large companies. That is often not enough to influence decision-making. It is rather more in West Wales and the Valleys and in Cornwall, but across the rest of Britain there is a 10% ceiling on support for capital investment.

The other great failing of the present rules is that they have introduced a new hurdle since 2014 that makes it very difficult to provide support for firms reinvesting in existing plants. You can still provide firms opening up new business with support up to the 10% ceiling, but if it is for, let us say, a motor manufacturer wanting to develop a new model or to improve productivity at an existing plant here in Britain, that is now in effect prohibited in the rules. That is a problem.

Lord Liddle: Is it?

Professor Steve Fothergill: Yes, it is. If Nissan in Sunderland wanted financial support to develop a new model in Sunderland, rather than say build it in Slovakia or Poland, it would be very difficult.

Lord Liddle: How is aerospace launch aid justified under EU rules? That is a classic of developing a new model.

Professor Steve Fothergill: That is one I cannot answer, I am afraid. I am not on top of the intricacies of the aerospace industry.

Lord Liddle: And what about training and R&D support? That is different from capital spending.

Professor Steve Fothergill: Yes. There is a series of EU rules. There are parallel sets of rules on support for R&D, support for training and support for environmental measures. I am focusing here on the regional development side of the rules. We have been open and critical and have published proposals for post-Brexit regional policy. We say that if we get leeway on the state aid rules, these are some of the changes that could usefully be introduced. But I go back to what I said earlier: it is far from clear that we will get leeway.

Lord Liddle: Is it not also the case that English regions are now among some of the poorest in relative terms in the EU? I did not quite understand your first point, because I do not think that outside London and the south-east we are actually very prosperous by comparison with the rest of the EU.

Professor Steve Fothergill: If you were making those comparisons with the old EU 15, there might be a bit of truth in what you say. But once you are making comparisons across the EU 27 or 28, even our less prosperous regions look relatively prosperous on GVA-per-head measures compared to the states of central and Eastern Europe. The EU, which looks at Europe as a whole, says that there really should not be much eligibility for regional aid in Britain, although if you look narrowly within Britain we clearly do have huge disparities between the prosperity of

parts of London and the south-east and some of the older industrial areas in particular.

Ms Kate Bell: The one thing we would add is that we do not think that the state aid rules are perfect, but the European trade union movement, at a European level, has long been arguing for improvements; we do not think that these improvements need to happen only at the UK level. I think I am right in saying that international businesses operating in the UK and elsewhere would still be bound by the state aid rules, so we would need to take that into account. We have long said that there should be more clarity about where you can use state aid to support industrial strategy and to support sustainable development, but we think that the rules would be more effective being improved at a European level rather than simply within the UK.

The Chairman: Just help me on the concept here. We are talking about a post-Brexit situation, which, as Steve Fothergill said, depends to some extent on what trade arrangements we eventually have with the EU and indeed other countries. Even the WTO has rules relating to state aid. The issue of preferential state aid becomes a British issue: in Britain, discriminating against one British operating company or another, as distinct from ensuring fairness between ourselves and a German or Italian company. Does that raise a whole new dimension, or does it get swallowed up in regional or industrial policy?

Professor Steve Fothergill: When we are talking about regional economic development, it is not whether you prefer this company or this employer to that company, it is about where the proposed investment is. Going right back to the 1960s, we have had regimes in Britain that have been about encouraging investment in the less prosperous parts of the country. There is something called the Assisted Areas map, drawn up under the EU state aid rules, which covers 24% of the UK population and is very much tied to the less prosperous areas. It is about facilitating growth and investment in those places.

Lord Liddle: You have to have a regime, do you not, that prevents firms shopping around the Welsh, the Scots and Yorkshire trying to get the best subsidy deal out of them? You have to have some kind of control of that sort of behaviour.

Professor Steve Fothergill: Absolutely, and this would have to be regulated at the core in the United Kingdom. It is not a matter that could be devolved to the component parts of the UK.

The Chairman: That brings us to Baroness Randerson's question, I think.

Q41 **Baroness Randerson:** Essentially, the question has been asked and half answered. To what extent do you think that state aid could be devolved? Reference has already been made to subsidy shopping. There is also the danger, of course, of a race to the bottom between the various nations of the UK. Perhaps you might also take into account the political pressure

that there would obviously be if you were to change the current situation with a UK basis—under an EU umbrella, of course.

Professor Steve Fothergill: I did say that it would be very difficult ultimately to devolve this area. I can see that day-to-day administration under UK rules might to some extent be devolved, but you would also need to police the system and not just make sure that you did not have a bidding war developing between different parts of the UK. The Department for Business, Energy and Industrial Strategy has procedures in place at the moment to make sure that does not happen. But you would also have to police the system to make sure that you are not throwing money at investments that would have gone ahead anyway. There has to be genuine additionality, which means that you have to apply the same sorts of tests that are written into the present EU state aid rules: would this business invest on this scale here, at this point in time, if they were not given financial support? If the answer is that they would have invested anyway, you do not really want to give the money, as it is just a waste of public money.

Baroness Randerson: How much is state aid policy devolved in other parts of the EU? In practice, how much are the devolved Governments throughout the EU left to implement state aid policy?

Professor Steve Fothergill: I could not give you a definitive answer, I am afraid, but they would still all be within the basic EU state aid rules. Bavaria and Saxony, for example, would each have ultimate ceilings but that might be different.

Baroness Randerson: But do you recognise that there would be huge political pressure, because one of the hopes and expectations of many who support leaving the EU is that it will enable government to have a more interventionist hand in these issues? This issue was raised in relation to the steel industry and the loss of jobs, for example.

Professor Steve Fothergill: Particular rules apply to the steel industry beyond just the normal regional aid rules. Going back to what I said right at the start, you can do more within the existing rules anyway, which is one of our big problems, particularly in England I have to say. The Devolved Administrations in Scotland and Wales are still trying to use the leeway within the EU state aid rules to provide the sort of support for businesses for regional economic development that we are talking about here.

Lord Aberdare: I have a more specific question about how we might use state aid rules after Brexit. Picking up Ms Normand's point about promoting innovation, might we be able to use it in addressing the challenges of broadband and 5G rollout, for example? Are there ways in which it could be used to address the areas that are in the famous 5% at the moment, which we seem to have no idea how to meet?

Ms Caroline Normand: I cannot give you an overall policy answer from a Which? perspective on how state aid operates, because we are fairly

neutral about state aid. State aid has obviously been used in some of the rollouts of broadband, and there are interesting questions to ask about what we do in the final stages of getting connectivity to the remaining 5% of the population and what happens with 5G. That is one question that goes into the mix, alongside questions about how you get private investment to do the same thing. You need to look at those one against another.

Ms Kate Bell: We might add that it would be unfortunate if we had to wait until possibly the end of 2019 to deal with those 'un-broadbanded' areas. There is probably quite a lot that the Government could be doing with greater investment now. The Government upping investment in infrastructure, of which broadband is a critical part, is one of the things that we have been pushing for. We are likely to be bound by it if we are in a transition period, which the TUC very much hopes we are, in which we comply with European rules. We will be complying with state aid rules during that period, and we need to act on the broadband issue now, as it is so important for business development.

The Chairman: Can we go on to aspects of public procurement? Baroness McGregor-Smith.

Q42 **Baroness McGregor-Smith:** In the post-Brexit environment, what do you think the opportunities or the challenges could be in the UK chooses to adopt a more flexible approach to public procurement?

Ms Kate Bell: We think there are plenty of opportunities in the pre-Brexit environment. As you know, the latest procurement directive from the EU introduced social and public policy considerations into the acceptable criteria for assigning government contracts. In both Wales and Scotland, the Governments are taking those forward in same quite interesting ways.

In Wales, the Welsh TUC has been working quite closely with the Welsh Government on procurement rules. They have been defining the use of community benefits to make sure that they must apply to all contracts over £1 million and are being very clear that those community benefits must include things like promoting jobs and training places. They have introduced a code of practice on ethical employment in supply chains and have been setting out specific pilots in which public contracts are reserved for the organisations that employ people in disadvantaged areas.

In Scotland, which it is important to note is not covered on these issues by the (English and Welsh) TUC¹, it is interesting to see what they have been using as a possible example. The Procurement Reform (Scotland) Act says that "before carrying out a regulated procurement" the contracting authority must "consider how in conducting the procurement

¹ Note: The TUC has an office in Scotland to work on union education. The Scottish Trades Union Congress (STUC) is independent from the TUC although the organisations work closely together.

... it can ... improve the economic, social and environmental wellbeing of the authority's area". There is some real evidence already of how the devolved Administrations are basing procurement on the 2014 EU directive. Again, we do not need to wait for the post-Brexit environment to look at how we can use that positively now.

Professor Steve Fothergill: Of course, it is theoretically possible that post Brexit we might have far greater leeway to buy British goods rather than imported ones. That has obvious attractions in some instances, such as protecting or creating jobs and developing supply chains. But it is not obvious that Brexit will actually deliver that if we also want access to other people's markets. That is the problem. If the flipside is that we are shut out of potential procurement decisions taken by the remaining EU countries, it is a bit of a zero-sum game; we might gain on the one hand, but we will lose on the other.

Baroness McGregor-Smith: I agree with that point, but do you see any other areas where we could change the rules to make us more flexible?

Professor Steve Fothergill: The right noises are certainly coming from government on procurement, but whether that is actually being delivered at the sharp end is something that a lot of people who I talk to question. Since the debacle over Bombardier and the trains, in 2010 or 2011, the Government have unquestionably been sensitive on this issue. There are policies in place to try to encourage the public sector to build a dialogue with potential UK suppliers. It is possible to use public procurement as a tool to help to train people and to help small businesses to develop local supply chains and so on, but whether that is delivering at the sharp end is questionable, I have to say. I heard tales about the steel industry yesterday, for example; there has definitely been a public policy push for the public sector to buy more UK steel. However, you are still limited, of course, by what you can do formally under EU competition rules. Even beyond that, there seem to be worries about where the steel for the new generation of frigates, for example, is going to come from. There is no guarantee that it will be from UK sources. There is that disjuncture at the moment between theory and practice. If we could move closer to what is already the aspiration, we would make a lot of progress this side of Brexit.

Baroness McGregor-Smith: What about SMEs and making it cheaper for them to bid under public procurement?

Ms Kate Bell: I think the Government set themselves the target of 25% of government contracts being met through SMEs, and they have now met that target. That is an interesting example of the Government, when they set their mind to delivering the policy, having been able to do so. Again, perhaps the issue is intention and follow-through rather than necessarily the rules. It will be really interesting to see what comes out of the Welsh pilots that are happening now. Will those actually deliver the new jobs in disadvantaged areas which we very much hope they will? It is about the delivery chain. Is this taken into account at every level? With that government target for SMEs it certainly was, and something

changed, rather than this being about the rules stopping us. Our feeling is sometimes that the EU procurement rules are used slightly as an excuse.

The Chairman: Could we now go on to the merger area? Baroness Noakes.

Q43 **Baroness Noakes:** This question is about mergers and acquisitions, but specifically the Government's power to intervene, which currently exists under the national interest criteria, which are prescribed in law and are consistent with the EU area. I do not think that is fundamentally changed by the announcement this week by BEIS that effectively further extends the national security grounds. Post Brexit, we would not be constrained by the EU's overarching framework, and the question is about the opportunity to reshape the power of government intervention. I heard what Ms Bell said earlier about possibly reshaping it around longer-term contribution. I would be interested if you wanted to elaborate on that, and to hear from other witnesses.

Ms Kate Bell: I think that is right. Our primary suggestion for reform of the mergers and takeovers regime has not been about the national interest test or around government intervention; it has been about having a new, independent test, basically. We think there should be an independent test on whether a merger or acquisition will deliver a long-term benefit to the company, and it is important to stress that we think that should be measured in respect of the whole company, workers as well as shareholders. However, we think that should be delivered by an arm's-length commission. We are not arguing for government to make that judgment; we are arguing for an independent set of criteria that could ask, "Is this in the long-term interest of the company?" Either we could deliver that long-term interest regime through a new mergers and takeovers commission, or a part of the Competition and Markets Authority could deliver it. But it is an independent test, not a new revision of the government national interest criteria.

Baroness Noakes: So do you see any scope for widening the grounds on which the Government could intervene?

Ms Kate Bell: That is not where we have focused our reforms. Others have put forward proposals, to which we are not necessarily averse, but the critical thing we are trying to deliver is that focus on long-term interests, and that will be delivered through reform of the government tests.

Professor Steve Fothergill: We do not have an institutional view on mergers and acquisitions, so I will stay silent on this one.

Ms Caroline Normand: From a Which? perspective, as I have already said we feel that the independence, transparency and rigour that the CMA can bring to looking at mergers is a really important part of the system. Essentially, the process that you go through, focusing on whether deals are harmful or beneficial to economic growth or consumers, is the right

approach. Obviously, there are already prescribed grounds for looking at mergers in public interest terms that are tightly drawn and apply in specific circumstances. There may be other grounds. I do not think Which? has an institutional view on that, but we would say that anything in this area has to be really rightly prescribed. The 2002 Enterprise Act reforms were intended precisely to take competition decisions out of the politicised realm and to ensure that you have a degree of independence looking at mergers and other issues as they come through. What we do not want for consumers is second guessing or other decision-making coming into play that has unintended consequences and that does not in the end benefit them. This is a really important place just for keeping an eye on the main prize and making sure that what happens here is set in the context of a proper, rigorous analysis of the interests of consumers.

The Chairman: A couple of other issues have been raised with us in relation to merger policy. One is the threshold at which the competition authorities look at companies. As a Committee, in our previous manifestation we had a particular concern about relatively small high-tech companies that ostensibly had relatively few assets but huge potential for being taken over by the giants of the internet world or the financial sector, particularly in the FinTech area but also in others. Do you think there ought to be other threshold criteria above which the competition authorities should intervene in relation to mergers?

The other thing in a sense relates to Kate Bell's point about the long-term interest of the company being taken over, and the tendency for takeovers to be financed by loans that are then imposed on the taken-over company—what some people call the Manchester United effect. It is a growing concern. Is that one of the areas that you have in mind in relation to the long-term interest of the target company?

Ms Kate Bell: Yes, absolutely. When we think about the long-term company interest test, one of the things that should be assessed as one of the indicators is the level of debt that the company would end up with. That is one of the key indicators of whether the takeover is in the long-term interest of the company rather than that of the shareholders at the time. We have not taken a view on the threshold issue, but we should read the Committee's report.

The Chairman: Does anyone else have anything to say about the threshold? No? We can move on to Lord Mawson's question.

Q44 **Lord Mawson:** In the light of Brexit, do your organisations have any plans to establish or improve transnational links with counterpart organisations to share information and best practice on competition and consumer issues?

Ms Kate Bell: We think that we have quite good links already. We are a member of the European TUC, the international TUC, and sector-specific union federations such as Public Services International. We will maintain those links irrespective of Brexit. They help, of course, to inform our view

on competition policy and of what may be happening at the European level, too.

Professor Steve Fothergill: We, too, have European links. We belong to a Europe-wide association called Euracom, which brings together older industrial areas across the EU. Over the years in that forum we have talked about many EU-related issues, not just the state aid rules but in particular the EU structural funds. Post Brexit, we may lose the basis for a dialogue with many of our partners, because they will presumably be concerned with one set of issues, while ours will be rather different. We will just have to see.

The Chairman: Also, the EU bankrolls some of those contacts.

Professor Steve Fothergill: No, except in some exchange-of-experience projects, which we have run and which have been very useful in promoting understanding of each other's issues. We will presumably no longer be eligible, outside the EU, for that sort of support.

Ms Caroline Normand: Which? is currently a member of BEUC, the European Consumer Organisation, and of Consumers International. We have very good links with members of all those organisations. It is important that we continue to have good relationships with our counterparts across the world. The CMA will need to develop its links too, because it is clear that it will be taking on 30 to 50 additional merger cases. If you look at two of the big cases last year—Google and the Hutchison O2-Three merger—the two biggest markets involved in the EU considerations were the UK and Germany. It is very important that we play our part as a consumer organisation in understanding what is going on and working with our counterparts on the cases that are increasingly going to be seen in the UK, in Europe and potentially internationally. There is a big role here.

The Chairman: In terms of your links with other consumer organisations across Europe, does their view of their national system or their experience with it give you any ideas as to how ours could perhaps be improved?

Ms Caroline Normand: In the context of competition, I would have to think about that. Obviously, a lot of our experience with our counterparts in Europe will involve cases that are considered at the EU level. At the moment, national competition authorities look at cases that are specifically national, and the cross-border cases are mainly European cases.

Lord Aberdare: Should the UK consider a different structure for enforcing competition law post Brexit, or would the current structure suffice?

The supplementary question is whether the UK should consider a separate body to develop advocacy and co-ordinate enforcement of consumer rights? To my mind, there are three aspects to the question.

One is the consumer interest and whether that needs a different structure; I gather there is a different body in Portugal, which has a separate consumer rights organisation. The second might be other issues that we have seen in some of the evidence: how issues of social and environmental interest are represented in the system. The third is the question of enforcement. You can pick and choose from three topics.

Ms Kate Bell: Very briefly, I will just restate our case for a potential mergers and takeovers commission, which is where we think the critical reform is needed, and let Caroline pick up the consumer issues.

Ms Caroline Normand: In my opening remarks, I talked about having a well-resourced CMA. One of the reason for that is not just because it will have an increased case load but because, even prior to the discussions in relation to EU exit, we as an organisation have concerns that the CMA's role in using its consumer powers and enforcing them is crowded out by some of the other activity that it undertakes on anti-trust and other matters. We want to make sure that they use the consumer powers that they have and perhaps look at whether the powers they have are sufficient. We have that issue already.

Moving on to enforcement, absolutely we think that Brexit is an opportunity to look at the consumer enforcement landscape in the UK as a whole. At the moment, it is quite fragmented and divided. The CMA has the top of the pinnacle, if you like, and looks at the national cases, although, as I have said, we had to bring a super-complaint on supermarket pricing, for example, as a means of bringing that to its attention, because it is very much focused on competition responsibilities.

If you go further down the triangle of enforcement, you come to the National Trading Standards board and trading standards more generally. Trading standards, which enforce consumer rules on trading scams and all issues of consumer law as well as food, have reduced in number by 56%, I think, since 2009, and in some places are completely strained. The system is absolutely at breaking point. We are seeing it in the product safety regime; the degree to which we can get traction on issues such as domestic fires relating to domestic appliances is one example. Likewise there is what we see across the board in relation to food enforcement.

I know it is not the subject here, but there is an incredibly variable picture when it comes to trading standards and how well safety is being enforced in those places. We think there is absolutely an opportunity to look at that picture as a whole and to consider how the CMA might be able to raise its game when using its consumer powers, as well as how we can make sure that we can do this better. Ideally, we would do it more efficiently. I know you cannot have everything in this world, but we need an enforcement regime that works and we need to put effort into working out how we can achieve that.

Lord Aberdare: Are there models in other countries that you think we could learn from? The Portuguese model is DECO, I think.

Ms Caroline Normand: There are different models of consumer and competition decision-making and enforcement across the world. We are looking at them to see if we can learn something and propose ways to the Government in which this could operate better.

Lord German: Looking at your paper—perhaps all three of you would like to comment on this—what level of scaling-up do you think will be necessary for the CMA and other organisations? If you put it all together—state aid, merger and acquisitions, anti-trust—what kind of new facility will we be looking for?

Ms Caroline Normand: Just drawing on the CMA's own evidence, I am looking at between five to seven additional anti-trust cases and 30 to 50 additional merger cases a year. I am not going to give you a monetary figure, but that sounds like a substantial increase in its resources—

Lord German: And in people?

Ms Caroline Normand: It is all people, because doing most of this stuff is an intellectual exercise. It is a substantial increase in its resources.

Lord German: And if we throw in state aid as well?

Ms Caroline Normand: I look to my colleague on my left.

Professor Steve Fothergill: I am not going to be drawn on this, because it is not something I have huge expertise in or, again, where there is an institutional view at the moment.

Ms Kate Bell: The only thing with that is that it depends again on whether we are complying with European rules or whether we have a totally independent regime.

Lord Mawson: I have a question for you as organisations. I am a bit worried about how you think you know things about what is going on. There is an interesting example with regard to the banks. In the crisis, we had lots of very clever people sitting in board meetings reading lots of very clever papers, but, as one person asked, what were the auditors doing when all this was going on? No one had noticed what was actually going on in the machine in practice, at the front edge of these multimillion-pound organisations. Europe itself has forced on us a whole set of behaviours and ways of working, with its famous frameworks and all these things, and some of us worry a bit about how much we really know about what is really going on. It is very interesting to those of us who have been involved in procurement. You discover that it is all about the lawyers at the end of the day; which lawyers you employ and a whole lot of detail relating to all that stuff. How much time do you as organisations spend at the front edge in the real practical issues that are going on? I am just trying to understand that. Is it paper-based knowledge or real practical, front-edge experience? What is going on with some of these issues?

Ms Kate Bell: I suppose we are a democratic organisation with routes into the workplace, so we hope that that enables us to have a good knowledge of that as well as doing the reading. One additional thing we have done as a consequence of Brexit is to set up a monthly panel of trade union convenors working in some of the biggest firms around the country. There are about 60 of them and we call them on a monthly, or three-monthly, basis and just say, "What are the biggest issues in your firms at the moment? What is happening? Tell us what is actually going on on the ground".

Lord Mawson: Do you ever go there yourself?

Ms Kate Bell: We do. I have not visited a firm for a little while, but our general-secretary does. We have a number of workplace visits, and we travel round the country, so we are talking to people regularly and speaking to people on the phone, which is the next-best thing, I guess.

Professor Steve Fothergill: In the National Secretariat of the Industrial Communities Alliance, we have to look two ways. We have to look out to the world and, in particular, talk to Governments as much as we can. We do our very best to maintain the dialogue, particularly with officials in relevant departments on a range of issues. Generally, we manage to get access to the right people, I think. But we also have to look the other way, to the views of our local authorities, because we are a body that represents a certain group of authorities and is under the democratic control of those authorities. We have regular national policy meetings, I get feedback from those meetings, and decisions are taken.

Specifically, one of the great messages that has been coming through all this year is that the absolute top priority for our authorities in the old industrial areas is sorting our post-Brexit regional policy. I have been told repeatedly by my elected members around the country: "This is what the organisation needs to be about and needs to deliver on". It is a double-headed issue in that, on the one hand, there is all the European cash that we have been used to receiving in EU regional aid and the question of what is going to replace it, under what terms and under what conditions et cetera. On the other hand, it is also an issue of EU state aid rules, because that determines so much of what can be done in the UK to promote regional development. I am being told all the time that this is the top priority.

Lord Mawson: I am pushing you a bit, because I go and listen to local authorities, listen to speeches on their websites and all sorts of things. But sometimes when you dig under the carpet and watch what is actually happening on the ground, the speeches and the words are one thing, the practice is something quite different. I just wonder how much time you spend under the carpet, at the front edge, watching what is going on.

Professor Steve Fothergill: It is inherent in the job. I will just say that local authorities are not the people who mostly administrate aid to businesses under the EU state aid rules. That is channelled from the Department for Business, Energy and Industrial Strategy or the Devolved

Administrations in Scotland and Wales. We are not hands-on in that regard, except in so far as it affects the outcomes in our areas. The intelligence that comes to us from both sides means that we tend to be pretty well informed. I would hope so.

Ms Caroline Normand: As I said at the outset, we are a member organisation, and we start always with consumers. We have more than 1 million supporters, and when we find an issue it is often because people have told us about it. When we put something out, we get in all manner of stories about what is going on out there. Our most recent social care campaign was launched not long ago, and some of the stories that we have got back about how people are suffering or trying to get social care beds is exactly what moves us and starts to identify a problem. It is a bit under the carpet, so you can get a sense of what is going on but it is not sufficient.

We do an awful lot of representative research with consumers to see if we can pick up the picture and the patterns. We also do deliberative research, because people may not know what is affecting them until you try to talk them through it. We feel as though we get a good handle on the issues that are there, whether it is scams, nuisance calls and so on. We also have very extensive contacts in both government and business to try to understand what is going on. You are always going to be listening to the sides of the argument and trying to come to your own conclusion. But on the question of understanding what is going on under the carpet and trying to see what is happening higher up the tree, we try to do all of that at the same time.

Lord Wei: Reading through the evidence and listening to you, there seem to be some real issues with competition law, enforcement, the speed with which things can happen relative to some of the fast-moving markets out there, and just the capacity of organisations such as the CMA before and after Brexit. Do you see any potential for technology or innovation, such as blockchain or using more online distributed ways of signalling, and even enforcing in some cases? That might be through things like smart contracts in the coming decades, where things are triggered almost automatically. That could get us away from having to hire armies of lawyers and triple the size of the CMA, but we could still find that we are not quite catching the future Googles and so on, given our limited resources as a country.

Ms Caroline Normand: It is an ongoing and everlasting challenge for a competition authority to keep up with what is going on. That was the case when Microsoft was innovating and then grew and grew, and it is the case now. It is self-evident that competition authorities need to keep trying to innovate and come up with new ways of approaching an issue, although using the same basic tools, because there is nothing new under the sun in that sense.

The only thing I would say, coming from the consumer perspective, is that while the tools are the same and you have good clues as to the things you might look out for, no market is the same. You cannot treat an

energy market the way you treat a banking market or supermarkets; they are all different. That is the one thing that you absolutely have to watch out for in what you described as perhaps automating decisions; markets are just different. An element of judgment has to come into play, or you end up with the wrong outcomes.

Professor Steve Fothergill: Could I just pick up on that word “automatic”? Certainly, in the context of state aid to businesses in the regions, absolutely the last thing you would want is automatic aid. You do not want a company saying, “We are going to invest. Can we have 20% investment grants?”, and the answer is automatically, “Yes, tell us how much”. You have to scrutinise; you have to ask whether this investment would have gone ahead without the public aid. For better or worse, that is always going to be a rather labour-intensive process. You cannot just feed in data at one end and out comes the answer at the other.

Ms Kate Bell: I do not think we have a view to add to that.

Baroness McGregor-Smith: I would like to go back to this point about being practical. You made a point about what the local authorities were preparing for in this post-Brexit environment. How practical will they be? It is one thing saying it and another writing a lovely policy—a lovely theory, a beautiful glossy book—but on the ground, what difference will the individual see in a post-Brexit environment from the things the local authorities are thinking about? How many times do they talk to the individuals they look after?

Professor Steve Fothergill: We are trying to shape the debate and frame what ultimately comes out of Brexit in terms of policies for regional economic development. That means talking to our own authorities and keeping them in the loop, but above all it means talking to Governments and planting the ideas with them, as well as with other partners in the game. We know that we are not the only players in all this. There is so much at stake. We are trying to stay ahead of the game and, through events such as today, trying to influence what people are saying about what we would want two or three years down the line—whenever Brexit finally happens and is in its final form, assuming there might be some sort of transition. Sooner or later we have to put something in place for the post-Brexit world, which is what we are trying to shape. I know that is not about talking to people on the ground in the way you are perhaps suggesting, but we are focusing on Governments and decision-making.

Baroness McGregor-Smith: So who is going to focus on the individuals on the ground?

Professor Steve Fothergill: It is our job to get the right policies in place. It is then the job of our authorities to help deliver those policies, in partnership with all sorts of other players. On the ground, hopefully at the end of the day more individuals will be employed and we will have better jobs instead of very low-paid insecure employment, which is the great problem at the moment.

Ms Kate Bell: Obviously the trade union movement's mission is to represent working people. To give an example of some of the work that Wales TUC has done, the work on procurement came from a campaign in some of the most disadvantaged areas of Wales, talking to people about their issues. They said, "There are no jobs near here. We have to travel a long way to find employment. Transport is expensive and irregular. We need better jobs, closer to home". That is the name of the campaign. In thinking about how you deliver those better jobs closer to home they came up with the idea of using procurement to encourage companies to invest in these areas, which we can require in some ways in the case of public contracts. Making that eventual policy recommendation happen meant focusing, as Steve said, on lobbying the Wales Government to change their procurement policy, but the idea of what problem we were trying to solve very much came out of engaging with workers in those communities and asking them about the issues they faced.

The Chairman: Anything from Which? on that one? We come to Lord Rees's question, which is the last really substantive one.

Q45 **Lord Rees of Ludlow:** It is a follow-up to what Lord German has already asked and is about the CMA, which is going to expand. We understand that it is mainly in London, but there are branches in Northern Ireland, Scotland and Wales. How do you think it should be developed? Should there be more emphasis on the north of England, for instance?

Ms Kate Bell: We think that organisations work well with regional offices as a general principle. We have them, and the Bank of England's network of regional networks allows it to get a different perspective on what is happening in the economy around the country. Intelligence closer to the ground is always a good thing, but I should emphasise that we are not arguing for a totally devolved competition machine.

Lord Rees of Ludlow: But you think there should be a bit more spread within England?

Ms Kate Bell: We suspect that would be useful.

Professor Steve Fothergill: We do not have a formal view on the future of the CMA, but I can give you plenty of formal views on prospective regional policy.

Ms Caroline Normand: On the regional question, we know that the CMA has regional offices, which is a useful thing for it to have, but we need to have a strong national—

The Chairman: More substantially on this future structure, some of you were advocating a separate takeover panel, some of you talked about more emphasis on enforcement on the consumer side, while others have argued to us that we need a new state aid organisation. Others have talked about all that could be done by the CMA. Do any of you have views on that constellation of things? What sort of increase in resources would be needed? We have touched on that in relation to merger cases, but more generally this seems to involve quite a big range of bureaucratic

responsibilities and possibly changes in structure.

Professor Steve Fothergill: Can I come back to where I started? Are we really going to look at a completely new state aid regime, or will we, in order to have access to the single market, have to accept lock, stock and barrel what the EU has in place, and perhaps with less leverage over it than we had when we were a full member of the EU? Are we putting the cart before the horse in anticipating that all this new architecture has to be created?

The Chairman: In all this Brexit stuff it is a bit difficult to see which is the cart and which is the horse. Post Brexit, there will clearly be an increased workload in any case, because more mergers will come under the national authority. In addition to that, do you see separate organisations for state aid or for the takeover side?

Ms Caroline Normand: From our point of view, you need to work out what task you need to do and then work out how you need to organise it. I can absolutely see that there is a need for a better way of arranging consumer enforcement. We are neutral. At the moment, we have proposed an additional and new organisation for product safety because it is so clearly broken. But the gist of the point is that there needs to be an improvement in the task. There are different ways of organising the building blocks, but you need to have a really good eye as to what the task is and what needs to be accomplished.

The Chairman: That reminds me that I ought to declare for the record that I am a vice-president of the Chartered Trading Standards Institute.

Lord Mawson: One final thing. I think that Brexit provides a real opportunity for innovation in how institutions and organisations work. I suspect that there is quite a lot of experience out there on the ground in modern enterprise Britain, but a lot of our institutions are not working very well. They are out of date in all sorts of ways.

Arguing that “we represent people” is very interesting. In representative structures you often find that lots of ideology is driven around all that. I have found that, in practice, organisations or individuals have claimed to represent people, but what people want to buy with their own money is not necessarily the same. We all are all very confident that we know what people want because we ask them, but business people know that there is a level of naivety in that, because people do not necessarily know what they want. I am interested in representative cultures and your experience of what consumers actually want, because in my experience those things are not the same.

Professor Steve Fothergill: I am not here to represent consumers; I am here to represent a quite sizeable subset of Britain’s local authorities. Behind me stands an immense architecture of discussion and decision-making. There are six national policy meetings a year, which all our member authorities are welcome to attend, and behind each of those six national meetings, six meetings are held separately in each of the regions

in which we operate. A lot of intelligence from the authorities feeds in there.

The Chairman: Are there any quick points from the TUC or Which?. This is a wider political argument.

Lord Mawson: My point is about innovation going forward.

Professor Steve Fothergill: The biggest area for innovation on post-Brexit regional policy is probably what we do when we have to replace the EU structural funds, when we can get rid of a lot of the unnecessary bureaucracy.

The Chairman: That brings me to my final point. With regard to your objectives for improved employment, improved regional development and improved consumer experience, on a scale of one to 10 how important is competition policy in your forward vision of that post Brexit?

Ms Kate Bell: I do not think I can say in a word or on a scale of one to 10, but it is certainly worth thinking about as part of a wider set of reforms.

Professor Steve Fothergill: We are doing more than thinking about this. I would say that it is an eight or nine out of 10. It is very important, because it frames what we can do to promote regional development in this country.

The Chairman: That is unexpected.

Ms Caroline Normand: It is foundational for consumers to have a strong competition policy.

The Chairman: Very good. Unless there is anything that you feel you have not said that you want to tell us in two sentences, I will thank you very much for your time and your submissions. If there is anything more you want to send in, please do so. You will get a transcript for this which you can correct, within reason. We will keep up the dialogue, because we will be continuing this process until at least the end of the year. Thank you very much indeed.