

Select Committee on the European Union

Internal Market Sub-Committee

Corrected oral evidence Brexit: Competition

Thursday 2 November October 2017

10.10 am

[Watch the meeting](#)

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

Evidence Session No. 4

Heard in Public

Questions 46 - 57

Examination of witnesses

Margot James MP, Chris Blairs and Bridget Micklem.

Q46 The Chairman: Minister, thank you very much for coming to this session. We have about an hour with you, as I understand it. Thank you and your officials for the written evidence. I remind you that this session is being broadcast and is on the public record. If you feel you have not dealt with any questions afterwards, please write in or contact us.

Just to set us off and give us an overview, can you set out the immediate implications of Brexit for the UK's competition policy and the enforcement mechanisms that lie behind it? Do you think that Brexit gives us the opportunity for greater freedom to modify competition policy in the UK?

Margot James MP: Thank you very much for the invitation, Lord Chairman, and thank you, members of the Committee. I am very pleased to be here. It is very important to discuss the impact of the UK's exit from the EU on competition policy. My colleagues from the department, Mr Chris Blairs and Ms Bridget Micklem, are experts in market frameworks, devolution and state aid, as well as competition.

Obviously competition encourages enterprise and efficiency, increases consumer choice, improves our competitiveness and is a very important

way to improve productivity and growth, so it will be key to the Government's industrial strategy, which will be published later this month. The UK has led the way globally in these areas. We have one of the strongest competition regimes in the world. It is transparent. Enforcement is based on economic reasoning and is carried out by the highly-respected specialist independent CMA, which I know you have already heard from in your inquiry. Ministers and the Secretary of State have separate powers to intervene in mergers in some circumstances in order to protect the public interest.

The Prime Minister set out in her Florence speech her vision for the UK and the EU driving side by side. We face common challenges and opportunities with our European neighbours and share a responsibility to ensure that the move to a new relationship is made smoothly and sensibly. The UK shares with the EU a fundamental belief in rigorous and fair competition, and the Government are committed to preserving the strengths of our competition regime during Brexit negotiations and thereafter.

The Prime Minister, as I am sure you are all aware, has set out some clear objectives for the negotiations: restoring control over UK law, ending the jurisdiction of the European Court of Justice, ensuring a smooth and orderly exit, establishing a new economic partnership with the EU that is comprehensive and ambitious, and, finally, the ability to strike new trade agreements with other countries. To understand fully how we can meet these objectives while preserving the strength of our competition regime, we have been working closely with the CMA and the sector regulators.

We think it is important to establish clarity over future arrangements and close co-operation with the EU post Brexit on competition enforcement. Clarity and co-operation are crucial in order to deliver certainty for business and prevent consumers being penalised by anti-competitive agreements and practices.

I could also make some remarks about state aid. You asked the question in the context of competition, but if you would like me to continue, I will.

The Chairman: We will come to state aid in subsequent questions, so if that is a discrete subject, we will wait until we get to them. Meanwhile, Baroness McGregor-Smith has a question on the CMA.

Q47 **Baroness McGregor-Smith:** We have been told that there will be a substantial increase in demand for the CMA's resources post Brexit. How are the Government working with the CMA to prepare for both the immediate and the long-term implications of Brexit?

Margot James MP: There will undoubtedly be an increased demand for the CMA's resources. My department has been working with the Treasury, the Department for Exiting the European Union and the CMA on planning for resource allocation.

The Government understand the resource implications of regaining jurisdiction over anti-trust and merger cases. The CMA has undertaken an analysis of work currently undertaken by the Commission that would fall into its jurisdiction in future. It has said that it could see an increase in its merger case load of between 30 and 50 cases per year, and that it might expect to investigate an additional five or seven large anti-trust cases at any one time.

We understand that some of these additional cases are likely to be larger and more complex than many cases that the CMA currently investigates, so the Chancellor has committed £250 million of additional spending in 2017-18 to allow all departments and partner bodies, including the CMA, to prepare for Brexit. We will continue to work with the CMA with regard to its future resource requirements as the negotiations proceed, when we get a clearer idea of the post-Brexit framework.

Baroness McGregor-Smith: How do you think the increase in resources post Brexit will be funded?

Margot James MP: Currently, the CMA is funded by the Treasury, so I have no cause to believe that there would be any change there.

The Chairman: Just on that point, we got a slight indication from the CMA that it might cover its increased costs by increased fines. Do you have a view on that?

Margot James MP: You are quite right to point that out, because fines go to the Treasury and some of them might be larger, given the increase in size and complexity. So you make a good point.

Baroness McGregor-Smith: If the CMA can produce larger fines, might that not incentivise it to look for more cases and increase its workload? Does it not give people in the CMA the wrong set of incentives?

Margot James MP: I suppose there will be no real change. There are fines under the current framework, but I do not think that influences its behaviour, and it will have more resources post Brexit. I do not think that will play a huge part, but you would have to ask the CMA about that.

Baroness McGregor-Smith: Another question that we raised with the CMA was about its ability to hire resources at a senior level. Do you have any concerns about how it would do that? Would the resources be available to it?

Margot James MP: The budget will be there to meet the revised requirements, and it will not be the only sector of our country's economy that faces recruitment issues. I suggest that it will be able to manage, but, again, that is more a question for the CMA. There are recruitment issues, and this is a very important body, so I concur that it might weigh more heavily with us. But it will be up to the CMA and government to manage those recruitment issues so that the organisation is staffed appropriately.

Q48 Lord Rees of Ludlow: Does Brexit provide an opportunity to re-examine the national interest criteria for mergers and acquisitions? We have the Enterprise Act 2002, under which the Secretary of State can intervene on specific public interest grounds. We are told that it is rather similar to the European merger regulation criteria at the moment. I want to ask in particular about the implications of the recently published proposals of a month or so ago to enable the Government to intervene in mergers that have national security implications, even when they involve rather small companies. Do you feel that they will carry over?

Margot James MP: The answer to the last bit of your question is yes. I think you were alluding to the national security and infrastructure review, which was published last month and which proposes to extend the role of government to dual use and military use, advanced technology, critical infrastructure and essential services.

Lord Rees of Ludlow: Down to rather small companies?

Margot James MP: Yes, down to small companies. Under the current regime, merger cases come under the jurisdiction of the European Commission or of the UK's CMA. The companies' turnover and the impact on member states determines which body looks at it. Would you like me to expand?

Lord Rees of Ludlow: A little, if you could, about what might change.

Margot James MP: For merger cases that come under the jurisdiction of the European Commission, the EU merger regulations allow member states to protect legitimate interests. That would continue. Those legitimate interests include public security, media plurality and prudential rules; that is, prior to the new paper that I talked about a few minutes ago. Expanding those legitimate-interest grounds currently requires the approval of the Commission, but the UK's exit from the EU would mean that we would no longer be subject to those merger regulations. Merger cases that come under the jurisdiction of the CMA have a similar facility that allows the Government to intervene on public interest grounds. That is set out in the Enterprise Act 2002. The public interest criteria can be expanded through secondary legislation.

Lord Rees of Ludlow: At the moment, the criteria are fairly similar to the European ones.

Margot James MP: Yes. As I mentioned, we are extending the criteria cautiously under the national security and infrastructure review, and in theory there could be further divergence once we leave the European Union. Although many interested parties have stressed the benefits of maintaining a close and common understanding in this area as per our current relationship with the European Union, in theory it will be possible for us to diverge.

The Chairman: Do you have an estimate of how many additional merger cases will be dealt with?

Margot James MP: Yes, I think we do.

The Chairman: You gave us a figure for anti-trust cases.

Margot James MP: Yes, I did. I do not think it is as clear cut for mergers, but I can get back to you on that.

The Chairman: Thank you. Although it is seen through the prism of national security, the paper relating to the public interest with regard to national security, given that it is a consultation, has slightly opened the door to looking at other aspects of the public interest. Are you concerned or excited about that?

Margot James MP: Neither. It is a sensible, cautious approach to the changing nature of the globalised world that we revisit our criteria for the public interest. It is sensible to include critical infrastructure. Technology was not an issue when all this was established, but it very much is now, so it is quite right that the Government treat advanced technology as another matter of public interest when it comes to mergers and acquisitions.

Q49 **Baroness Donaghy:** Your written evidence indicates that the Government hope to negotiate a strong future co-operation agreement with the European Commission on all competition matters. What provisions would the Government seek to include in such an arrangement, and would it also include one of the CMA's real concerns about the ability to exchange confidential information subsequently?

Margot James MP: I agree that it would be mutually beneficial for the CMA and its European partners to be able to share confidential information for the purposes of competition enforcement. That would be a good thing. We want to ensure that the CMA and partners in Europe can work together to avoid as much as possible outcomes that might harm UK or EU interests, so we are looking at a number of ways of co-ordinating remedies and co-operating on enforcement. We start from a position of absolutely integrated, in-depth co-operation as part of the European competition network, but a comprehensive agreement that goes beyond the current levels of co-operation that the EU has with third countries would be desirable. However, that is subject to negotiation.

Baroness Donaghy: What would your shopping list be, and what priorities would you have on that shopping list for including those arrangements?

Margot James MP: We have strong, well-established competition law and a world-class enforcement authority, and we have the benefit of that system and the CMA's enforcement expertise after we leave, whether or not there is a deal. We in our department are currently drafting statutory instruments that will be needed to make UK competition law function effectively and independently after we leave the EU. I do not have a particular shopping list for specific areas.

Baroness Donaghy: So really you are saying that the nearest we are to

our existing position, the better.

Margot James MP: While recognising that there may well be a need for some divergence, in principle the answer is yes, but with the proviso that there is likely to be a need for divergence in certain areas, such as in the digital market, where things are developing at great pace. Obviously, we do not want to be committed indefinitely to a system that we are leaving. That would not be logical. But there is great benefit in maximising the common ground available to us with our European partners after we leave.

Q50 **Lord Aberdare:** Minister, my question relates to anti-trust cases and specifically to transitional arrangements. What arrangements are the Government seeking for cases that are live when Brexit takes place? There are cases that are still pending in the system, there are cases where ongoing monitoring or enforcement activity is needed, and there are others based on pre-Brexit conduct, which will come up afterwards. What are your thoughts on how we might tackle those between the different bodies involved here and in Europe?

Margot James MP: We have discussed with the EU the arrangements for live competition, merger and anti-trust cases, as well as our positions on jurisdiction over cases that will begin after we leave but relate to pre-exit conduct. Experts from the CMA and the European Competition Commission have been involved in the discussion, alongside officials from my department and the Department for Exiting the European Union. These discussions will obviously continue, and our objective is to achieve a clear outcome that provides some certainty for business. Aside from that, these matters are part of the ongoing negotiation.

Lord Aberdare: How are you addressing the issue of who has ultimate authority when there are parallel investigations or both sides involved in addressing an issue?

Margot James MP: We are engaged in a live negotiation, and our negotiating approach to judicial and administrative proceedings, of which competition cases are one such proceeding, is set out in a position paper published by the Department for Exiting the European Union. I do not want to stray too much on to its ground, given that it is in the process of negotiating an outcome here at the moment.

Lord Aberdare: Do you see any issues arising from either the extra workload on businesses having to face parallel investigations or from divergence between the approaches taken to such issues by the authorities here and in Europe?

Margot James MP: I am mindful of the potential increased burden on business from dealing with two authorities. To a certain extent at the moment they have to do that in some cases. There could be a risk of increasing the burden, I agree.

Going back to the negotiations going on at the moment, the most important objective is to get some clarity so that businesses know which agency handles which issue.

Lord Mawson: I just wonder how the working relationship is going, because we hear a lot of noise up here. In reality, what are those relationships like at the moment for officials in your department? What level of detail are they getting into on those issues? Do you have a sense of that?

Margot James MP: Perhaps Chris Blairs would like to comment, as one of the officials. Let us hear direct.

Chris Blairs: As the Minister said, there is a set of live negotiations taking place. I will not get into the detail of their content. Officials in the business department have always had good working relationships with officials in DG COMP. These discussions and negotiations have been quite technical, as you would expect, because some of what happens to live cases is very technical, such as the jurisdiction over those cases, at what point an investigation starts and on what facts. They are technical discussions, as I said, but as the Minister said the negotiations are still live.

Lord Mawson: Can you give me a handle on what it feels like? Do you think they are very business-like and getting into the detail, despite all the noise up here?

Chris Blairs: Yes, these are very detailed technical discussions at official level on the way legal systems operate together. As you would expect, there is a set of practical decisions and procedures to be worked through about how the jurisdictions work together.

The Chairman: Minister, you mentioned a few minutes ago the need to adjust arrangements in relation to the digital sector. Before the Brexit vote, this Committee produced a report about large digital platforms. Clearly, with the ongoing cases in Europe in relation to Google, the British dimension could run in parallel. Might there be a difference of approach between the European and British authorities towards the dominance of one particular large company?

Margot James MP: I gathered from your report that you identified that there had been significant British input into that inquiry and that the majority of companies exercised by it were British-led. To the extent that that pertains post Brexit, I imagine it would be fertile ground for close co-operation between the CMA and the Competition Commission.

Q51 **Baroness Randerson:** You referred earlier, Minister, to a potential no-deal scenario and said that in principle the Government want to maximise common ground between the CMA, the European Commission and the European Union in general. What would the implications of a no-deal scenario be for competition enforcement and co-operation on competition matters?

Margot James MP: First, we are planning to achieve a mutually beneficial deal and are optimistic about our ability to do so, but we have to plan for the contingency, as your question suggests. We start with a strong, well-established system of competition law and a very highly regarded authority, and we will continue to have the benefit of that system and the CMA's enforcement expertise after we leave the EU, even if there is no formal arrangement for co-operation with regard to competition.

As part of that preparedness, we are drafting SIs that will be needed any way to make UK competition law function effectively and independently after we leave the EU. All relevant departments are in discussion with the CMA about the resources that it would need to enforce competition law effectively. That would include the circumstances of there being no formal deal.

Baroness Randerson: Your written evidence includes reference to the importance of the mutual sharing of confidential information and co-operation on investigative and enforcement measures. It also refers to the need to undertake large investigations in parallel and in collaboration with the European Commission. Even if we have a deal, that is already more cumbersome and expensive than the current situation, where large investigations would be undertaken by the European Commission alone. How in practice do you envisage this working in the event of a no-deal scenario?

Margot James MP: I suppose there is no deal and there is no deal. If there were no formal deal but a continued positive relationship, perhaps it would be less cumbersome on our own authorities. The CMA already has the ability to share certain confidential information with overseas authorities in some circumstances anyway, although not where such information is obtained in connection with investigations using its mergers or markets powers. The use of that gateway is not as efficient or straightforward as current information-sharing with other EU authorities, and it would not be as smooth as the information-sharing that we would hope to achieve under a comprehensive co-operation deal.

However, there is no such information-sharing gateway under EU law, so the key issue with not getting a deal is that the European Commission and any other EU authorities that do not have a domestic legal gateway would not be able to share confidential information with the CMA. There is therefore obviously a strong interest in getting a deal, so that we can share information to enforce competition law internationally.

Baroness Randerson: Thank you. That is helpful.

The Chairman: We move to issues that relate more to state aid.

Q52 **Lord German:** What models are you are currently considering for the state-aid machine post Brexit?

Margot James MP: That issue is still very much being considered. I am sorry not to be able to say very much about it, because we have not

arrived at a settled policy. It is a complex question, but there are a few points that we are going through, which I will share with the Committee.

First, it is important that any system guarantees competition and open markets. The Prime Minister has stated quite clearly that it would be a serious mistake for us to try to beat other countries' industries by unfairly subsidising our own. That is a guiding principle. We have always been in the vanguard of supporting open markets within the EU. On exit, those values and our approach to openness and competitive markets will not change, and it will be more important to send a clear signal to third countries that we are a country that they can do business with on a level playing field.

Secondly, we want to ensure that there are no distortions of competition in the UK and that wealthier areas are not simply able to outspend other areas without regard to the interests of the UK as a whole. Those principles apply within the UK as they do in our trade with other countries. With an eye to the negotiations, although we cannot comment in detail, it is important to mention that the Government are not going to close any options. The withdrawal Bill will give us powers to establish a regime in the UK that could mirror the current EU state aid regime. That is one option for a future regime and is part of our current considerations as we develop policy.

Lord German: Could I take you through the immediate transition period post Brexit? The European Union (Withdrawal) Bill, which is coming before the House of Commons and then to us towards the end of January, I understand, does not transfer into domestic law the treaty rules that allow for the European Commission to approve state aid. You might expect that to be the case. However, it gives no indication of what will happen when that is transferred. The Committee has been advised that there would be a legal hiatus if we passed the Bill without proposals on the table before us that indicated what the UK Government intended. Could you give us some timescale for when the policies that you have just outlined will be put in place, and can we be reassured that it will happen before the Bill is discussed in this House?

Margot James MP: This is really a question for the Department for Exiting the European Union, which recently published a position paper on the matter. We in my department have had discussions on it, and in a minute I will invite my officials to see whether there is anything more up to date than I have in front of me that they can share with you. It is a matter of continuing negotiations and discussions, and I cannot really say a lot more than what I have already said. However, my officials might have something to add.

Bridget Micklem: The only point I would add is that it is clear that one needs to have a position by the time one gets to day one, or exit point. Clearly, that is part of the consideration. Because this issue, as the Minister said, is bound up with negotiations, we cannot say anything at the moment about a particular timetable.

Lord German: But within the legal framework that Parliament has at present, are you expecting us to vote for a hiatus when we just do not know what the outcome will be if we pass the legislation in the format you describe? Clearly Parliament needs to understand what the result would be of the vote that it takes on primary legislation that will be before it.

Margot James MP: That primary legislation is not before us. It has been the subject of many proposed amendments, and I suggest that your Lordships wait until the Bill is published and on its way before getting too concerned about the points that you are raising.

Lord German: You have given some principles, which is helpful, but they need to be enshrined, would you agree? We also need some reassurance that that will happen in a timely way, given that it is expected to pass through this Parliament. Can you give some rough indication of when you would expect to be able to commit to a position statement on this matter?

Margot James MP: All I can say about a timetable—I cannot give any specific dates—is that our aim is finally to achieve a clear outcome that can provide certainty for business. We will use our best endeavours to ensure that progress is in line with achieving that end goal.

Q53 **Lord Mawson:** Does Brexit provide an opportunity to create a more flexible system for the notification approval of state aid in the UK? Is the UK likely to require an independent state aid authority? Given that you are at the Department for Business, Energy and Industrial Strategy, I am interested, as I always am, in what it is going to cost, although it may be too early to say.

Margot James MP: I cannot answer that. Obviously, in answer to your neighbour's question, I have not been able to give you a great deal of detail by way of an update on where we are on the policy. Therefore, it is difficult to speculate on how we should create a more flexible system of notification and approval and what that might mean in relation to any independent state aid authority. The notification system as set out in EU rules has advantages, because it creates some certainty about aid awards. Any possibility of informal pre-notification is an important thing to preserve. It gives aid givers the opportunity to develop their proposals in dialogue with any replacement authority. All those issues will be considered for the best possible outcome and the greatest clarity for business in any new system that prevails post Brexit.

The Chairman: Among the options would be the extension of the CMA's remit in effect to take on the role of state-aid authority.

Margot James MP: Certainly, having read transcripts of some of your earlier hearings, that would be a consensus to which we would have regard.

Q54 **Lord Wigley:** I turn to the question of the devolved Administrations. You will be aware that the Scottish Government have published a list of policy

areas where it considers the devolution settlement to pose questions about the balance of power between the UK and devolved Governments, and that list includes state aid. How are the Government engaging with the devolved Administrations on their role in the design and enforcement of UK state-aid rules post Brexit?

Margot James MP: We are very mindful of the need to closely involve the devolved Administrations during negotiations. The First Secretary of State has already had discussions with the devolved Administrations on a number of issues in this area. There will be detailed work to follow this up, and we are very mindful indeed of our responsibility to involve the devolved Administrations closely.

Lord Wigley: In paragraph 15 of your written evidence, you refer to the longer-term option of subsidy control after we leave the EU being subject to negotiation. Does that include the negotiation with the devolved regimes?

Margot James MP: Yes, it would.

Lord Wigley: Likewise, with reference to paragraph 18 of your written evidence you say: "The Government will be engaging with the devolved administrations in discussions on state aid". Your answer now suggests that they have already started. Have the discussions that have taken place with the devolved regimes been specifically on state aid matters?

Margot James MP: They have been wide-ranging, but they have included state aid matters.

Q55 **Lord Wei:** What would the implications be, despite all efforts, either of a no-deal scenario in which we would fall into the WTO regime, or of an FTA between the UK and the EU that does not include state aid provisions? What would happen then?

Margot James MP: There would continue to be subsidy rules of some sort. I think I mentioned in my written evidence that the World Trade Organization subsidies and countervailing measures agreement would act as a backstop. That, of course, does not cover services, so it would be limited in scope, but we would be part of those obligations and therefore automatically covered by them.

The definition of aid under the WTO agreement is not dissimilar to the EU regime in other respects, apart from the fact that it does not cover services or apply domestically. The crucial difference is that complaints cannot be actioned by business, as they can under the current regime.

I think the answer I have given you underlines the importance of our negotiating a good free trade agreement with a high level of market access with the EU as we leave.

Lord Wei: But in order to ensure continuity in such a scenario do you envisage the need for statutory instruments or legislation to cover any gaps that emerge?

Margot James MP: Some of this will be covered already by the UK competition regime. It is up to us to achieve greater co-operation on competition enforcement and mutual enforcement of fines and decisions, and there is a need for bilateral co-operation arrangements with the third countries with which the EU currently has agreements and to which we are already party. We will have to replace those agreements.

Lord Lansley: Apologies for being late, but I am very interested in the state aid issue. Perhaps I could jog back for a moment to the question of how you see our relationship with the EU state aid regime developing over the two periods. The first, of course, is the post-Brexit transition period, and the second is the future relationship. The two are not necessarily the same.

In particular, given that presumably the intention is to give business certainty by agreeing what the transition period will look like, up to two years, is it the Government's present intention that during that transition period there should continue to be a requirement to notify state aid to the European Commission, or would we expect to exit from that in the transition period and establish a new state aid regime in the UK? Either of those is possible in the transition period.

Margot James MP: That is a most interesting and pertinent question, but I cannot answer it at the moment because it is subject to the negotiations. We have indications that there will be a period of approximately two years during which we will be able to implement any agreement and fine tune the details, but as we have only preliminary approval for that I do not think that I can comment on how state aid might be applied in the hypothetical case that we get that transition period agreed.

Lord Lansley: We do not know what the outcome of the negotiation will be. Clearly you do not. We kind of know what the Commission will say. It will say, "If you want access for up to two years during the transition period, you have to have a notification process and be compliant with the state aid regime". We know that much. The question is whether the British Government have any negotiating view about whether they are going into the transition period in order to accept the EU state aid regime for that period or not. Business would find it really helpful to know that. Quite often they say, "We only want to change once", but in this context they would probably say, "We want to know that the present regime will last during the transition period, and then we will change at the end of it once we know what the future relationship looks like".

Margot James MP: You continue to ask very interesting questions and make pertinent points. There are certain principles that might be grounds for an optimistic outcome. The Government have made clear that we want to maximise access to the single market. We cannot prejudge what trade-offs that might require in the negotiation. We have also heard the Prime Minister say that she is not interested in undercutting as a means of securing trade advantage with other countries, including the European Union. That would also seem to be fertile territory for a happy outcome

that provides the certainty for business and minimises the number of changes to which it has to adapt, which is what I think your question concerns.

The Chairman: Do I draw from that that, at this point, the Government have no position on how far competition and state aid rules would apply during any transition period? Would we remain for that period within the EU structure or not? We are not yet clear on that.

Margot James MP: It really is subject to negotiation, and it is not for me to say any more than I have.

The Chairman: Can I raise one other point? We have been focusing on the relationship between the UK and the EU, but once we are out there on our own in the big wide world, issues of state aid arise quite acutely. We saw one example in relation to Bombardier. Although, as you say, individual companies cannot take complaints to the WTO, some companies seem to get the Department of Commerce to jump to their tune quite effectively. Do you think that issues of arguments with other countries about the degree of state aid are likely to increase? This leads on to a later question on remedies. Nevertheless, have the Government faced up to that possibility?

Margot James MP: State aid is often an important component of a free trade agreement and, as one of the reasons for leaving the European Union is that we can negotiate free trade agreements with a variety of other countries, the better for being a single country, that implies that we would see more of this issue in our free trade agreement negotiations with other countries, yes.

The Chairman: But it will take us some time, to put it at its mildest, to get a trade agreement with the United States, for example. In that period, do you see more problems with arguments over who is subsidising, favouring by public procurement, or whatever, between us and our trading partners?

Margot James MP: It will be the subject of difficult negotiations, and difficult negotiations take longer, by definition.

Q56 **Baroness Noakes:** Minister, the Government's recent paper, *Preparing for our future UK trade policy*, referred to a new independent trade remedies investigating authority. Could you tell us a little more about that? What will it do, what resources will it require, and how does it relate to the other organisational structures that we have discussed already this morning?

Margot James MP: The trade remedies authority proposed by the Department for International Trade, as a body that we will require post-Brexit, will have various roles, including providing for companies to have an avenue of complaint about dumping elsewhere in the world where we have a trade agreement. It will have a variety of roles. It will be an independent arm's-length body, and it will operate a domestic regime serving the whole of the UK. Businesses will be able to apply to the

authority where they think they have evidence of dumping or subsidy that causes unfair competition in their sector.

Baroness Noakes: So it will be a completely new body unrelated to the CMA or any state aid authority that the Government set up post Brexit.

Margot James MP: I am sure it will have a close relationship with the CMA and bodies in that field, but it will have a distinct role and focus.

Baroness Noakes: What sort of resources do the Government expect to delegate to it?

Margot James MP: That will depend in part on the outcome of the negotiations with the European Union and on policy decisions that I suppose have yet to be taken. We are ambitious in our desire for securing trade deals with a lot of different countries, so I would see it having quite significant resource implications.

Baroness Noakes: Can you just explain how it is impacted by the negotiations on Brexit? This is really about trading with other countries, is it not?

Margot James MP: Yes, but it might also have a role in our relationship with the European Union, as it would with what are currently third countries. To that extent, it could be influenced by the outcome of the Brexit negotiations in terms of the resourcing required.

Baroness Noakes: You said "quite significant" a moment ago. What did you mean by that? Does that mean hundreds of people, or thousands of people?

Margot James MP: I would need to give more thought to that and consult other people. I do not have a number to give you at the moment. All I can say is that it would be a significant authority and would require considerable expertise. One could look at comparable trade bodies around the world for some guidance as to what that might imply.

Lord Lansley: Thirty-five years ago, I was responsible for the generalised scheme of preferences for chemicals in the Department of Trade and Industry, so I remember how much time and energy these things take up; the resource that is required is not insignificant. However, I do not understand why you are saying that it is an arm's-length body. This is a governmental responsibility, particularly if we are in a WTO relationship with third countries. We are exercising our responsibilities as a Government who have to have a resource to be able to determine how to pursue an investigation, whether anti-dumping is justified and what kind of countervailing measures would be applied. That seems integral to trade policy, and I cannot understand why, when you have a department for trade, that department does not do it.

Margot James MP: That is certainly a matter for the department for trade. It is certainly leading on trade remedies. I know that this is the last session of your inquiry, but they are the people to answer your

question. Government has many responsibilities, some of which are exercised directly, but others are devolved to arm's-length bodies.

Lord Lansley: But you do recognise that if we had not been in the European Union but separate from it during the whole process of trying to understand the character of the Chinese steel trade and whether there was dumping and whether we should do something about it, you would not have said, "Let's have somebody else doing it, and the department for trade can just wait and see what they say". I mean, that is pretty integral to trade policy, is it not?

Margot James MP: I would think that, as with other arm's-length and independent bodies, the trade remedies authority would operate under a parameter of clearly defined policies set by the department for trade. It would be independent, but it would not be free of the confines of overall trade policy as set out by the Government and the department for trade.

Lord Lansley: I will just say that we will ask the department; it seems reasonable to ask it. But if I were a Trade Minister and were talking to my Chinese counterparts, and I tried to explain to them that some other body was doing this thing, they would be very surprised. They would think it was a governmental responsibility, and they would expect the Minister to be able to account for what was being done.

Margot James MP: That would be the same for a great deal of policy on China, I suppose.

Lord Lansley: That is true. Exactly.

Q57 **Baroness Randerson:** In your policy paper, you referred very clearly and definitely to the need for a UK trade remedies framework, which needs to be operational by the time we leave the EU, which the Government plan to be in March 2019. I understand that you are not prepared to put specific numbers on the people needed for this, but can you give a bit more detail about the preparations that have been made already for establishing this body? You have made it very clear that it will need specialised expertise; it takes a long time to set up something like this. So what have the Government done already to establish this body?

Margot James MP: A great deal. I suffer from not being in the department for trade when it comes to answering your question, because I really do not know the answer. It is very much a matter for the Department for International Trade. All that I know is that it has secured the services of hundreds of additional staff since it was established. I assume that some of those staff have the potential to make a contribution once the new trade remedies authority is set up.

The Chairman: You are indicating clearly that we need to have a more aggressive approach to the department for trade.

Margot James MP: I am sorry, because I like to answer people's questions, but I would not want to mislead the Committee by saying that I know more than I actually do.

Baroness Noakes: On transitional arrangements, separate from the transitional or implementation period that Lord Lansley asked about a moment ago, could you reflect on what will be required to manage outstanding EU notifications, complaints, investigations and so on relating to state aid pre-Brexit?

Margot James MP: Again, there is a live negotiation with the EU on separation issues, and the Department for Exiting the European Union has set out a position paper that covers the judicial and administrative proceedings during the transition. There are preliminary discussions for the arrangements for state aid with the EU, as I have said, and those discussions will be ongoing. I cannot really add a great deal to that.

Baroness Noakes: So do the Government have no position on whether they expect to continue to be subject to the jurisdiction of the Commission on state aid issues arising pre-March 2019?

Margot James MP: That is a very important question. I cannot answer it, but it is definitely exercising those involved in the negotiations, without a shadow of a doubt.

Baroness Noakes: Will the UK's future state aid framework take public procurement transactions into account?

Margot James MP: Public procurement is separate from state aid under the current regime. Public procurement is obviously a commercial transaction between the state and suppliers contracted on market terms. We will no longer be subject to the EU public procurement rules, unless we decide during negotiations that it would serve our interests better to be aligned. State aid, on the other hand, is about giving a subsidy of some sort to a company or group of companies that they would not normally obtain. So public procurement does not give rise to state aid regulations.

Baroness Noakes: Do I take it that you do not see a role for the public procurement rules that currently exist under EU law being needed post Brexit?

Margot James MP: The Government have their own public procurement rules.

Baroness Noakes: But they derive from the EU.

Margot James MP: They are derived from the EU, and we are subject to EU rules on public procurement at the moment. There will have to be rules on public procurement. Once we leave the European Union, we will be able to develop our own rules on public procurement that are tailored to the needs of government, commercial enterprises and consumers just within the UK. As I said, if we feel that it is in our interests to have close alignment to the EU rules, as currently exists, that is a matter for negotiation.

Baroness Noakes: But the UK will have freedom. I am just trying to get

an inkling of how Government would use that freedom.

Margot James MP: That is a matter for future policy. There are certain policies, such as the drive to encourage more SMEs to take advantage of public procurement, and a whole raft of policy desires in those areas, and I do not see that changing post-Brexit.

The Chairman: I am not sure that the distinction between state aid and public procurement is as clear cut as you indicate. In a world of multilateral trade agreements, the issue of state aid via public procurement is just as fraught as the issue of giving them a dollop of money. The Boeing-Bombardier situation is largely about public procurement, so that distinction may be difficult to retain.

That brings me to a more general point, which we touched on. You represent the BEIS strategy, and as I understand it, without being too ideological about it, the Government are thinking of adopting a slightly more interventionist strategy, whatever that means, in future. You will know that opposition parties and devolved Administrations are even keener on having a slightly more interventionist strategy. Do you see that coming into conflict with the approach that you are taking towards state aid and again raising the issue of whether we have a wide enough definition of the public interest?

Margot James MP: The industrial strategy is really about improving our productivity and earning power and building on our competitive strengths as a country, but it is also about ensuring that the parts of the country and sectors of the economy that need greater support have a legitimate way to access it. We do that currently in some cases by applications for state aid clearance for all sorts of interventions. The 'Northern Powerhouse', for example, now has a substantial capital fund designed to close the venture capital gap in the north of England in certain sectors of industry.

All that will be put on to a much more positive and ambitious footing in the industrial strategy, but it is not about intervention in the old-fashioned sense of the term whereby companies that run into trouble are looking for extended subsidy with no regard to their sustainability. That would have been policy in the 1970s, I suppose, and it certainly plays no part in our industrial strategy.

Lord Liddle: On public procurement, I agree with all the points you make about small companies and the promotion of venture capital, but take something like Heathrow, for example, where there are major design questions. You put the contract for architects out to tender. Should that be open to European companies as well as British companies, or are there circumstances in which it would be right for the Government to discriminate in favour of British companies? What is the Government's view of that matter?

Margot James MP: That would be subject to procurement policy once we leave the European Union, so to that extent there is no clear view on

that question. There are many arguments in favour of and against the proposition that you put that would be the subject of a most interesting hearing but that are possibly too involved to go into here and now. I can talk at length on that interesting subject if you like, but the Government's position is that it would be governed by procurement policy once we had left the European Union.

Lord Liddle: That does not answer my question. Surely you have a view on this. Do you accept that British service companies, such as the architects who designed the new Madrid airport, have gained an awful lot from European public procurement rules, which have allowed our leading companies to compete? Presumably you accept that if we give preference to British companies there will be constraints on our companies competing in European markets. If you accept that, what is the Government's position on their preference?

Margot James MP: I do accept what you are saying. Certainly, in line with the overall goal for our negotiations of developing a deep and special partnership with European Union, there are grounds for reciprocity in a number of areas, including the example that you have given.

The Chairman: Unless my colleagues have any urgent further questions, you have been very generous with your time, Minister. We have come to the end of the period allotted. Is there anything that you or your colleagues wish to register that we have missed, or that you want to add to what you have said?

Margot James MP: No, I do not think so. If members of the Committee have any points that they feel they have not had the chance to air, by all means please write to me and we will respond with fuller details. Obviously, as the negotiations go on, some of the answers that I was not able to give today may become clearer, and I would of course be happy to return to your Committee on a future date.

The Chairman: Thank you very much for that. You will receive the transcript of this meeting. If you wish to add to it or to clarify anything in it, please feel free to do so. In the meantime, thank you very much.