

Business, Energy and Industrial Strategy Committee

Oral evidence: Work of the Competition and Markets Authority, HC 2246

Wednesday 5 June 2019

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Members present: Rachel Reeves (Chair); Drew Hendry; Stephen Kerr; Peter Kyle; Mr Ian Liddell-Grainger; Sir Patrick McLoughlin; Mark Pawsey; Antoinette Sandbach; Anna Turley.

Questions 1 - 69

Witnesses

[I:](#) The Rt Hon Lord Tyrie, Chair, Competition and Markets Authority; Dr Andrea Coscelli, Chief Executive, Competition and Markets Authority; Will Hayter, Senior Director, Policy and International, CMA.

Examination of Witnesses

Witnesses: The Rt Hon Lord Tyrie, Dr Andrea Coscelli and Will Hayter.

Chair: Thank you very much, Lord Tyrie, Dr Coscelli and Will Hayter, for coming to give evidence this morning on the work of the CMA. As you can imagine, there are a number of topics we want to cover, not least the work you have been doing, as we have, on the future of audit. We will start on your approach to consumers and the new ideas that you have put to the Secretary of State.

Q1 **Antoinette Sandbach:** Morning, Lord Tyrie. It is a year now since you took over as chairman of the CMA and, in February, you came forward with a major package of proposals for reform. Are we to see these as not only a series of institutional and legislative initiatives, but a way of resetting the competition sector, and in particular the CMA's relationship with its stakeholders?

Lord Tyrie: That is a very interesting opening question with quite a lot in it. Why don't I start with the general, and then go to the particular? On the regulatory environment generally, more widely, the regulatory landscape will not look like it does in 10 years' time. Parliament and the public are not satisfied with the way it is going, and digital will bring a lot of pressure to bear.

These are natural monopolies, and part of the responsibility of the CMA is to keep an eye on those monopolies. The old solution was state ownership. It is an enduring problem. Then we had a completely new model, which was privatisation plus regulation. That was replicated in most countries throughout the world, but it is no longer working in the interests of consumers. They do not think so. It was always vulnerable to capture from vested interests, and it is at risk of that now in some areas. There is quite a lot of pressure from politicians, some of it undue, to act quickly, which tends to trigger overregulation, which then stifles competition. There is a natural tendency on the part of regulators to become remote and technocratic, which further reduces their capacity to justify their existence, even if they are doing a good job.

Something is going to give. What I tried to do when I arrived at the CMA was have an internal discussion about these issues, partly in the light of the fact that I had a request from the Secretary of State to look at it, both when he appointed me and then more directly in the columns of *The Financial Times*. We have on our part developed a programme of reform that we think can address some of these concerns.

Q2 **Antoinette Sandbach:** One of the things you have raised in your response is the fact that regulators may feel remote to consumers. Will you be looking at capacity issues, for example, around enforcement and local trading standards, which are often the bodies that are there to protect consumers, and the effectiveness, for example, of alternative dispute resolution in getting redress for consumers?



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Lord Tyrie: On the first, individual cases are generally taken by trading standards. Our job is to try to pick cases that have general applicability across the markets, in short. Andrea might want to add more on that.

On the second, I am sure I am not supposed to announce anything. Indeed, the purpose of coming before a Select Committee as a regulator is to try to get past as inconspicuously as possible and scurry back, so I do not know whether I should say this, but I am going to. I have, since you asked, put in train internally—I do not know where it will lead—work to think through, if necessary radically, how consumers can directly do more of the heavy lifting to deal with detriment when they encounter it, including small businesses. At the moment, they feel disempowered, completely disempowered in some cases. That cannot remain.

There are some tools and vehicles to enable the expression of that discontent, but they are probably no longer strong enough, particularly in the digital age, where detriment develops so quickly that the current regulatory structure, with the barnacles that inevitably attach to any system—particularly one based on law, as the lawyers develop case law—slows up the process by which detriment can be remedied.

Q3 **Antoinette Sandbach:** The Government were undertaking a statutory review in relation to the competition regime, and that was due to be completed by April. Do you know when it is going to be published?

Lord Tyrie: No. It is now 180 days since. Am I right? I am not sure of the timing exactly, but anyway, it is certainly due. Let us say that. They have quite a lot on their minds, but from time to time we are asking them.

Q4 **Antoinette Sandbach:** I can encourage you to ask more.

Lord Tyrie: Sorry I cannot give you a more robust reply.

Q5 **Antoinette Sandbach:** Given that the Government have failed so far to publish their response, are you clearing the way, as it were, for the modernising consumer markets Green Paper, so that you can adapt your proposals to what may come forward in that Green Paper?

Lord Tyrie: Yes, and we are providing a lot of technical expertise to BEIS in a series of papers, parts of which I expect eventually to end up in the public domain, but that will be a matter initially for BEIS. Yes, there is a great deal of work going on with respect to that.

Perhaps, again, I am saying things that are not customarily said by people in the position I now hold. The Civil Service is thinking, “We are not quite sure what is going to happen here. Do we want to commit ourselves to heaps of stuff when the environment is somewhat uncertain?”. The politicians, certainly in BEIS and the Treasury, are very supportive of getting on with this situation. There is absolutely no doubt about that. That is my clear impression. It is not an easy environment in



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which a Department can take forward legislative proposals, particularly since they will have to win approval across Government.

I note that the Secretary of State, when he gave evidence to you, was pretty robust in saying that he wanted to make further progress on both this and audit—on all fronts. There is no lack of will there. We will keep pressing, and I take the nudge that you have given me firmly on board.

Dr Coscelli: The advantage for an agency like ours is that, in many ways, we can get on and do quite a lot of work ourselves, so we are doing that. We have taken a fairly expansive view of our powers on the consumer side, and we have quite a few cases. We have achieved some goods results in things like hotel online bookings, ticketing and other areas.

At the same time, as Andrew was saying, we have been working quite hard with the Department to prepare for consultation on legislation. Things are blocked at the moment, but there is quite a lot that is essentially ready to go, I understand, when that situation changes.

Q6 Drew Hendry: Good morning. Your proposals would amend the CMA's primary statutory duty in order to focus on the interests of consumers, rather than to promote competition for the benefit of consumers. How big of a refocus would that be for the CMA?

Lord Tyrie: The proof of the pudding will be in the eating. There are two new duties we propose be imposed on us. One is the one to which you refer, which is the paramount duty: that we should consider consumer interest to be paramount. The second is that we should have a duty to get on with it and do our job quickly.

The combined effect of those should alter the way the scrutiny process of our activity in courts is assessed and, therefore, should enable us, all things being equal, to process more cases. If you permit us to have this on the statute book, it creates a tool for this Committee to say, "You asked for this duty to get on with it; here is case x, and you have not, so what on earth is going on?" It is a self-imposed duty that we are proposing. Most bodies do not leap forward with those things, but we are, and that is a way of sending a very clear signal of what the CMA is going to be about.

Q7 Drew Hendry: Just to follow up on that, how much of a refocus is that going to be?

Lord Tyrie: I tried to answer that in a single phrase: the proof of the pudding will be in the eating. I do not know.

Q8 Drew Hendry: I am trying to get you to expand on that phrase.

Lord Tyrie: The short answer is that I do not know. I do not think anybody knows. I am clear in my mind, having looked at it quite closely



with colleagues in the CMA over several months, that this has a good chance and is well worth a try.

There are other, more radical proposals. In the letter that I sent in, I set out a more radical approach, which would be to take this amalgam of bits and bobs of law that have grown up since the war, really, in the consumer protection space and on competition. There is an argument for saying that should be redrafted to create a single regime. I am sure Napoleon or someone like that would be very keen on that idea. We are trying to build on what we have, because we think what we have is already working quite well, but it is at risk from the pressures I described earlier on regulators, and it will be at greater risk partly as a consequence of digital, so we have to act.

Dr Coscelli: If you go back 10 years, the way an authority like ours was looking at this issue was very much with a sense of very active engagement by consumers, so the idea would be to promote a competitive process, and consumers, being very active, would protect themselves. We have learned through various reports that that is just not the case for many consumers, and there are lots of reasons for it. There are various aspects of vulnerability for consumers.

The rationale behind it is to learn from experience that, at the margin, there probably is a need for greater protection of consumers in a number of situations. We think these legal powers will make it easier for us to deliver what all consumers in a particular market would like to have, as opposed to being narrowly focused on the protection of the competitive process.

Q9 Drew Hendry: Let me ask a wee bit more about it, then. Would such a move align the CMA more with comparator bodies internationally, or would this be a whole new approach in competition?

Lord Tyrie: It is certainly not the approach taken by most competition authorities around the world. I have just been at a conference of 140 competition authorities, and I do not want to be critical of it, but they see, in a sense, the purity of an approach that looks at competition, with the intermediate objective of achieving better consumer outcomes, as their responsibility, but are not directly necessarily focusing in on the ultimate benefit, which will be consumer. The short answer is yes. We are breaking new ground in going down this road.

Q10 Drew Hendry: The big question I would like to ask is who determines the consumer interest.

Lord Tyrie: I wanted to talk about consumers. In fact, I would much rather just talk about people, but every time I had a go at arguing for that, I was told, "No, you cannot put that in this letter; you have to take that out. You need to use the phrase 'consumer interest'". That is because consumer interest has an established framework of case law behind it, partly as a consequence of the work of the OFT. It means that



we are not starting from scratch with exactly that concern. It is quite well defined.

May I come back very briefly to add a rider? I agree with everything Andrea said. When he talked about the changing nature of vulnerability, this is a very big issue and not very well understood. When we and MPs generally talk about vulnerability, we all think we know, or I always thought I knew, what we mean. It is people on low incomes, people with disabilities, people with learning difficulties, people with mental illness and those sorts of problems. That is all true, and that has not gone away. They are certainly at a disadvantage, and probably at more of a disadvantage in the digital age than they were before it started developing 20 years ago, but many people in this room are becoming vulnerable as a result of digital.

Try renewing almost any of your digital contracts and you may find you are sucked into a vortex online that is really very complex. You may spend many hours trying to get to the right deal or the best deal for you, and even then it is very difficult. It is back to the caveat emptor point that Andrea was alluding to. The old model that just said, "We will supply the information; you consumers have to do all the heavy lifting now and look after yourselves" is an entirely logical and sensible approach, but today it is not going to be adequate. Therefore, we have to supplement it with, if necessary, regulation, and certainly a much more fleet-of-foot competition regime that can look after a much wider sense of vulnerability than the traditional definition of it.

Q11 Drew Hendry: Before I leave this, I want to push you one more time on this issue, because case law can help you retrospectively to deal with precedent, but in the CMA, who determines the consumer interest or the people's interest?

Lord Tyrie: I set the strategy with the board. Andrea does the implementation, so I am going to ask Andrea.

Dr Coscelli: I will answer slightly differently from Andrew, in terms of the international comparisons. This is not radically different from what others do. We are talking about where on a spectrum you sit. If you look at the international discussions now, the US historically has been at an extreme end, in terms of the purity of the interpretation, and that is why, in a sense, politically there are very serious discussions going on now in the US on that. Europe has always been more in the middle.

It is quite interesting if you listen to Margrethe Vestager, who is a Commissioner. She is implementing in many ways exactly the same case law that has been implemented for the last 10 or 15 years, but she is pushing the boundaries on the case law and communicating, I would say very effectively, in a context of fairness and consumer outcomes.

What we are pitching for in the proposals is much more along the lines of what Vestager has been doing in Europe, which is to say we are not going



to radically change the case law. I will give you just one example. We are looking at the funerals market at the moment. Our predecessor, the Office of Fair Trading, conducted an inquiry 10 or 15 years ago, and concluded that more informational remedies were needed, and tried to get more information to people. We have since learned that it was not a particularly effective remedy, because people are very vulnerable when they look to purchase a funeral. Now we are looking at it through a different lens, so we are trying to find something that works in practice for real people.

Q12 Chair: If some sectors of the economy that are particularly important or strategic were to fail or falter, the Government of the day would always have to step in and intervene. I wonder, Lord Tyrie, whether you think the remit of regulators should be extended beyond competition to cover issues such as the resilience of the sector. Have you thought about that at all?

Lord Tyrie: I have thought about it quite a bit and the short answer is no. We should not get into this space. It is a matter for Government to decide. What I was describing earlier about the challenge to the regulated sector is a small part of a much bigger challenge to free enterprise capitalism around the world. It is taking place everywhere. One aspect of it is that a number of countries are saying they would not mind developing an industrial strategy after all. In the EU, it has been very rigorously controlled through state aid. The American presidency has drifted into the area of industrial policy, although he would deny that is what he is doing, as part of his protectionist strategy.

I do not know whether it has crossed this Committee's desk, but the Siemens-Alstom merger is an extremely instructive case to take a look at. In the light of that, you can see pressures building up in France and Germany to develop an industrial strategy. Our job should be to say, on the basis of our statutory remit, broadly interpreted, what we think is best for consumers. In that case, we did not think, for example, that an industrial strategy that enabled a merger to take place, which would restrict suppliers of goods to our rail sector, was in the UK interest. We thought consumers would end up paying more and we said so publically, which is not always the way things are done.

To their credit, the Government, although they had a lot of other things to think about, also chipped in. To her enormous credit, Vestager fended off massive pressure from Macron, if we read the press, and Merkel directly, and stuck to her guns, as a result of which, in an extremely rare set of circumstances, this was called in by the whole Commission, all 28 of whom met to decide what to do, rather than delegating the decision to her. She won the day, and UK consumers have been protected in that case.

It is a long answer to a reasonably direct question, but I hope I gave a direct answer right at the beginning. Our job, if necessary, would be to



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explain what the consequences for the consumer and for competition would be of an industrial strategy.

Let me just say one more thing. If you look at what the industrial strategy is at the moment, I do not think it is a cause for concern. If I did, I would have already said so, and I would have already come out publicly; institutionally, we should have done. He can intervene on security grounds on mergers, and I can see the logic of that. The industrial strategy basically has a number of components, which are an R&D programme, some technical education, an innovation fund and some sector deals. At the moment, those look compatible both with the existing state aid legislation and the kind of work we are trying to achieve.

- Q13 **Chair:** The issue about Siemens-Alstom was not what I was trying to get to, but you raise an interesting point, Lord Tyrie. Are you suggesting that, if we had not been at the table objecting to that merger, that would have happened, and it would have been a detriment to the UK economy?

Lord Tyrie: I am not going to say what the outcome would have been, because I just do not know. I do know that it was of use to the UK that we were able to make our points effectively, and we would need to find other means of making them. There is discussion of a further agreement after Brexit. No doubt, an element of that will be what kind of co-operation and consultation arrangements can be put in place.

Chair: We will come on to that.

Lord Tyrie: Without any of those, we would certainly have a problem.

- Q14 **Stephen Kerr:** If we can look at the second of your eight proposals for reforming the CMA, dealing with investigative tools and powers, you are proposing some pretty powerful adjustments here, including interim measures. There is a whole range of options discussed. Which are the ones that you prefer?

Lord Tyrie: I have just turned to it. This is section 7 of the eight sections of the longest letter.

- Q15 **Stephen Kerr:** This includes the proposals to have a single regime for market studies and market investigations, the provisions for making judgments on an interim basis, fines for breaching undertakings, et cetera.

Lord Tyrie: There was the markets regime, the fines and the interim measures. Shall we take each of those in turn?

- Q16 **Stephen Kerr:** Yes. Which ones are your preferences?

Lord Tyrie: We would like the lot, please. Otherwise, they would not be in the letter.

Stephen Kerr: You would like the lot; it is not a menu.



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Lord Tyrie: This is not a menu. Let us go through them one by one. In the consumer protection area at the moment, which is of considerable concern to me and to this Committee, we do not have the power to fine or the power to make orders. We are severely restricted in what we can do. We are arguing for an alignment of the powers in the consumer protection space, broadly speaking, with those that already pertain in anti-trust. Again, we have tried to design reforms that do not try to completely change everything, but draw on existing understanding and practice to make them as workable and as practical as possible. They are also ones that can be delivered quickly.

On interim measures, the central problem there, which Andrea may want to chip in on in a moment, is this. If you look at the way the current interim measures statutory framework is interpreted, the courts tend to end up reviewing a very large proportion of the whole case to decide whether we should have an interim measure. If you have to do all the work for that, you are going to end up delaying to the point that it is hardly worth while going for interim measures. The French, for example, operate quite a robust interim measures regime, and it seems to give them a better outcome in negotiating quicker solutions to consumer detriment that they find.

Some rebalancing is required. We have made a proposal. We are in the market for ideas on whether that is exactly right, but I am trying to convey to the Committee that carrying on exactly as we are is a recipe for leaving an increasing amount of consumer detriment out there, particularly in the digital space, which is growing, unaddressed, sometimes for years at a time.

I find the markets regime a curious but extremely interesting tool. First of all, Andrea might correct me, but as far as I know, we are the only competition authority that has something like that. Others look at it, perhaps overestimating its effectiveness, somewhat enviously from abroad. That enables us to do ex ante studies of markets. Most anti-trust and competition enforcement is ex post. Somebody has done something wrong; you go and hunt down the specific case.

What you are trying to do in a market investigation is what, in a sense, to some degree, you are trying to do with a mergers investigation. When two people come together or a number of people come together in a merger, what is going to happen to the whole market? What is the whole market effect? It is an ex ante approach and study of the problem.

That all sounds good. Why do we want to alter it? In practice, it is quite inflexible in a number of respects. For example, when we get to a market investigation, we can only look at the effects of anything we propose on competition. We are not able to interpret it on the basis of what is in the consumer interest, and we are proposing adding that. Curiously, in phase 1, as it is called—it is a phase 1/phase 2 thing—we are able to look at the consumer interest specifically with respect to the study. Also, it looks



quick, but it can be, in my view, not quick enough, and we have to find a way of speeding up this work in fast-moving markets.

Q17 Stephen Kerr: Does the comment you just made about the speed of the process create the possibility for more legal challenge to the process?

Lord Tyrie: Yes, unless we are given some statutory support. We need a framework that enables some rebalancing of that to maintain proportionality for the protection of businesses and markets, but at the same time enables us to get on with the job where the public are clearly discontented.

Q18 Stephen Kerr: On that point, what does that do to the confidence of business? Is there not going to be a concern from business that some of these interim measures are going to be driven by public mood?

Lord Tyrie: That is a very important question. I will answer it in two parts. First, I have just mentioned proportionality. There needs to be proportionality to ensure that we protect legitimate business activity and do not damage the confidence to invest or enthusiasm for inward investment. When answering that question, you have to think about what business is. Business is a number of big businesses very often, but it is also a very large number of smaller businesses that go largely unheard. Their concerns need to be taken into account in establishing what it is proportionate to do. Remember, the longer any detriment stays there, the more these firms are going to either give up or remain subject to this.

Dr Coscelli: To give you a sense, on the discussion points about interim measures and digital platforms, this discussion is going on globally, and there was this recent report for the Chancellor by Professor Furman and various other academics advocating exactly these powers for us.

If you take the example of a business in the UK acting today on Amazon Marketplace, there is a certain set of rules about the prominence of that particular business on Amazon Marketplace, and today Amazon can decide, if the particular business has a month with some problems for the delivery, that suddenly this business could go from page 1 to page 15. We know that, if you go from page 1 to page 15, your business decreases by 95%.

If that business is close to failing, it would like to have someone it can go to and complain about that. You could put in place ex ante regulations, which is a way of doing it, so we regulate the platform. That is one way of doing it. If you decide, as is currently the case in the UK, that you do not have that ex ante regulation and that someone like us should do the policing, if it takes us two and a half years to get to the bottom of this matter, that business will be dead and finished by the time we have finished. We are saying we would like to be able, within six or nine months, still within all the procedural guarantees for Amazon and everyone else, to take at least a preliminary decision on that matter.



Q19 **Stephen Kerr:** You recognise that that could create more legal challenge. What role should courts play in reviewing?

Dr Coscelli: There will still be a right under the interim measures. Let us suppose, in this hypothetical example, that we came out in a preliminary position on the side of the business and not Amazon. Amazon could take us to court, again, hopefully in a matter of weeks or months, and then the court will decide. The whole process will not change from now. The problem we are focusing on here is that, if you have an interim measure process that takes a very long time, essentially it does not work, so it is akin to not having it. Particularly in the digital space, everyone agrees that, if you want a flexible ex post regime, it needs to be sufficiently fast to get to a conclusion.

Q20 **Mark Pawsey:** I wonder if I could come back to the proposals for change that you put forward. In answer to Stephen Kerr, when asked which of the reforms you would like implemented, you said, "All of them, please". What happens if they are not?

Lord Tyrie: We make the existing regime work as best we can, which we think is already adequate for the task, but not optimal.

Q21 **Mark Pawsey:** In the absence of acceptance of the reforms you put forward, does the CMA cease to be fit for purpose?

Lord Tyrie: No, it is fit for purpose and it is not a failing institution. It is working well. One of my first impressions going into this building was that this is a very hard-working group of people very committed to public service, most of whom, unlike many other areas of regulation, could earn a lot more in the private sector and are very dedicated to what they are doing. I do not sense any diminution of that. On the contrary, they see this rise in detriment in their detailed project areas, whether it is pharmaceuticals or whatever.

Q22 **Mark Pawsey:** Lord Tyrie, they need the tools to do the job.

Lord Tyrie: Yes, they do.

Q23 **Mark Pawsey:** You are saying they do not have them right now.

Lord Tyrie: I am saying they do not have all the tools that, in my view, having looked at it for six months with senior staff, they should have if we want to address the kind of detriment that Parliament and the public are telling us is now out there.

Q24 **Mark Pawsey:** You also said earlier that you had had a sympathetic hearing from the Secretary of State.

Lord Tyrie: It was a very sympathetic hearing. He recognises the problem and has asked us to go away and find a solution. I tried to say in the letter that there are a number of ways this could be approached. We have all worked hard to find something—I used these words a moment ago—that is really practical and can be implemented relatively quickly to get to a significantly better place at speed. That is what the public would



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expect of us. A few years after implementation—say, five—we suggest, as I have already suggested to the Secretary of State, that there should be, in the statute, a review. Was this enough, or was it too much?

I want to make one more very quick point. All over the area that we look at in the CMA, we often conclude, “There is detriment there, but it is very difficult to get at with the existing law and we had better leave it alone.” There are great calls on us to be bolder and to take on more cases, which means we might lose more cases.

That is okay in principle, but two things flow from that. First of all, a lot of resources get burned up on cases that we are then losing, which you will criticise us for, with all this energy and public money burned up that need not have been. The other thing that flows from that is an incentive to appeal. The more successful overturning of our decisions there is, the more likely these people will be to have a go. That is why we need to rebalance the legislation as a whole. We need to move it into a place where we do not have to take those sorts of risks.

Q25 Mark Pawsey: How many of the proposals that you would like to see implemented require legislation? You said the legislation needs changing. Do you get a sense from the Secretary of State that time is going to be made available pretty soon to bring forward that legislation?

Lord Tyrie: I will answer that second point and then, if I may, I will bring Andrea in on the first. On the second point, which is whether he is going to find time for this, he will need to develop proposals that he can put before colleagues and get beyond Sir Patrick’s successor there, who will be saying, “No room, no time and no space. We are all far too busy, thank you very much. I do not want to turn my boys and girls out at 10 o’clock at night to achieve this. They have had quite enough as it is”. He is going to have to win over his colleagues and press vigorously.

Q26 Mark Pawsey: Is there an understanding that there is such an urgency to bring these forward that that time will be made available?

Lord Tyrie: I have not had that discussion with him, but you have now asked me, and he will no doubt have seen this exchange. It is very helpful to me that you have made that point, Mr Pawsey, and I am now going to raise it with him in very much the manner you have just suggested.

Dr Coscelli: Essentially, what is here requires legislation, because we are getting on with everything else. There is quite a lot we do in terms of our guidance that we are changing. To add to what Andrew was saying, there are two key drivers behind the reforms that you need to bear in mind.

One is the move to a digital economy, which is common worldwide. On Monday, I was at an OECD event on that. Next to me was the head of the Canadian authority, who was talking about his package of proposals to government for changes in legislation in Canada, and the head of the German authority was discussing the proposals in the German Parliament



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for changes to the powers of the authority. That is happening everywhere.

Brexit is very important for us. If you think about the three Google cases that the European Commission has brought, with €8 billion of fines, post-Brexit we will have to do these cases in parallel. These are massive cases with an army of lawyers and economists trying to fight you all the way: a £1.2 billion fine on foreign exchange cartels by British and other global banks. These are the types of cases we will need to do post-Brexit. We are not looking at the world as it is today. We are trying to make sure, in two, three or four years' time, the authority in is the right place to deal with the challenges we face then.

Lord Tyrie: May I add one more rider to that? Andrea and I discussed this at length, just the two of us. There are two basic approaches. One is to say, "Let us wait for the pressure to build up a bit more, so we feel we have the headroom in order to speak up to make change". The other is to say, "Let us get ahead of it. Let us try to set out what we think will be required, even if the pressure has not reached boiling point".

Both routes carry risks. We have taken a decision. We are getting out there and we are getting ahead of it. We recognise that that will mean there will be flak. There are huge vested interest groups around the competition area, obviously financially driven, but sometimes driven by deep views about what the framework of law should be. We are now out there with those proposals, and I have no doubt they will be subject to vigorous attack and challenge, but that is the right way to make law, so I am not concerned about it. The CMA perhaps is somewhat unused to being in that environment, but I am going to do my best to make sure it can adjust to it and to help it through.

Q27 Mark Pawsey: Lord Tyrie, anticipating the future, you told us about the impact of digital, for example, but a very significant change coming down the road is the fact that we are leaving the EU. Dr Coscelli, you referred to Brexit. To what extent does that change things? Will that give us the ability to create additional powers of our own that may be necessary and that may be different to colleagues in Europe?

Dr Coscelli: It depends on the future relations. In a world of broad convergence with the EU, the reality for us is that we just need to be effective at working in parallel with the European Commission, mainly, and the other authorities. We go from a world like Siemens-Alstom, where we are an important player influencing a decision by the Commission, to a world where we have to stand on our own two feet and take a decision, potentially on global transactions. We are going to be in the same position as the Canadians, the Japanese, the Brazilians and the Australians.

We know we can do that, but it is a very significant change from where we are today. To be honest, the European Commission has done a pretty good job at protecting UK consumers on competition matters, particularly



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in the last five years, having had a very strong Commissioner. We need to do at least as well as the Commission and ideally better. Depending on the relationship and the trade agreement, potentially we could diverge in some areas, and there are some areas where potentially we can take advantage of that freedom.

Q28 Mark Pawsey: Has there been enough clarity from the UK Government on what the position may look like once we have left? Have you been engaged?

Lord Tyrie: The answer is no, and if you can tell us what it is, we would be very grateful. I am only teasing. I am afraid the Government do not know what it is going to look like.

Q29 Mark Pawsey: Have you been engaged in discussions with DExEU, for example, as to the future position of Europe?

Lord Tyrie: Yes, very much so, and deep in discussions with BEIS, looking at very extensive contingency planning for every type of Brexit. If there is a transition period, we are in a much better place. If there is not a transition period and there is not a deal, really quite robust measures will need to be taken at speed.

To give you an idea, we will be talking about big ticket in-flight mergers coming to us. We do not know exactly how many, because we do not know exactly where we will be at that time, but perhaps a handful of big cases and 50 smaller ones. Anti-trust cases too will be coming our way. We will need internally to reallocate staff. To give you a sense of the scale of this, we are a relatively small organisation. Between 100 and 200 staff are going to have to be taken off whatever they are doing in order to manage a hard Brexit.

Q30 Mark Pawsey: My question was going to be to what extent you will need additional resources to deal with these items in isolation, rather than as a member of the EU.

Lord Tyrie: We have been given some extra money.

Q31 Mark Pawsey: Could you give us an indication?

Lord Tyrie: It is £20 million, and the £20 million has already been cut back from £22 million, but £20 million is fine. Thank you very much for asking about our resources. It is always a vexed issue with regulators. I want to tell you, though, that we are not asking for more money.

Q32 Mark Pawsey: I was going to ask whether that additional resource met the additional demand for your work.

Lord Tyrie: In a steady state post Brexit, with or without a deal, that will probably enable us to function to a level that would be acceptable to this Committee, Parliament and the public. If it is not, we will come back and say. This is uncharted territory; we cannot be absolutely sure. I want to convey, though, that the scale of the adjustment will be very large. It will



be essential that we get some sort of co-operation agreement with the EU on exchange of information, which is why I lingered so long on Siemens-Alstom, to try to convey that. That is a very practical illustration of what is required. There will also be the issue of whether Parliament by then has put on the statute book state aid legislation, which has not yet been approved by the House.

Dr Coscelli: We think the resources are sufficient. There is an issue in translating resources into extra people, so we are spending a lot of time recruiting. To give you a sense of the scale, over the last financial year we had more than 2,200 face-to-face interviews with potential candidates to come to the CMA, so it is a very significant exercise on top of the day job. That is the main risk, because we are subject to pay caps in the Civil Service. One of our strategies has been to expand quite significantly in Edinburgh, which has been a very successful strategy. We now have more than 40 people, from three people last year, and it is very much part of our strategy to try to be creative and get the talent wherever we can find it in the UK.

Lord Tyrie: Andrea mentioned that we are a Government Department. Because of the private sector market for our staff I was describing a moment ago, we really need more flexibility on pay. I do not need more money. I need more flexibility to be able to use it. Either we need to reconsider whether we should be a Government Department, or we need more flexibility from the Treasury on how it can be used. The Ministry of Defence has flexibility in some areas. That is what needs to be explored.

I used to work in the Treasury. I can tell you they fight any flexibility or any unique arrangements like alley cats, so whichever way we go here we are going to meet a wall of opposition. It would be extremely helpful, Chair, if you wanted to consider this issue further and if Parliament was able to give us some sort of support for obtaining that flexibility, because that is what enables me to say with confidence, "Yes, we can cope, with the extra money. We are not going to bid for more".

Q33 **Drew Hendry:** To bring us back to the Brexit situation, has the Government secured agreement for the CMA to be able to continue sharing and receiving information with the European Competition Network and member states post-Brexit?

Lord Tyrie: Andrea might answer this question in more detail, but as far as I know every effort to share information has been rebuffed with the standard line from the Commission and from our counterparties: "We cannot talk about that issue until the withdrawal agreement has been signed". I went over personally to discuss this with Vestager, among other issues, but that was high on the agenda. We sat opposite one another for about an hour or an hour and a half; I cannot remember exactly. We ambled around this subject from various angles, but we did not make any headway. She played an extremely straight professional bat.



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They would like co-operation, I suspect, at official level. There are things they get from us. This is a two-way street, but we are not in a position where we can put that in place. That is why I wanted to put on the record that, whether it is no deal or deal, the moment we are in a position to start negotiating that and getting that in place, it is necessary and in the British interest. We have done a lot of preliminary work on what that deal or co-operation arrangement might look like.

Q34 Drew Hendry: For clarity, there is no arrangement in place and, notwithstanding your own efforts, you cannot tell us about any of the UK Government's direct efforts to deal with this. Is that correct?

Lord Tyrie: I have not been party to those, but I have no doubt that they have pushed in various areas. Probably No. 1 on the list has been security aspects and customs aspects of this.

Q35 Drew Hendry: You have not seen any evidence of that.

Lord Tyrie: I have not seen any documentary evidence to support progress on that issue.

Q36 Drew Hendry: Let me follow that on. What would be the impact on the CMA's work if such co-operation was not in place?

Lord Tyrie: It is unknown, but possibly quite serious.

Dr Coscelli: It would be very serious. For us, our main risk factor is no deal. On mergers, the parties usually have an interest in the different agencies co-operating with each other, so we would expect, the day after no deal, on most of the mergers, the parties to give us that kind of waiver for the confidentiality discussions. If you are defending a cartel investigation, your incentives are very much in a different place, so we think there will be a real gap on anti-trust. That would be our priority in trying to secure something after exit in that scenario.

Lord Tyrie: Hopefully, acting rationally, something will be put in place. It is in the interests of both sides.

Q37 Drew Hendry: Pursuing that, how much influence does the CMA and the UK more widely have within the EU as regards competition issues? How can the CMA continue to influence after the UK leaves the EU?

Lord Tyrie: On the first question, it has considerable influence. In the brief time I have been in this job, I have seen that in action, in a number of ways—through the OECD, through the paper flow that goes between the Commission and us with respect to specific deals and projects of work, and in discussions with Andrea, who has briefed me on a number of aspects of co-operation that he is engaged in. The short answer is a lot, at the moment.

How do we replace that? It is a twofold answer, really. First, we need some sort of co-operation agreement, ideally, but other countries cope, being out of the EU, without particular trade deals. We will have to do the



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same. They clearly cope and so will we, but it will be a sizable adjustment. What are the consequences of that? They are unknown, but in my view, in the interests of protecting consumers, we are better off with a co-operation agreement than without one, and possibly a lot better off.

Q38 Drew Hendry: Without one, we are likely to face serious consequences.

Lord Tyrie: I cannot say that we will. Let us put it the other way round: we will be in a much better place if we have a co-operation agreement. That has come across pretty clearly from this hearing.

Q39 Drew Hendry: It has come across clearly, but it has been underlined by what you have just said—I think this is fair to say, and I am interested to get you to commit to this—that, without an agreement, there are serious consequences for the operation of the CMA.

Lord Tyrie: There are consequences, possibly serious, unknown, because this is new territory for us.

Q40 Drew Hendry: To follow on again from what you said, you hinted at this earlier—

Lord Tyrie: There are some advantages. Sorry to interrupt you. Having been a politician, I spot the odd thing during hearings. Sorry, Mr Hendry.

Q41 Drew Hendry: The consequence, you are saying, of moving on from that is that the CMA will need to take on a greater role in international networks. Is that fair to say?

Lord Tyrie: Yes, very much so.

Q42 Drew Hendry: They include the International Competition Network, the OECD and the United Nations Conference on Trade and Development. Would that be correct?

Lord Tyrie: Absolutely bang on the money, yes. That is why I was at the International Competition Network for a whole week with Will only a few days ago—or a fortnight ago, I suppose, now—where I spoke, and where we have a highly developed set of relationships with a number of key regulators. I held meetings with the deputy head of the Department of Justice, the key figure on competition; with the Federal Trade Commission; and with my South Korean counterpart. I also had numerous other bilaterals with other senior regulators. A great deal of the work is informal. Outside those meetings, I had extensive informal discussions with my counterpart at the Bundeskartellamt, Andreas Mundt. He is a mixture of Andrea and me; he is a combination of the two.

Chair: Imagine.

Lord Tyrie: I do not know if you can imagine that. I had meetings with my French counterpart. Yes, we had extensive discussions.

Q43 Drew Hendry: That means, I take it, there will be a serious body of



work out of that.

Lord Tyrie: We will want to develop that work further. I want to say one quick thing on it. On the OECD side, the OECD is dominated by the EU in numbers terms or membership terms. At the moment, we are not on the so-called steering group or the bureau of the OECD, its working group on competition. We should be. We used to be and we are not at the moment, and I am aiming to rectify that as part of what you have just been raising.

International co-operation is not only very important indeed—and I hope that has come across—for an organisation like us, but it is going to get even more important, for all the reasons I have just been alluding to about the growth of detriment and the discontent right across the world with competition policy, the growth of digital technology, and more and more truly global, fast-acting market players. It is a crucial area for us that we get that co-operation. For the most part, we are getting it. We are getting a sense that we will be able to achieve it, although I have put down a pretty clear marker about the risks with Commission co-operation as things stand.

Q44 **Mr Liddell-Grainger:** Good morning, Andrew. Can I ask you about Professor Furman's *Unlocking Digital Competition* report? One of the things he recommends in this report is that a body is set up to deal with consumer rights in the digital age. He is saying in it that it could be an independent body linked to both you and Ofcom. I am quite interested in how that would work, if it was to be there. I suppose, first of all, do you accept the report? Second, how would that work? Thirdly, what is your view on the report? Has it gone far enough or does it need to go further?

Lord Tyrie: First of all, it is a first-rate report. I read the summary and then, about 10 days later, I read the whole report—maybe a week later, when I had time. We, as an institution, agree with a very large proportion of that report. We had at least one of our team and possibly two working on it, seconded to them. We were not, in any way, controlling or interfering with what they were saying, but they were putting their expertise at the disposal of Furman and his team. We accept its overall approach. We strongly accept its analysis, which goes deep into supporting some of the points that I have been making this morning.

I had a couple of meetings, one informal and one more formal, with him, and I did, in the informal—less formal—meeting, allude to this. If you wanted to pick out a weakness, it is that he has slightly passed the parcel on one of the trickiest questions: if you think digital is going to require regulation and cannot be handled by competition policy alone, who should do the job? This is not, as people might think, merely or even mainly a turf war; it is a very complex issue. It would be madness, or certainly—let us water that down—imprudent, to try to centralise all these skills in one body if we have already developed it in Ofcom, Ofwat, Ofgem and other institutions. We should start from where we are, and not try to create something new.



On the other hand, there needs to be some repository of institutional knowledge, preparedness to co-operate with other institutions and understanding of these issues, right at the heart of the competition regime. Logically, therefore, we will want to build up some of this function. If you imagine the CMA without a digital function in 10 years' time, I do not think the CMA would be a very important institution. Digital is going to be absolutely crucial. Have I answered your question?

Q45 Mr Liddell-Grainger: You have and you have not. We are talking about the unit. What are you suggesting as a standalone unit? Somebody has to take action on it. You have said that you have all these people at Ofcom and others doing part of the work, but you are right that digital is the thing we have to embrace. Let me just move it on a bit. How do you equip yourself and your team to deal with the challenges of the digital age within the Furman recommendations?

Lord Tyrie: I will ask Andrea in a moment to speak about how we have already created a unit internally to start building up this expertise, which is already reasonably well advanced. Before too long, the CMA may well want to respond to Furman in the broadest sense on how it should be taken forward. The institutional question has not been fully thought through by anybody, including me, and I have not seen anything written down that cracks it. We will have a go at that issue, probably, internally and may advise Government on it, possibly publicly but certainly privately. There is no perfect solution to it and it may need to be varied over time.

I would add one more rider to the whole thing. What he is really proposing is a digital markets regulator. If you look at what the responsibilities of this unit are—and I am told it is an open secret, but I do not know whether it is already in the public domain—whispers come my way that this report originally said we need a digital regulator but, at a late stage, the word “regulator” was seized upon and sat upon by a number of Whitehall Departments and replaced with “unit.” It does not solve the problem, doing that.

Q46 Mr Liddell-Grainger: Can I then ask you a crystal-ball question?

Lord Tyrie: I do want Andrea to say a bit about the expertise.

Mr Liddell-Grainger: Shall we let Andrea speak? Then can I come back on one bit?

Lord Tyrie: Of course. This is the expertise point.

Dr Coscelli: Independently of Furman, we have set up a data science unit; we were probably one of the first agencies globally to do that. We have 15 people now and have recruited a very strong head for the unit, and that is already highly relevant to what we are doing. It could become even more relevant to the extent that we take some of these extra powers coming out of Furman.



On the Furman point, it seems to me that it is a very good idea to have a unit. Our view is that there needs to be some regulation alongside competition because, realistically, if we want to deliver what the public expects from authorities in the next x years, you need both. The big question is the mix: how much regulation and how much competition, and exactly what type of regulation.

Realistically, there are three options on the regulation: you take advantage of the synergies in the CMA, given that a lot of our competition and consumer work is in digital and a lot of the analysis is very similar; you take advantage of the synergies with Ofcom, in the content regulation on online harm and various other things in digital that are clearly closer to Ofcom than to us; or you think about a new regulator, which is what a number of other countries are thinking about. All three options are valid ones. For me, the exercise now for Government, for us or for anyone else is to really think about the pros and cons of these three options.

Lord Tyrie: When I was at this International Competition Network meeting, there was a private meeting of the heads of competition authorities. While I am not going to divulge the private meeting, I can tell you that a very large proportion of the discussion at that meeting, which lasted over an hour, was about how we are going to respond to this question. Can competition policy cope with the digital challenge? Are we going to need regulation? Some of us—and I was one—were arguing, exactly as Andrea said, that we are going to need a regulator of some sort. We are going to need regulation in this field.

Q47 **Mr Liddell-Grainger:** Is the unit going to be a halfway house to a regulatory body on this? The unit explores, recommends and then goes on beyond that.

Lord Tyrie: Mr Liddell-Grainger, you are on one of the questions I am thinking about with Andrea right now. We have not made up our minds and we are still thinking about it. We would like to come back to you and to the Government.

Chair: Thank you. That would be helpful. When you have thought more about it, you can come back to us in writing.

Peter Kyle: You can tell us more about your private meetings as well.

Lord Tyrie: I did not divulge very much.

Peter Kyle: What did you have for lunch?

Lord Tyrie: The lunch was dreadful. I should not say that.

Peter Kyle: For someone who started off saying they were not going to tell us about what happened, I now even know what you had for lunch.

Lord Tyrie: It was a rare slip in the otherwise magnificent food.

Q48 **Peter Kyle:** Let me direct you to the future. Do you think that the



energetic approach that you are trying to bring to regulation could well encourage other regulators to take a similar approach, so that we could start tackling things like late payments with perhaps more energy and focus?

Lord Tyrie: I entirely agree. In many ways, the CMA can act as a beacon for thinking through how to adapt to and cope with what, in my view, will be, as I said right at the start, in 10 years' time, quite a different regulatory environment for authorities like us and other regulators to operate in.

Q49 **Peter Kyle:** This is interesting. For those of us who are interested in the culture of regulation, is it your belief, therefore, that consumers, the public, people, expect a different approach to regulation—a more assertive approach or perhaps a more interventionist approach from regulators—than they did in the past?

Lord Tyrie: Absolutely. The relationship between Parliament and the public has changed and, as a result, the relationship between Parliament, the public and regulators is also changing. There is a decline of deference. People are better educated. They are also probably being ripped off more. Concentration ratios are rising. On the measures of excess rent, it is very difficult to do this sort of work but, from what one can tell, there is quite a bit of evidence out there to suggest that this problem is increasing. The public are not just getting more articulate about the same problem; they probably have a bigger problem. Digital is probably reinforcing that.

Q50 **Peter Kyle:** When I asked you these same questions in your confirmatory session with us, you were very cautious.

Lord Tyrie: I am a cautious man, Mr Kyle.

Peter Kyle: You do not sound so cautious now. What has changed in the last year, now you have looked under the hood?

Lord Tyrie: I have been taking a look at some of the consumer detriment that comes our way, which we are not able to act on, for one reason or another. I am not happy about it and I want to do something about it.

Q51 **Peter Kyle:** The work you have done on loyalty penalties is a good example of this. Do you think that the gap you have identified through this work between regulators is something that we need to look more at?

Lord Tyrie: Yes. Of course, that was a challenge to us from Citizens Advice, but it was, in many ways, a very helpful challenge that has brought about a lot of helpful co-operation with them and with other regulators in preparing the response. It is worth saying that the response we put out—and Andrea may go through the recommendations in a minute—had a number of pretty clear recommendations on how to address aspects of this problem. If you were to read our response, it is highly unlikely that could have been produced from scratch in 90 days.



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There was a lot of work already going on in the CMA about these problems.

Q52 **Peter Kyle:** You are one of the more powerful regulators. You are now becoming one of the more assertive regulators.

Lord Tyrie: That is what was said when I was chairman of a Select Committee and I was always looking for these levers to pull. There was nothing attached.

Q53 **Peter Kyle:** You have the law on your side now, and you have the ability to apply the law in a way you did not before. It is good to see you using it. I have said consistently since joining this Committee that we often have regulators coming before us, apologising for letting consumers down. We have never once had, in my experience, a regulator come to us and apologise for going too far. We live in an age where consumers expect regulators to be pushing the boundaries of the legal powers that they have on behalf of consumers. It is nice to hear somebody now who is looking at exploring those boundaries, and we would welcome—I think I can speak on behalf of the Committee here—regulators coming to us, asking for us to support the provision of new powers, if they feel that it is in the best interests, looking further into the future.

Are you in dialogue with other regulators about these sorts of things? Are you able to influence other regulators in these things? Is it the job of the regulatory community to get together and sort these things out themselves, or is it the role of Parliament to try to insist on a new culture and develop the culture of regulators?

Lord Tyrie: It is a very interesting question. On pushing the boundaries, we should try to push the boundaries more. We are doing, and Andrea is leading, the work on pushing boundaries within the existing legal framework, but we are also pushing the boundaries by arguing for a change to that framework. That is a new thing. We will carry on pushing those boundaries, subject to the qualifications I was making about creating even further stimulus for appeals, if we are not careful and if we start losing too many cases by being bolder.

On the question of co-operation with other regulators and what leverage we have over them, there is something of a misunderstanding in this space, which it took me a while fully to grasp. That is why I am going to bring in Andrea in a moment, because he was one of the key people educating me about it when I first arrived. We have responsibility for regulatory appeals for decisions taken by other regulators, which alters our relationship with them to some degree. It can be of benefit but it can also be a bind. It can limit the relationship. We rely very heavily on co-operation with those regulators in any case for information flow. They are technically very knowledgeable about a number of things we need to know about in order to do our job. There is a culture of, to some degree, mutual interdependence.



Does that relationship need to change? Are there ways in which we can bring more discipline to bear on the whole regulated sector, including us? These are questions I am starting to think about, but one thing at a time, in a sense. The short answer is that there probably is, but I am not quite sure what it is. I am quite confident, though, that it is not the amalgamation of every regulator we have into some new, all-singing, all-dancing body. That would be a recipe for five years of adjustment and absorption of the change, while we have even more detriment building up in the market.

Q54 Peter Kyle: I, for one, hope we can find the time to have the specific conversation at some point and go into this.

Lord Tyrie: Let us do it informally, if you like.

Peter Kyle: Over another terrible lunch.

Lord Tyrie: We could get a good lunch in the Members' Dining Room. I am sure we can run to that. You are right on a very tricky subject. May I bring in Andrea to discuss the level of practical co-operation that there is?

Dr Coscelli: There is a lot of very good co-operation on a daily basis. If you think about Siemens-Alstom or when the Commission prohibited the merger between Three and O2, which, in many ways, have been two very good decisions for UK consumers, in both cases we worked very closely with the regulators: Ofcom in one case, and the Office of Rail and Road. It was a very strong joint performance that helped push the Commission to the right place, so there is a lot of good co-operation going on.

The point to bear in mind is that, because of historical reasons, we have this quasi-judicial role as an appeal body for the regulators, so there are whole areas of what the regulators do where, essentially, we cannot talk to them or discuss with them, because it would clearly not be appropriate when we are then the arbitrator between them and the investors or businesses. That is partly one of the reasons we are asking in our letter to potentially give this role to the courts, which is, historically, where it should have been, because it would free us up to potentially have more of this role in the ongoing discussions with regulators.

Q55 Chair: Previously, Lord Tyrie, both as chair of the Select Committee and giving evidence to us in your confirmatory hearing, you expressed concerns about previous inquiries that the CMA conducted, particularly on banking competition but also on energy prices. You cannot go back and say what would happen if those were conducted now, but you are suggesting that there has been a change in culture and more pushing of the boundaries. Do you think that the approach to those two subjects now from the CMA would be different from that in the past?

Lord Tyrie: Yes, but I cannot explain exactly how, because I do not have all the material required to think through the counterfactual. I know more about the banking case than I do about the energy case. In the banking case, of course, this was a phase 2 investigation, and it was while I was



on the Treasury Committee that I discovered what phase 2 of a market investigation really meant: that the board—us, the people you have in front of you now—has no involvement in the whole process. We are taking responsibility for a decision over which we have had no influence.

Is this, in the long run, a sustainable arrangement? That arrangement was put in place as a compromise to deal with what is called confirmation bias. Something needs to be done about confirmation bias, but where we have landed is also an increasingly uncomfortable place in an area in which you feel we should be more accountable.

Q56 **Chair:** Are you looking to change that?

Lord Tyrie: One of the consequentials of the reform programme, if we manage to get statutory support—and we need your help with that—will almost certainly be an examination of both whether we should remain a Government Department or whether there should be reforms to the way we remunerate staff, which I have already raised, and decision-making and the way competition decisions are taken by the CMA.

There are allusions to those sorts of points throughout the letter, but we do not have any view on this yet. We put this work out in play after only six months. If I had had my way, I would have taken 18 months to two years over it, certainly 18 months, because there is so much detail required to support proposals like this, of which that is part.

Q57 **Chair:** It is very important that there is consistency, and you can speak about the way in which you approach these issues of competition and markets, but if, as you say, phase 2 investigations are done by external people, who might not sign up to this new philosophy, there is a risk that what you are preaching from the top does not then filter through to the decisions.

Lord Tyrie: That is 100% right. It is something that Andrea and I have discussed extensively, and with other senior staff and senior board members. We are in a better place with this than we were. Andrea was already deep in the case on this when I arrived and has been thinking about it. Some of it can be dealt with at the human level; it is just a personal relations issue internally in the way we go about our work. What I am saying clearly to the Committee is that, if and when—and I very much hope it is when—we get the lion's share of this reform package on to the statute book, there will be consequentials for the way we take decisions, and we will need to think about it.

Q58 **Chair:** I want to ask you about the reform of the audit market. You consulted stakeholders twice during your audit market case study, and you also took account of the evidence that this Committee received on your recommendations. What do you expect to happen now? Do you expect the Government to implement your proposals or to consult on your recommendations?



Lord Tyrie: The Government asked us to look at this; we have. We have made a number of pretty robust proposals. You have looked at it. You have made a number of pretty robust proposals. There is a large overlap between those and a near identity of analysis about the cause of the problem. The Government know that this has to be addressed. Parliament is unhappy—I get this right across, when I talk to colleagues—with the performance of the existing audit market, with 27% of audits for the most recent year not at the level—

Q59 **Chair:** This is my point, Lord Tyrie. What do you expect the Government to do now? You have come to your conclusions. Sir John Kingman has come to his conclusions. Our Committee has as well. As you say, there is a great deal of overlap. The Government asked you to do this investigation; you are the experts. We have also taken evidence, and we support your recommendations. What would you expect the Government to do now, Lord Tyrie?

Lord Tyrie: I am hoping that the Government will now take forward legislation to create a regulator that is worth the name, and that they get on with that. Without that, many of the recommendations—both this Committee's and ours—will be very difficult to implement. We need a regulator worth the name. If they have to legislate in order to do something about the Kingman report, that is the best way to take forward the work that we have done on audit.

Q60 **Chair:** Do you mean by that specifically issues around joint audit and the operational split between audit and non-audit functions?

Lord Tyrie: Yes, you have touched on the two key issues.

Q61 **Chair:** How concerned are you now about the judicial review of your proposals? Specifically, to what extent might that hold up implementation of those proposals?

Lord Tyrie: A judicial review of a market study, as far as I know, is uncharted territory, so we cannot be sure how long that would last or how it would hold it up. We have done a huge amount of work on this subject. It followed seven studies and reports, so it was not as if we are starting with tabula rasa. There has been a great deal of information out there for a long time on this subject, and we have been asked by Parliament and by the Government to get on with it, which we have done. We have not got on with it by cutting any corners on the quality of the work we have done; we think it is very high-quality work.

May I bring in Will, who is sitting next to me, who led the work on audit? He may want to add something about the appeal and the quality of the work, since he is talking about his own homework.

Will Hayter: First off, the comments on any appeal are, as far as we know, mostly speculation in the press. Of course, quite what that means for the process depends on whether an appeal does indeed materialise but, more importantly, what it would be. If the Government intend to



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consult on our proposals along with the Kingman ones, in principle I see no reason that that should be delayed, but of course it depends on the precise content of any appeal.

- Q62 **Chair:** My concern, Lord Tyrie, is that we have uncovered, as have you, serious problems in the audit market. We have had collapses of big companies and scandals at others that should have been detected by the auditors. They were not, and that shows that there is a need for reform. The reforms that our Select Committee and the CMA have put forward are sensible reforms that could address some of these issues. My concern is that, if these reforms do not happen, we risk future failures of businesses and future scandals because we have not acted when all the evidence is there that tells us we should act. Do you share those concerns, Lord Tyrie?

Lord Tyrie: I could not have put it better myself. I share your concerns in their entirety, as you have put them there, and that is pretty much the analysis we have. You set that out yourself in, to put it mildly, a robust speech that I heard you deliver to launch your own proposals. I think Antoinette Sandbach was on the platform with you.

- Q63 **Chair:** There have been various announcements from some of the big four accountancy firms about voluntary reforms that they want to put in place, presumably to suggest that some of the more structural reforms you have put forward are not necessary. Do the reforms from the big four go far enough in addressing the concerns that you outlined?

Lord Tyrie: The proposals that are required to crack the problem that both you and I—both groups—have identified are the proposals that we set out in our report. Doing something else risks not adequately addressing those problems.

- Q64 **Chair:** While they may be welcome, they do not go as far as is needed to address the very real issues that we have raised.

Lord Tyrie: Exactly.

- Q65 **Chair:** Can I ask you whether you are working with other regulators on audit reform, particularly with the FRC? Also, are you working with Sir Donald Brydon on his review?

Lord Tyrie: I have seen Donald and had a chat with him about it, over lunch, if I may say so, Mr Kyle—an excellent lunch provided by Don. The key question there, it seems to me, is whether the Government can get ahead without waiting for the Brydon report. I think you asked him that question; certainly, somebody has. I have, and he, both privately and publicly, has said, “No, it should not await the completion of my work.” That is not a bar to getting on with it. On the other hand, quality is crucial to all this, and his input will be extremely important in working out exactly how the new regulator should function.



Will Hayter: Just to reassure, particularly during the course of the study, we worked very closely with the FRC and with the Kingman review on relevant issues, such as the competition duty that Sir John Kingman proposed, and provided input to the Brydon review. That was the reason we spent some time writing an annexe to our December paper all about the issues that Ms Sandbach is so focused on.

Lord Tyrie: It is back to where we were on reform. The spirit is willing right at the top of Government to do something about this, but the flesh may be weak occasionally. They are under pressure. They do want to act on audit, but it is going to be heart-pounding getting early action, and we both have to press vigorously to try to secure a favourable response.

Q66 **Chair:** You said that you would revisit audit reform if your proposals did not have the intended results. How radical are you prepared to be?

Lord Tyrie: As radical as it takes to solve the problem identified. By then, the problem may be slightly different, but I do not think it is going to be radically different. It has been around a very long time.

Q67 **Chair:** If the reforms that you and we have proposed are not implemented with the results that we would expect to see, would you, for example, look again at a full structural break-up, and independent appointment of auditors?

Lord Tyrie: The short answer is yes. We are talking about in several years' time, probably five years' time. In any case, we should by then have a regulator on the block that is getting to grips with these issues and can apply technical expertise to answering the question of how to address the shortcomings that you are suggesting might develop. The market needs to realise, if it does not already, that the appetite for whatever is required to address this is very strong in both the Government and Parliament. It is as well for everybody to bear that in mind.

Q68 **Chair:** Thank you very much, Lord Tyrie, as well as Dr Coscelli and Will Hayter. We very much welcome your proposals for reform, putting consumers at the heart of everything that you do. Your concerns about a hard Brexit have been noted. Most of all, the Government asked you to do an important review on the future of audit. They also asked Sir John Kingman to look at the regulation, and our Select Committee, following on from what we saw with the collapse of Carillion, also wanted to look at these issues. The Government now have all the information they need to put in place the reforms that are necessary to try to reduce the likelihood of future corporate scandals, which have implications within that business—for the people who work there, the people who save for their pensions, and the suppliers—but also for all of us as taxpayers, who pick up the bill when companies fail. You have some fantastic people working at the CMA who have done really important work.

Lord Tyrie: I have one of them on my right here.



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Chair: And on your left as well.

Lord Tyrie: I agree entirely, but I was referring to the audit work.

Chair: We are determined that the work that has happened at the CMA does not just sit on the shelves in a Government Department, but that it is implemented, and implemented soon, so we look forward to working with you to push the Government to get those reforms on the statute books.

Lord Tyrie: You have worked with me before, Chair; I do persist, and we will persist.

Chair: I also know, Lord Tyrie, you like to get the last word in, but I am now going to say order, order.