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Public Bill Committee

ENTERPRISE AND REGULATORY REFORM BILL

Tenth Sitting

Thursday 5 July 2012

(Morning)

CONTENTS

CLAUSE 18 under consideration when the Committee adjourned till this day at One o'clock.

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The Committee consisted of the following Members:

Chairs: †HUGH BAYLEY, MR GRAHAM BRADY, MARTIN CATON, MR CHARLES WALKER

- | | |
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| † Anderson, Mr David (<i>Blaydon</i>) (Lab) | † O'Donnell, Fiona (<i>East Lothian</i>) (Lab) |
| † Bingham, Andrew (<i>High Peak</i>) (Con) | † Ollerenshaw, Eric (<i>Lancaster and Fleetwood</i>) (Con) |
| † Bridgen, Andrew (<i>North West Leicestershire</i>) (Con) | † Onwurah, Chi (<i>Newcastle upon Tyne Central</i>) (Lab) |
| † Burt, Lorely (<i>Solihull</i>) (LD) | † Prisk, Mr Mark (<i>Minister of State, Department for Business, Innovation and Skills</i>) |
| † Carmichael, Neil (<i>Stroud</i>) (Con) | † Ruane, Chris (<i>Vale of Clwyd</i>) (Lab) |
| † Cryer, John (<i>Leyton and Wanstead</i>) (Lab) | Simpson, David (<i>Upper Bann</i>) (DUP) |
| † Danczuk, Simon (<i>Rochdale</i>) (Lab) | † Smith, Julian (<i>Skipton and Ripon</i>) (Con) |
| † Davies, Geraint (<i>Swansea West</i>) (Lab/Co-op) | † Wright, Mr Iain (<i>Hartlepool</i>) (Lab) |
| † Evans, Graham (<i>Weaver Vale</i>) (Con) | † Wright, Jeremy (<i>Lord Commissioner of Her Majesty's Treasury</i>) |
| Johnson, Joseph (<i>Orpington</i>) (Con) | |
| † Lamb, Norman (<i>Parliamentary Under-Secretary of State for Business, Innovation and Skills</i>) | James Rhys, Steven Mark, <i>Committee Clerks</i> |
| † Morris, Anne Marie (<i>Newton Abbot</i>) (Con) | |
| † Mowat, David (<i>Warrington South</i>) (Con) | |
| † Murray, Ian (<i>Edinburgh South</i>) (Lab) | † attended the Committee |

Public Bill Committee

Thursday 5 July 2012

(Morning)

[HUGH BAYLEY *in the Chair*]

Enterprise and Regulatory Reform Bill

Written evidence to be reported to the House

ERR 27 English Heritage

ERR 28 Verina Glaessner

ERR 29 Bluesuntree Ltd

ERR 30 Unite

9 am

The Chair: Colleagues, we start a new day with a new part of the Bill—so now for something completely different.

Clause 18

THE COMPETITION AND MARKETS AUTHORITY

Chi Onwurah (Newcastle upon Tyne Central) (Lab): I beg to move amendment 70, in clause 18, page 12, line 38, after ‘the’, insert ‘long-term’.

May I say what a pleasure it is to serve under your chairmanship, Mr Bayley?

The Chair: They always say that.

Chi Onwurah: All may say it; some of us mean it. I rise to speak for as a shadow Minister in a Public Bill Committee the first time—it is also my first such Committee—so I hope, Mr Bayley, that as I find my way, you will forgive any faults I make. I shall certainly rely on your guidance. I already know that I must stick to the subject of the Bill and not be tempted by unrelated concerns. You and the members of the Committee will be pleased to hear that I am absolutely certain that competition and market reform are of such great interest as to furnish material for many long speeches and debates—I am sure you will appreciate them all.

So far, we have had lively and informative debates, and I hope that that does not change now that we are in the territory of competition and market reform. As my hon. Friend the Member for Hartlepool said in his excellent opening speech, we aim to challenge and scrutinise the Bill as thoroughly but as reasonably as possible. I have tabled several amendments with the aim of improving the Bill or of probing the Government’s objectives. As I shall show, the current competition environment in the UK is very much the last Government’s legacy, and we have no intention of allowing it to be undermined without a fight.

I should declare my own interest in this subject. One of the many interesting aspects of this Committee is what we have learned about the past lives and relevant experience of so many of its members. Mention has been made of the Minister’s well-known book on employment law. I do not have his book—I have a competition law book—but we are all looking forward to the new edition that the Bill will make necessary. The hon. Member for Solihull and my hon. Friend the Member for East Lothian have significant experience in human resources, and my hon. Friend the Member for Swansea West is an expert in market research. Whatever the other experience of Government Members, Opposition Members have significant and varied business experience. Before I became an MP, I worked as an engineer, mainly in the private sector, but for the six years before I entered Parliament, I was head of telecoms technology at Ofcom.

As I am sure we are all aware, Ofcom has concurrent competition powers with the Office of Fair Trading in the existing competition environment, and it is therefore touched by this part of the Bill. Ofcom has been a very light-touch regulator. It is fair to say that it has had considerably more success than the light-touch regulation of the banking system about which the Prime Minister was so insistent. Whether that is a function of the type of people who go into telecoms or the effectiveness of the regulator is not for me to say.

Andrew Bridgen (North West Leicestershire) (Con): When the hon. Lady mentioned the Prime Minister, she was talking about the right hon. Member for Kirkcaldy and Cowdenbeath (Mr Brown), was she not?

Chi Onwurah: The hon. Gentleman is very much in error. I was speaking about the current Prime Minister, who, as we know, toured Europe citing his free market credentials. The problem with banking was that there had not been enough regulation. [*Interruption.*] I am not sure we can be held responsible for what the current Prime Minister said under the previous Government.

David Mowat (Warrington South) (Con): On a point of fact, the veto in Europe was to permit tougher banking regulation in respect of capital requirements in this country. It potentially would have been allowed by the European banking authority. The purpose of the regulation was for tougher sanctions.

Chi Onwurah: I thank the hon. Gentleman for his intervention, but my point related to the current Prime Minister’s views on the problems of banking, as described by him in 2008 when considering the banking regime at that point.

The Chair: Order. Before we progress, we should all remember that the clause is about the Competition and Markets Authority, not about banking regulation particularly.

Chi Onwurah: Thank you for that welcome guidance, Mr Bayley.

In Ofcom, I worked side by side with competition lawyers and economists. I hope that their expertise has rubbed off on me, increasing my understanding not

only of the complex workings of markets, but the importance of competition for the long-term interests of consumers. Amendment 70 gets to the heart of what the purpose of the new competition authority is to be. Who will it work for and who will be the boss?

As the clause stands, the purpose of the Competition and Markets Authority is to promote competition both within and outside the United Kingdom for the benefit of customers. The Competition Commission's current mission statement states that it is an independent public body that helps to ensure healthy competition between companies in the UK for the ultimate benefit of consumers and the economy. In neither organisation does one really get the impression that consumers are at the forefront of their minds. In contrast, the principal duty of Ofcom is to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate, by promoting competition.

Ofcom's duties make citizens' and consumers' interests the most important purpose of the organisation. By contrast, the Competition Commission and the new proposed body, the CMA, seem rather less consumer-focused. Regulators look to their duties for general and specific guidance, I can vouch for that from personal experience. I kept a copy of the Communications Act 2003 on my desk at Ofcom and regularly looked to it for guidance and to determine what the general duties were.

In Ofcom, we often discussed exactly what was meant by the interests of the consumer. Is it just about the lowest possible price at a given moment? If that is the case, large, efficient companies may be best able to deliver the lowest price, so it may be in the interest of the consumer to have a small number of large companies. However, in practice we find that if there are a small number of large companies, we do not get the best results for consumers. In many cases, we end up with an oligarchy in which a small number of large companies act together to keep prices high and customers locked in. Some might argue that the current energy market displays the characteristics of an oligarchy.

How can we determine where consumer interests really lie? The amendment proposes we do that by considering consumers' long-term interests. For example, encouraging new entrants into a market might not reduce prices or improve productivity immediately, but in the long term the customer will be better off. That is why the Government are trying to attract new banks into the retail banking market. It is also to increase competition that the European Commission is obliging Lloyds TSB to divest itself of many of its customers.

As a Lloyds TSB customer, I should declare an interest. I am not happy that in the short term I am having my account moved without my agreement. I recognise that in the long term I should benefit from a more competitive market. Obliging the Competition and Markets Authority to focus on the long term will send a strong message to companies of the importance of long-termism. We know they need that message. Currently, we have a system where businesses with long-term models struggle to access capital from banks that pay out bonuses to executives who have presided over huge and often nationalised losses.

This is not just about greed; it is not even about the politics of envy. It is about a structural problem with our economy. We need an economy based on long-termism,

investment and training. We do not need the short-term, fast-buck, "take what you can" culture that caused the financial crisis in the first place and is very much in evidence in the current LIBOR fixing scandal at Barclays and other banks. I feel that as a Committee we can all agree on that.

At this difficult time in our economy, we should be working together as far as possible, allowing for political differences, to build an economy that is competitive, resilient and fair, where we see businesses encouraged to pursue long-term, inclusive and socially responsible strategies, because it is good for them and their customers.

Some might be asking what we mean by the long term. Some might be thinking of the famous quote from Keynes:

"In the long run we are all dead."

I am sure that those on the Government Benches are always thinking of Keynes. However, I do not think we need to be more prescriptive than the amendment would allow. The CMA can, and should be, staffed by people with intelligence and experience; intelligent enough to know what a long-term perspective is. At Ofcom, for example, market reviews generally look three to five years ahead. The Competition Commission has been reluctant to look more than two years ahead. Adding "long-term" to the remit and duty of the CMA would encourage a more long-term approach without being prescriptive about the time frame.

I would be surprised if anybody on the Committee did not agree that we need to take a long-term view. While some politicians may not be very good at taking a long-term view—at least, not longer than the electoral cycle—I believe it is a skill that we can and should acquire. We can start by amending the Bill to encourage a long-term view in our competitive environment, and the amendment would do just that.

The Parliamentary Under-Secretary of State for Business, Innovation and Skills (Norman Lamb): It is good to have you back again, Mr Bayley. I also welcome the shadow Minister who is taking responsibility for this part of the Bill. I know what it is like doing it for the first time, so I welcome her to the role.

She talked about the legacy effect on the current arrangements for competition organisations. It is fair to say that we share the view that the Competition Commission and the Office of Fair Trading have a very high standing internationally, of which the UK should be proud. However, there are concerns, particularly about the slow pace at which some of the work is undertaken. The decision of the *Global Competition Review* to downgrade its rating of the OFT reflects some of the responses to our consultation, which revealed considerable concern, as I have said, about the speed and efficiency—and the quality—of decision making in antitrust cases.

9.15 am

I have visited the OFT and hold in high regard the people there and the work that they do, but sometimes that work is constrained by the framework within which they work and the powers available to them. The OFT has also suffered recent reverses in the Competition Appeal Tribunal, and all that took place under the regime that we inherited, so when the hon. Lady discusses

the legacy, there are issues that must be addressed. We are not in a state of perfection. If we were, we would not seek reforms to address those concerns.

Chi Onwurah: I thank the Minister for giving way and for his acknowledgement of the high quality of the competition environment left by the previous Government. On his comments about the OFT, the downgrading was in response to slowness in particular antitrust cases, as he mentioned, and that needs to be improved, but does he acknowledge that bringing the competition and markets authority and the OFT together will not necessarily improve the situation?

Norman Lamb: The package of reforms that is being introduced will absolutely address the concerns raised. I understood that the principle of what we are trying to achieve had been broadly accepted by the Opposition, but if that is not the case, I stand to be corrected.

Chi Onwurah: The principle of improving our competition environment is absolutely accepted by the Opposition. Indeed, as we are responsible for the high standing of that environment, it is our obligation to do all that we can to improve it, but not all the measures in the Bill will have that effect.

Norman Lamb: I of course recognise that there will be a debate on many such issues, but we are acting to remedy the identified weaknesses, which the hon. Lady acknowledges. New powers in the Bill will make antitrust investigations more efficient. The power to ask questions, for example, will assist the CMA in establishing the facts of a case, and I experienced that when I visited the OFT and the limitations of what it can do because of its limited ability to ask questions and get answers were explained to me. New arrangements in the Bill will provide that those responsible for final decisions on a case are independent of those responsible for the initial investigation, ensuring that there is that separation. Collective, rather than individual, judgments will be introduced in antitrust decisions, ensuring that the parties have full access to decision makers and that a better dialogue is provided between the CMA and the parties. Those are all things that I hope the hon. Lady will accept can improve the framework within which highly skilled people operate and can improve their capacity to get good outcomes in a timely way.

I assure you that I will not detain the Committee, Mr Bayley, but I should say that I was completely gobsmacked—is that allowed?—by the assertion that the Labour party had nothing to do with the light-touch regulation that caused such horrific chaos in the financial services and allowed so much bad behaviour. I had thought that there was an acceptance, including from the shadow Chancellor, that with the benefit of hindsight the light-touch regulatory regime was a big mistake and allowed some appalling behaviour to take place in financial services, which has damaged the interests of consumers and the economy.

Geraint Davies (Swansea West) (Lab/Co-op): Will the Minister give way?

Chi Onwurah: Will the Minister give way?

The Chair: Order. With great respect to the Committee, I must give the Minister the same licence that I gave the shadow Minister, but we will not have a series of interventions on a slightly extraneous matter. So, I am no longer gobsmacked, and the Minister has the floor.

Norman Lamb: I am happy to quit while I think we are ahead.

Geraint Davies: Will the Minister give way?

Norman Lamb: I am conscious of your concern that the hon. Gentleman may be tempted to stray beyond the clause, Mr Bayley, and I am keen to save the hon. Gentleman from himself. If he wants to intervene on the clause, I am happy to give way.

Geraint Davies: We are talking about the long term. The previous Government introduced the FSA, which was resisted by the Conservative party because it wanted less regulation rather than more regulation. The Minister should withdraw his ridiculous point.

The Chair: Order. We are fortunate to have a long opportunity this afternoon to discuss such matters on the Floor of the House. As time is so short in this sitting before the start of the day's proceedings in the House, I suggest we stick to the question of the Competition and Markets Authority's establishment and purpose.

Norman Lamb: Under the guidance of our robust Chair, I will resist the temptation to respond to the hon. Member for Swansea West.

I was slightly surprised to hear the shadow Minister's suggestion that the interests of consumers are not highlighted, because, for the first time, the clause contains this specific duty:

"The CMA must seek to promote competition, both within and outside the United Kingdom"—

this is the crucial bit—

"for the benefit of consumers."

Clearly, the CMA's role is to act for the benefit of consumers, which we feel is absolutely right.

Andrew Bridgen: Does my hon. Friend agree that "for the benefit of consumers"

means in the short term, the medium term and, indeed, the long term?

Norman Lamb: A good point well made. I thank my hon. Friend for that incisive intervention. [*Interruption.*] Mr Bayley, can you deal with the abuse that is being thrown?

The Chair: Order. The Minister has the floor.

Norman Lamb: Thank you, Mr Bayley.

I agree with the sentiment underpinning the suggestion that the role of the new Competition and Markets Authority should be to ensure that competition across markets works well for the benefit of consumers, not only in the short term but in the long term. Consumers suffer if markets are not competitive, whether because

of barriers to entry, barriers to switching—as we have seen in the energy sector, for example—anticompetitive practices adopted by firms or consumers’ having imperfect knowledge of prices or product features. That is why the Government have given the CMA an overarching duty, as I have described, to seek to promote competition across markets for the benefit of consumers and have equipped it with a strengthened and streamlined toolkit to do so. For example, the new CMA will operate the combined OFT and Competition Commission markets regime to ensure that markets work well for consumers. As such, the CMA will have powers to investigate markets such as payment protection insurance, which is a good example of where there was anticompetitive behaviour and behaviour that adversely affected consumers. That market was found by the Competition Commission to be overcharging consumers by as much as £1.5 billion per annum, collectively not individually. The OFT secured voluntary agreements from the airline industry on the online airline market to improve price transparency for consumers to the value of £131 million a year.

Ian Murray (Edinburgh South) (Lab): Will the Minister publicly welcome the announcement made late yesterday or this morning that the main airlines that have been criticised for drip pricing, such as adding on credit card charges, have decided to stop by putting the prices up front on their websites to increase transparency on the total costs?

Norman Lamb: I totally welcome the announcement, which is an important advance in achieving greater transparency for consumers. We have all experienced it: the consumer starts with a seductive price and ends up paying far more because they encounter extra charges later on. I entirely agree with the hon. Gentleman that we have secured a good advance today through the OFT.

We are providing more speed and rigour in market studies and market investigations and in antitrust cases to give consumers faster and more robust decisions. We are strengthening merger controls to enable the CMA to more effectively address anticompetitive mergers, which can lead to high prices and poor quality.

John Cryer (Leyton and Wanstead) (Lab): An example occurs to me which we probably all remember. Three or four years ago when Kraft took over Cadbury, which at the time was very controversial, nothing could be done because the legislation was not there. I am not saying that under the new legislation a Government could intervene directly, but could the CMA at least investigate such a takeover if it were repeated today?

Norman Lamb: It is always very dangerous to look at individual cases, but the new body will have the power to investigate mergers of any size that might have anticompetitive outcomes and in that way act in the interests of the consumer. That is the duty that we are talking about in the clause today. The hon. Gentleman makes a valid point there.

Alongside this the CMA will have powers to enforce unfair contract terms legislation and additional consumer enforcement powers to tackle business practices that

distort competition or affect consumer choice even when in other respects markets are competitive. These can come in the form of tricking consumers into tie-in contracts, which it is hard to escape from and which might inhibit them from switching suppliers; and subjecting consumers to excessive surcharges or using misleading reference pricing. The CMA will therefore have the power to carry out investigations similar to those currently undertaken by the OFT such as its investigation into the use of online payment surcharges by airlines, the point that the hon. Member for Edinburgh South referred to in his intervention, which the OFT estimates cost consumers £300 million across 10 airlines in 2009 alone.

We will also transfer the OFT’s super-complaint mechanism to the new authority so that designated consumer bodies such as Consumer Focus, Which? and Citizens Advice can continue to expect fast tracking of super-complaints that significantly harm the interests of consumers. To date the super-complaint mechanism has resulted in big wins for consumers in investigations such as those into payment protection insurance and cash ISAs, which resulted in industry guidelines to ensure consumers receive personalised interest rate information on cash ISA statements. Those two examples are both the result of super-complaints.

We have also created a new strategic intelligence prevention and enforcement partnership involving the CMA, the new National Trading Standards Board, the new Financial Conduct Authority, Citizens Advice, and representatives from Scotland and Northern Ireland, to collectively identify issues causing consumer detriment and agree priorities for enforcement information and education. We do not, however, consider that the CMA’s duty needs to specify long-term benefits to consumers as the clause delivers that effect. As I have indicated, and as my hon. Friend the Member for North West Leicestershire indicated in his intervention, both short and long-term benefits are important. There could easily be a circumstance where consumers taking action through the new body to address an immediate detriment will bring about a short-term benefit. So just to define it as long-term benefits would seem inappropriate.

9.30 am

As with the OFT and the Competition Commission, the total impact and intention of the CMA’s work will be to deliver benefits to consumers. Even those cases with an immediate impact, such as cartel enforcement action and merger control, deliver enduring benefits for consumers through making the rules of business behaviour and through deterrence to others to indulge in that sort of behaviour. OFT figures show that for every cartel case pursued, 28 breaches are deterred, while for every anticompetitive agreement case not involving a cartel, 40 are deterred, and 12 are deterred for every abuse of dominance case. Therefore, there is a much broader deterrent effect acting in the long-term interest of consumers. We would also be concerned if the CMA’s flexibility to choose to deal with a high-impact, immediate short-term issue appeared to be constrained by an overly restrictive institutional objective, focusing only on the long term.

I hope that hon. Members will withdraw the amendment, but we agree with the sentiment of the proposal and what it seeks to achieve, as I hope I have indicated.

Fiona O'Donnell (East Lothian) (Lab): It is a delight to be back with you, Mr Bayley, on such a beautiful morning. The Minister referred to quitting while he is ahead, but I do not think that is an accurate health check on the state of the coalition.

I want to raise a couple of issues on the amendment. My concern is that no provisions in the Bill further competitiveness within the financial services sector, and for many small and medium-sized enterprises that is a worrying trait. I notice that analysis of Labour's statistics showed an increasing number of people seeking to set themselves up in business, which is very welcome, but access to finance for the long-term health of those individuals and their enterprises is of concern. I am also concerned about community groups that are perhaps seeking to raise a wind turbine for the community's benefit, or social enterprises, which often find it so difficult to access finance. There is a lack of competition in the market, and I often think, "Thank goodness for the Co-operative bank that there is some competition."

The Minister also slightly misses the point made by my hon. Friend the Member for Newcastle upon Tyne Central about this part of the Bill not focusing on long-term benefits. We often see that what may appear to be a short-term gain to the consumer can, in the long term, disadvantage them. I hope that the Minister takes those comments with the good nature with which they are intended, but I feel disappointed by the ambition of this area of the Bill.

Geraint Davies: It is a great joy to have you in the Chair, Mr Bayley. I want to make a few quick points.

Introducing the idea of the long term does not negate the obligation to consider short-term issues. Before I refer to an example, I should express my personal interest and history, as I have a background as a director of a small travel company. I mention that because of the enormous growth of low-cost airlines, and because people are unaware that charter airlines are protected by ATOL—air travel organisers' licence. Therefore, if a charter airline goes bust people get their money back, but low-cost scheduled airlines, which most people use to go on holiday, have no cover. The point is that, so far so good, one of those companies has not gone bust, but in the current economic circumstances, with growing competition, falling demand and the eurozone crisis, it is likely that something will happen.

In the longer term, we should be looking towards scenario planning and whether obligations need to be introduced for consumer protection on the scheduled low-cost side, which is highly competitive and high risk, given that the case has been made historically for such protection on the charter side. That example lends support to the amendment and the idea of the long term, because although such a problem has not occurred, it is likely to. What will happen, as with charter airlines, is that when one of the companies goes bust, thousands of people, who assume they are covered but are not, will come to the Government. Many years back—in the 1970s—the Government had to step in for Clarksons and suddenly had to pay for everyone's holiday, after which the law was changed so that that could not happen again. Such an outcome is predictable as a medium to long-term prospect. The idea behind the amendment is to focus the civil service and the industry towards the long term, in the knowledge that there will

rightly be obligations in the short term, as the Minister has said. The amendment would not rule out those obligations, but I have used one example to make my case about the medium to long term.

The Chair: It might help if I tell members of the Committee that there will be a stand part debate. If they want to put broader questions to the Minister about the role of the Competition and Markets Authority, they will have the opportunity to do so then.

Norman Lamb: I shall briefly respond on the issues raised by Opposition Members. The hon. Member for East Lothian—[*Interruption.*] It did stick; I got there. It is the East Lothian question, indeed.

The hon. Member for East Lothian raised concern about anticompetitive behaviour, particularly in financial services. The Bill's whole purpose is to create an effective regime to deal with anticompetitive behaviour in any sector. It is important that the organisation can commit its resources to wherever there is a problem, and that it has the capacity and the independence to decide on where the focus should lie, which may be in financial services or in other sectors. I reassure the hon. Lady that the whole purpose of the reforms is to put in place a very robust regime that can deal most effectively with anticompetitive behaviour, and do so in a timely way—we have already debated that key concern, and there is an acceptance that that is a problem.

The hon. Member for Swansea West raised the issue of airlines and the potential risks of low-cost airlines going bust and leaving consumers stranded. I can tell him that action is being taken at the European level. This is a single market issue, and it is important for the economy that the single market operates very effectively. Over recent years, because of effective action on airlines, the market has been opened up and there has been a massive reduction in fares for consumers, which is broadly a good thing. That has enabled us to go on holiday and to travel far more cheaply than we ever could in the past. Work is under way at the European level to consider the updating of the directive to ensure that appropriate protections are in place for consumers, while not—this is the concern of this Government—excessively burdening business with regulation. His concerns will be addressed in that forum.

On the hon. Gentleman's broader point about the importance of the long term, I have made it clear that we accept the sentiment behind the amendment about ensuring that consumers are protected by and benefit from a robust regime in the long term. However, in many cases immediate action will be necessary and appropriate, and consumers must benefit in the short term. We do not want an in-built bias towards the long term because, in all its work, the organisation must simply look at acting on anticompetitive behaviour in the interests of the consumer, which is the important thing. The introduction of such a duty for the first time is a significant advance.

Chi Onwurah: I welcome the Minister's acknowledgment of and support for the sentiment behind the amendment. In his opening remarks, he made many points about the Bill. In my desire to follow your guidance to stick closely

to the amendment and the clause, Mr Bayley, I did not raise such issues, but I look forward to addressing them in later debates.

I want to make two points that are slightly wider than the amendment. First, to set the record straight, with your guidance, Mr Bayley, I did not deny our shared responsibility for the light-touch regime in banking. As the Minister said, the shadow Chancellor has said that more and better regulation was needed. What I denied was the ridiculous proposition that the Opposition at that time called for more regulation, when in fact the opposite was true.

I move on swiftly to the important point about financial services raised by my hon. Friend the Member for East Lothian. I was surprised to hear the Minister say that the main purpose of the new organisation, the CMA, was to address competition issues in financial services. Please correct me, but my understanding, shared by others, is that the newly formed Financial Conduct Authority, to be created by the Financial Services Bill, would have a competition responsibility. We will have future debates on that, but will the Minister clarify the point raised by my hon. Friend about whether the responsibility for financial services will rest with the CMA or the FCA?

Norman Lamb: Regarding the CMA, John Vickers pointed out in his evidence to the Committee that one would not expect the competition aspects of the Bill to refer specifically to banking. It would be ridiculous to identify one specific sector. This is about the general competition and consumer law of the land and the institutions that administer it. It is about the principle, setting up the architecture of how the organisation will operate. The new Financial Conduct Authority will have a duty to promote competition in financial services, but will work closely with the CMA, the overarching competition body for the UK.

Chi Onwurah: I thank the Minister for that clarification. We look forward to clarifications of that type, to probe and understand what will be achieved by the Bill. As my hon. Friend the Member for East Lothian pointed out, competition in financial services is of such great importance that we need to be clear about the measures to improve that, and that the Financial Conduct Authority will be effective.

To return to the amendment, I am disappointed that the Minister, while acknowledging that we share the sentiment, will not consider some rewording of the duty. The principal duty does contain the word “consumers.” The Minister is right about that. The CMA is to further competition in the long term in the interests of consumers and the economy. My point is that consumers are not given sufficient importance. For example, the duty could have been to further the interests of consumers through competition. Consumers need to be at the heart of the organisation. Competition in and of itself is not the end objective. The benefit of consumers is the objective.

Norman Lamb: The duty is incredibly clear: it is “to seek to promote competition...for the benefit of consumers”.

That is the purpose of promoting competition. The link between the promotion of competition and the benefit to the consumer is absolutely clear.

9.45 am

Chi Onwurah: I thank the Minister for that intervention and the emphasis on the importance of consumers, which I know we share. I feel that the duty does not go far enough in promoting the long-term benefit to consumers. It is of great importance to the Opposition, as the Minister will know from the interventions.

The hon. Member for North West Leicestershire raised a point that goes to the heart of what may be a misunderstanding. He said that interests include short, medium and long-term interests, but as I said in my opening remarks, and indeed as was supported by the example given by my hon. Friend the Member for Swansea West, there may be a conflict between an apparent short-term gain and the long-term interests. The Minister was concerned that there would be cases in which there was a short-term gain that the CMA would not be able to investigate, because its duty was to the long term, but the fact is that a short-term gain remains in the long term. If someone gains £10 tomorrow, they will still have that gain in five years’ time.

The important point that we are trying to make is that the CMA should always look to the long term. Equally, that sends a strong message that that is the kind of competition and those are the kind of benefits that we are looking to support.

Geraint Davies: Would my hon. Friend agree that in fact the Minister confirmed a trade-off? He explicitly said of my example that consumers benefited from lower prices and he implied that if insurance was provided for their protection, they would have to face slightly higher prices, but they would be secure in the knowledge that if the company went bust they would not be stranded abroad. He has prioritised short-term gains over the long-term interests of consumers. That is why the amendment is right.

Chi Onwurah: I thank my hon. Friend for that intervention. He has highlighted that point more concisely and with greater passion than I was able to do.

Norman Lamb: It might help if I add an additional point. The OFT, through its business plan, has a particular focus on the long-term approach to consumer benefit. Through administrative arrangements like that, one would anticipate that the new body would have a clear steer about its importance. I have said that the Government share the ambition of ensuring that there is a focus on the long term. Guidance will be available through the business plan.

Chi Onwurah: I thank the Minister for that intervention, although I am not sure that it provides the reassurance that he intended. Part of my concern with the wider proposals in the Bill is that the OFT loses all its consumer powers and all its consumer interests, which are passed to the FCA, Citizens Advice or other bodies. I acknowledge that there would be ways of ensuring that long-termism was reflected in the organisational culture, but I am afraid that that particular example does not help. Again, I ask the Minister to take our amendment away and consider how the long term can be best reflected. If not, I would wish to test the opinion of the Committee to see which Members do not wish to support the long term.

David Mowat: It is clear that everybody agrees about long-term benefits. The effect of the hon. Lady's amendment is to specifically exclude the short and medium term, because the current wording allows short, medium and long. It may be that she wants to do that, because, as she said, if a short-term benefit is worth having, it should still be a long-term benefit, and I understand that logic. However, if we put that wording in, it allows somebody to argue that a referral is out of scope, because that referral has only a short and medium-term benefit, and therefore the CMA cannot consider it. Is that not a risk in the amendment?

Chi Onwurah: I thank the hon. Gentleman for that intervention, which shows that he is considering the merits of the amendment and is inclined to support it, as far as I can see. He makes an important point. While I am not an economist, I remember studying as part of my MBA various assessments of the long-term value of present value. A short-term gain remains in the long term unless it is undermined by a longer-term loss, which is exactly the kind of situation we wish to avoid. A short-term gain that has a longer-term loss, would be a long-term loss. If there is short-term gain with no associated longer-term loss, it is also a long-term gain. Having set out very clearly the importance of long-termism in the CMA and the strength of feeling on our side, I wish to test the opinion of the Committee.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 12.

Division No. 17]

AYES

Anderson, Mr David	O'Donnell, Fiona
Cryer, John	Onwurah, Chi
Danczuk, Simon	Ruane, Chris
Davies, Geraint	Wright, Mr Iain
Murray, Ian	

NOES

Bingham, Andrew	Morris, Anne Marie
Bridgen, Andrew	Mowat, David
Burt, Lorely	Ollerenshaw, Eric
Carmichael, Neil	Prisk, Mr Mark
Evans, Graham	Smith, Julian
Lamb, Norman	Wright, Jeremy

Question accordingly negatived.

The Chair: We have had quite a broad debate on the amendment but I guess there could still be more general questions that Members wish to raise on the establishment of the CMA, so we will have a stand part debate.

Question proposed, That the clause stand part of the Bill.

Chi Onwurah: It has been a good debate on the amendment. I am disappointed that so few, indeed none, of the Members on the Government Benches wished to support long-termism in the CMA. Long-termism in the CMA is but a small part of what this clause sets out to achieve and therefore it is important to have a stand part debate. The clause gives life to a new body, the Competition and Markets Authority. In choosing the CMA as a title for the new organisation the Government

have shown a certain appreciation of the importance of competition. Googling CMA brings up the Communication and Managers Association, the Complementary Medical Association, the Cardiomyopathy Association, the Christian Motorcyclists Association, not to mention the Community Media Association. In picking so popular—

Mr David Anderson (Blaydon) (Lab): Will my hon. Friend give way?

Mr Iain Wright (Hartlepool) (Lab): Declare your interest.

Mr Anderson: I will. The Country Music Association was missing from that list. Why?

Chi Onwurah: I thank my hon. Friend for that intervention and can find no possible excuse for my oversight. As we can see, there will be significant competition among those laying claim to the initials "CMA," so while I may not welcome that particular choice of initialism, I welcome the Government's intent to improve competition in this country.

Competition is a key basis underpinning the market economy. In neo-liberal terms—I am sure many Government Members are dying to speak in such terms—it is competition and competition alone that can deliver consumer benefits. It is through competition that markets deliver the most efficient allocation of resources and the proper pricing of products. Consumers therefore benefit from lower prices. In theory, competition encourages firms to invest in developing new products in order to distinguish themselves, so consumers also benefit from innovation. Lower prices and innovation are what competition delivers for consumers.

Mr Anderson: Far be it from me to disagree with my hon. Friend, but does she agree that the example of utilities, where companies have been unbridled for 25 years, has not delivered low prices and certainly not innovation? It is quite clearly an industry that is unfit for purpose in many ways.

Chi Onwurah: I thank my hon. Friend for that intervention. Indeed, he raises a point that I am just about to come to, because it is here that I and many in the Opposition part company with the neo-liberals. There are some things that the market cannot deliver, such as universal education and health care, and there are other so-called natural monopolies, because the investment costs involved are so great that only one company can make a profit. Many such natural monopolies, such as electricity, gas, telecoms and railways, were privatised by the last Conservative Government, who took—

Norman Lamb: Surely the hon. Lady is not suggesting that they should be renationalised.

Mr Anderson: I hope she is.

Chi Onwurah: The last Conservative Government took the money but left the difficult challenge of regulating—

Norman Lamb: I am just interested to know whether the shadow Minister agrees with her hon. Friend the Member for Blaydon that the utilities should be renationalised.

Chi Onwurah: I thank the Minister for that intervention. There are, as I will continue to set out, natural monopolies that cannot function effectively in a competitive market without significant regulation. In some cases, although not all—I am thinking particularly of the railways—the level of regulation required is such that it may be more cost-effective to bring them back into some kind of national ownership.

Ian Murray: My hon. Friend is making a compelling case about the complexities of the competitive market and what does and does not work, but does she agree that the Government have stepped in where markets have failed? It could be argued that the east coast main line franchise, Network Rail and, in fact, the two biggest banks in the country were renationalised by Governments because of market failure.

Chi Onwurah: My hon. Friend makes an excellent point. It is somewhat strange that the Minister expressed such surprise from a sedentary position at the concept of organisations that have so dramatically failed being brought back into public ownership, because that is exactly what happened to the east coast main line. A large proportion of the banking sector is also publicly owned. We must also be clear that competition has been successful in certain utilities, such as the telecoms industry. It has not been successful in other utilities, such as energy, but it may not be cost-effective or practical to bring them back into public ownership.

David Mowat: Will the hon. Lady give way?

The Chair: Order. Before we take further interventions, which we undoubtedly will, I am perfectly content for Members to debate further the role and purpose of the Competition and Markets Authority, but if we stray into a wider debate on the merits or demerits of public or private ownership of utilities, we would be stretching a bit wide. I am happy to give a little licence to a couple of Government Members, because I have done the same for Opposition Members, but I hope that within two or three minutes we can get back to the CMA itself. The hon. Member for Newcastle upon Tyne Central, who has the floor, may decide whether to take interventions.

10 am

Chi Onwurah: I will take one intervention.

David Mowat: I want to press the hon. Lady on natural monopolies, particularly in energy gas. Does she believe that to be a natural monopoly that should be renationalised? If so, will she explain why we have the 25th lowest gas prices in Europe?

Chi Onwurah: I thank the hon. Gentleman for his intervention, although it was somewhat disappointing. In strict network economics terms, the distribution of gas and electricity is a natural monopoly. That is not to say that they should or could now be brought back into public ownership. Talking about the lowest energy prices

is fantastic, but Opposition Members are also concerned about the long-term benefits. We have seen energy prices rise dramatically over the past few years.

Neil Carmichael (Stroud) (Con): Will the hon. Lady give way?

Chi Onwurah: I will take one more intervention from each side, and then we should make some progress.

Neil Carmichael: We are straying a bit off the point. Competition is not about ownership but about what happens within the industries. If we take energy, for example, that is not so much gas but gas versus other sources of energy production. That is the kind of competition that we need to stimulate, which she will find in the draft Energy Bill.

Chi Onwurah: I thank the hon. Gentleman for his intervention. When he mentioned gas, I wondered whether he was referring to what I was saying, but clearly not; he was referring to the underlying industry.

Ownership is key in competition; I do not wish to disagree with the hon. Gentleman, but I am afraid that, to correct him, ownership is key in competition because, where there is a monopoly, the fact of its ownership and how it competes will be part of the responsibilities of this organisation.

Geraint Davies: I should point out that the 25th lowest price is a pretty high price. Putting that to one side, does my hon. Friend agree that in the case of natural monopolies such as water, where clearly there is not a choice of taps to switch and where there are strategic issues with leakages, investment and variation in the amount of rainfall—there is a lot of rain in Swansea while there is a drought in the south-east—there should be a strategic approach that eventually lends itself, certainly for consumer protection, towards possible public ownership? An incoming Labour Government would not have any money, after the economic mess of the Tories, to do that sort of thing, but in the long term the strategic interests of the consumer may well be with the public ownership.

Chi Onwurah: My hon. Friend raises a very important point. The approach of the IMF and others to water privatisation across the world, requiring developing countries to privatise their water, has had terrible consequences. An understanding of network economics is really important to any competition authority.

Chris Ruane (Vale of Clwyd) (Lab): I do not want to water down my hon. Friend's argument. On whether there should be a halfway house between public ownership and private ownership, I give the example of Glas Cymru—Welsh Water—which is more of a social enterprise. The profits raised go back into it, not necessarily to the shareholders.

Chi Onwurah: My hon. Friend is absolutely right, inasmuch as considering different forms of ownership is one way of mitigating the detrimental economic consequences of a natural monopoly. To dwell on that point, a natural monopoly is in a position to raise prices and consumers cannot change where they go, so consumers suffer real detriment when a natural monopoly is allowed, unregulated.

[Chi Onwurah]

On the functions of the CMA, the last Conservative Government—

Andrew Bridgen: Does the hon. Lady agree that the CMA's function is to ensure that consumers have choice? With choice comes competition, which will drive down prices and drive up service levels in the marketplace. As has been mentioned, the consumer needs to have choice.

Chi Onwurah: That intervention simplifies the complexity of the competitive environment. I agree that choice is important, and with competition comes choice, but the consumer needs—

Andrew Bridgen: That is the wrong way round.

Chi Onwurah: Not necessarily. The consumer needs to be able to make well-informed choices, and companies do not always give consumers all the information that they need to make the right choice. We have had many examples in many industries, which I will not enumerate.

It is important to note that we have a large number of ex-nationalised companies that are now in the private sector, requiring heavy regulation. Ofcom is one such regulator for the telecoms industries, and there is Ofwat and Ofgem. Those regulators will need to work closely with the Competition and Markets Authority.

Chris Ruane: What does my hon. Friend think about the supermarket regulator, Offtrolley?

Chi Onwurah: My hon. Friend has a talent for marketing. I may be censured by the Chair if I give my opinion on all the possible names of the groceries adjudicator.

The previous Labour Government recognised the importance of competition, and therefore the current Government have a golden inheritance on competition law, as the Minister acknowledged to a certain extent. The competition regime is made up of four main elements: first, market studies and market investigation, which we will discuss in future sittings; secondly, merger control, to which the takeover of Cadbury by Kraft, mentioned by my hon. Friend the Member for Leyton and Wanstead, is relevant; thirdly, there is antitrust; and finally, there is competition advocacy.

As the Bill says, the UK's competitive environment is considered in the top three with the US and Germany, with KPMG's independent review of competition regimes ranking the competition regime in the UK third behind the US and Germany. The strengths noted include technical competence, independence from the political process, which is very important, transparency, access to decision makers, as well as accountability and robustness. The National Audit Office also concluded that the competition regime is generally effective in meeting its aims and is well regarded internationally. For example, the OFT, the Competition Commission and my ex-employer, Ofcom, have great international standing and are considered the best in their class. Ofcom oversees a competition regime, in which there had been a monopoly provider, that saw the average cost of monthly broadband halved in the five years between 2005 and 2010.

Today's competitive landscape, which the clause seeks to reform, was put in place by the previous Labour Government through the Competition Act 1998, the Enterprise Act 2002, as well as sector-specific Acts such as the Communications Act 2003. The CC and the OFT have estimated that there will be direct financial benefits to consumers of £465 million for the market investigation regime and £127 million for mergers in 2010-11.

However, in his evidence to the Committee, Malcolm Nicholson, a panel member of the Competition Commission, described that valuation as being "for the birds". All the witnesses agreed that a competition environment could not be measured in such a way. One said that

"a vigorous and efficient competition system increases business confidence, saves money for the economy and attracts inward investment."—[*Official Report, Enterprise and Regulatory Reform Public Bill Committee*, 21 June 2012; c. 107, Q243.]

Competition is therefore a key part of our economy. Thanks to the last Government, we have one of the most competitive markets in the world, and we will not allow this Government to undermine that legacy through a lack of scrutiny or because of their closeness to powerful vested interests.

There are measures in the clause and the Bill that appear to be sensible, and we will not object to them. On that point, I want to respond to the Minister's apparent surprise that, after my hon. Friends rightly called the Bill a ragbag of measures, we say that we will support some of the measures. It is perfectly possible to see the qualities of individual rags in a ragbag and not, on that account, to overlook the absolute lack of any coherently woven strategy to address the double-dip recession made in Downing street.

Ian Murray: Over the past two and a half weeks, we have failed miserably to get any answers from Ministers about how many jobs will be created. Will my hon. Friend give us her analysis of how many jobs might be created?

Chi Onwurah: My hon. Friend makes a very good point, and if it is in order I want to consider the objective of the changes proposed in the Bill. It is called the Enterprise and Regulatory Reform Bill, but where are the measures to promote enterprise? We all agree that enterprise is important for growth and therefore for jobs, and competition and markets are essential to enterprise, but we already have one of the best competition regimes in the world. Of course, it could be improved, and we support measures to improve it, but our competition regime did not cause the double-dip recession.

Norman Lamb: The hon. Lady asks where the measures are to promote the economy and jobs. Does she not agree—she appears already to have done so—that having a robust competition regime to ensure that we address anticompetitive behaviour is absolutely central to having a good, competitive economy that generates jobs?

Chi Onwurah: I thank the Minister for his intervention, because I agree. I have said that having a robust competition regime is essential, but we do have one. Clearly, it could be improved, but it is one of the best competition regimes in the world.

David Mowat: The shadow Minister is right that we have one of the best competition regimes in the world, but that does not mean that it cannot be improved. The one area in which it is a little weak is timeliness. If we accept that better competition creates jobs and all that goes with that, we must also accept that enabling us to move more quickly will itself create jobs and be a good outcome, which is precisely the effect of the clause.

Chi Onwurah: I have said that I agree that we can improve the competition regime and that we will support some measures, but to call the Bill the Enterprise and Regulatory Reform Bill and to have some measures to perfect the regime—by improving timeliness, for example—is not, given the gravity of the situation we are now in, the best use of Government time in relation to creating jobs.

I will not talk about our party's five-point plan for jobs, but there is a significant number of measures that would certainly create jobs, whereas the measures in the Bill, although they are important in themselves, will not lead directly to any given number of job creations. Instead of writing and rewriting the clauses, the Minister could have used his time to develop a comprehensive industrial strategy, which we know is wanted by the Secretary of State, as he said so in his letter to the Prime Minister in March. However, the Minister has chosen to tinker with our excellent competition environment, risking much. Top-down organisational change risks much in order to gain—what?

10.15 am

The impact assessment from the Department for Business, Innovation and Skills states that the Office of Fair Trading and the Competition Commission

“are required to make significant savings to meet their 2010 Spending Review settlements and the merger savings are not expected to exceed those required by the SR.”

Basically, there will be no financial savings above what the spending review would in any case bring. Is the Minister certain that the risks associated with such a top-down organisational change do not outweigh the benefits? The Government seem rather obsessed with upsetting existing organisational structures rather than supporting and improving our public services—

Mr Iain Wright: The NHS.

Chi Onwurah: My hon. Friend, from a sedentary position, mentions the example that I was going to give. I would also add schools. There is an obsession with free schools and academies rather than with improving education.

Focusing on market reform, there is one market that we know has failed, and failed spectacularly—the banking market, as my hon. Friend the Member for East Lothian pointed out. Banking is a key part of growth for small businesses, and there is a lack of competition in the banking market. The National Endowment for Science, Technology and the Arts found that finance is an important obstacle for high-growth firms. Some 18% of such firms consider funding to be the most important barrier to growth.

The Minister tells us that the Bill aims to deliver growth, but one of the most important parts of growth—access to finance—is not directly addressed by the Bill.

It mentions other sector-specific regulators, such as Ofcom and Ofwat, but does not mention the new financial services regulator. It leaves us in confusion about how financial services will be directly addressed by the Bill.

Julian Smith (Skipton and Ripon) (Con): The shadow Minister is making a compelling speech. On her point about savings from the merger, Simon Pritchard from Allen and Overy was quite compelling about the potential benefits of having the human capital of both organisations working more productively together and creating greater output as a result. I urge her not to focus solely on the numbers.

Chi Onwurah: I was concerned that, given the hon. Gentleman's almost obsession with employment law in the past few weeks, I might not benefit from his contributions when discussing competition and market reform. I am reassured to find that not to be the case.

The hon. Gentleman is right to point out that there can be benefits from bringing together two organisations, but I have significant concerns about the way in which the two organisations will be brought together, seemingly without much regard for the organisational culture of each. It will not enable the benefits to be fully released.

Andrew Bridgen: I share the hon. Lady's concerns about bringing two organisations together. I remind her of the disaster left to the country when the previous Government merged Inland Revenue with Customs and Excise. I urge the Minister to learn from that huge mistake and ensure that it does not happen on this occasion.

Chi Onwurah: I should also hope that the Minister and we all can learn from the great success that the previous Government had in bringing together all the individual communications sector regulators, such as Ofcom and the television and radio regulators, into one organisation, Ofcom, which, as we have already discussed, is one of the most respected regulators in the world.

Jobs and growth are the Opposition's priorities. Although this is the Enterprise and Regulatory Reform Bill, it is clear that its measures do not directly contribute to that priority. The Government have their own priorities and we will deal with them and scrutinise them, but it is clear that those priorities must appear out of touch with the real concerns of people up and down the country, who are focused not on improving the already excellent competitive regime but on jobs, public services and growth in the economy.

Finally, will the Minister tell me what is it that this merger is trying to achieve that makes it such a worthy priority?

Mr Iain Wright: It is a pleasure to serve under your chairmanship, Mr Bayley. It is good to have you back. It is good to be back from the Stone Roses concert, too, but I will not dwell on that. I support what my hon. Friend the Member for Newcastle upon Tyne Central has said. I refer in particular to subsection (3), which says:

“The CMA must seek to promote competition, both within and outside the United Kingdom”—

[Mr Iain Wright]

and this is the key point—
“for the benefit of consumers.”

Many hon. Members have mentioned the industries that need this measure, such as energy, utilities and the rail industry. I want to mention one—I hope the Minister will respond to this in his summing up—which is the bus industry. It is not necessarily a natural monopoly, but it is clear from my local area and from those of other hon. Members that the business model for the bus industry is simply not working. Crucially, it is not working in the interests of passengers or potential passengers and, given that we are considering an enterprise Bill, of the local and wider economy.

Ian Murray: My hon. Friend has made a critical point in this debate. The bus company in Edinburgh, Lothian Buses, which is 97% owned by the city of Edinburgh council and 3% owned by the surrounding authorities, has won best bus company in the UK for five out of the last eight years. It is run publicly and in the interests of consumers.

Mr Wright: That is a fair point, and I am glad that my hon. Friend has mentioned that example. Since 1985-86, when deregulation of the bus industry took place, passengers in Hartlepool and elsewhere have seen a decline in services, an increase in costs and no choice whatever.

Norman Lamb: What did you do about it?

Mr Wright: The Minister asks from a sedentary position what he does about it. We need to see some degree of re-regulation of the bus industry.

Norman Lamb: What did you do about it?

Mr Wright: The Minister asks what we did about it. We introduced something called the quality contract partnership, which, unfortunately, is not being used by local authorities to the extent that it should be.

On the interests of consumers, which comes under subsection (3), passengers and potential passengers are getting short shrift from the bus providers. Stagecoach in my constituency is making huge profits, which are far in excess of other operations within their group. It is cutting services, isolating communities in my area and ensuring that people are not able to get to work or to leisure activities, which is leading to a contraction of the local economy and a decline in competitiveness in Hartlepool and in other towns as well.

John Cryer: There is an area in which the bus service is an exception to what my hon. Friend is accurately describing, and that is London. The system there is not perfect; nobody would argue that it is. None the less, the buses in London are of a high standard and they run pretty efficiently. They have disabled access, which is not the case in the rest of the country. When Labour was in power, we should have re-regulated the rest of the country in line with London, which has never moved away from regulation. We would see far improved bus services had we done that.

Mr Wright: My hon. Friend is absolutely right. London is an important market to consider when it comes to the bus industry.

The Chair: Order. Probably not a minute too soon.

10.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at One o'clock.