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GENERAL COMMITTEES

Public Bill Committee

ENTERPRISE AND REGULATORY REFORM BILL

Eleventh Sitting

Thursday 5 July 2012

(Afternoon)

CONTENTS

CLAUSE 18 agreed to.

SCHEDULE 4 under consideration when the Committee adjourned
till Tuesday 10 July at half-past Ten o'clock.

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The Committee consisted of the following Members:

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

- | | |
|--|---|
| † 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>) | |
| † Morris, Anne Marie (<i>Newton Abbot</i>) (Con) | James Rhys, Steven Mark, <i>Committee Clerks</i> |
| † Mowat, David (<i>Warrington South</i>) (Con) | |
| † Murray, Ian (<i>Edinburgh South</i>) (Lab) | † attended the Committee |

Public Bill Committee

Thursday 5 July 2012

(Afternoon)

[MARTIN CATON *in the Chair*]

Enterprise and Regulatory Reform Bill

Clause 18

THE COMPETITION AND MARKETS AUTHORITY

1 pm

Question (this day) again proposed, that the clause stand part of the Bill.

Mr Iain Wright (Hartlepool) (Lab): It is a pleasure, and a surprise, Mr Caton, to see you chairing our proceedings this afternoon. I was worried, given my speech this morning, that Mr Bayley would do a runner this afternoon, and I see that he has. Perhaps I may give you a little bit of advice. I know that it is usually given the other way round, but Mr Bayley asked me to speak at some length on these matters, and I intend to follow his guidance closely.

We are discussing clause 18, and I have mentioned the importance of the new Competition and Markets Authority considering the bus industry, certainly if it is to fulfil successfully its obligations set out in subsection (3). I said that in Hartlepool and throughout the country the bus market is not operating effectively, and passengers do not have the choice that an efficient market would provide. That is because bus services are dominated by one powerful provider. In my case that is Stagecoach, which provides between 80% and 85% of services, although the situation is different in other parts of the country. The company deploys a business model that cherry-picks lucrative routes, and squeezes cash out of local authorities, while reducing the level of bus provision throughout the area and providing a poorer service in terms of punctuality. The traffic commissioners' target is that 95% of buses should be on time. In my constituency, the level is 81%.

In its interim report for the six months to 30 October 2011, the Stagecoach Group posted profits of £87.4 million, of which £80 million were derived from its UK regional bus operations. The profit margin on those bus operations, at a time when services were being cut in Hartlepool and elsewhere, was 17.7%, up from 16.4% the previous year. That allowed the company to boast in its interim report:

“We are continuing to deliver sector-leading profit margins”.

Fiona O'Donnell (East Lothian) (Lab): I am grateful to the former Minister for giving way. Would he care to speculate on the fact that part of those profits are donated to the Scottish National party in Scotland, which may relate to its failure to act on re-regulation of buses in Scotland?

Mr Wright: My hon. Friend can hear from my contribution why I am a former Minister, but I agree with her. She makes an important contribution.

We are discussing an enterprise Bill, and the cutting of bus services is having a detrimental effect on enterprise and the local economy because, certainly in my constituency, the stopping of services early in the morning, late at night and throughout the weekend prevents people from going to work; for example, those doing an early shift at a factory, or evening bar work. Consumers are deterred from accessing the night-time economy—having a few pints, or going to the local theatre—because there is no bus service in the evening. Cutting bus services has a disproportionately detrimental knock-on effect on enterprise, businesses, jobs and the economy.

A cheap, reliable and co-ordinated transport system is an essential foundation for improving competitiveness and growing the number of businesses and people in work, yet in its interim report, Stagecoach was able to state:

“We do not expect the recent Competition Commission review of the local bus market in the UK to result in any significant changes to the industry or our operations specifically.”

Well, Mr Caton, I think it should.

On the basis of the characteristics of the local bus industry—dominant players who cherry-pick routes and make excessive profits at the expense of choice, provision and punctuality of service for consumers—will the Minister acknowledge that the industry and its business model are not conducive to effective choice, which in turn hinders the competitiveness and enterprise that the Bill is helping to achieve? I hope that the Minister will reassure us that clause 18 and the CMA will be able to do something about the issues and the industries that I have referred to.

Fiona O'Donnell: It is a delight, Mr Caton, to serve under your chairmanship for the first time. I am assured that you are every bit as generous and kind in your chairing of the proceedings as your predecessors. I may be in need of that gentle approach given my inexperience, having previously sat only on the historic re-committed Health and Social Care Bill Committee. I am grateful to have the opportunity to contribute to the debate, and to follow the former Minister, my hon. Friend the Member for Hartlepool.

On bus regulation, I would be interested to hear from the Minister whether the Bill will improve the quality of public transport. Will he reflect on whether public interest or competition would take precedence, where they were in conflict? He may remember, although it seems like several years ago, that I raised the issue during evidence taking.

Although transport is devolved, there is still an impact from competition legislation passed in this place on service provision in my constituency and throughout Scotland. When one operator recently decided to pull out of several routes it was proposed that the council should establish a bus company and start operating on some of the loss-making routes, to ensure that many rural and smaller communities would still have access to a bus service.

Our understanding is that, because of competition law, the minute a council starts to charge a fare it is in breach of competition law and cannot provide those

services. That poses a difficult choice for many rural communities when under the present regulation, or lack of it, it can mean that services disappear. That of course makes access to work and services, and all the things eloquently set out by my hon. Friend the Member for Hartlepool, more of an issue for communities such as mine.

A Member from the coalition side boasted about how low gas prices are in this country, and there can be no doubt that an element of competition in various sectors has improved choice and brought prices down; but there is choice only if the consumer has access to the goods in the first place. Many parts of my constituency are not connected to the gas grid, so that choice does not exist for them. Does the Minister have any plans to examine both competition law and equity of service provision across the UK?

Similarly, my hon. Friend the Member for Newcastle upon Tyne Central spoke about telecommunications and how the liberalisation, let us say, of that sector has led to improvements; but, again, many communities have been left behind, without access to superfast broadband, which is so important to driving growth in a constituency such as mine, with many rural communities where people now choose to set up in business and work from home. It is also important in attracting companies, possibly from Scotland's capital city—although I promise my hon. Friend the Member for Edinburgh South that I do not have my eye on any companies in his constituency. There would be a benefit to companies that moved out, but for all the competition, choice and access are still not there.

Something in the Bill that is most welcome is the speeding up of the decision-making process, with the caveat that it is welcome as long as quick judgment does not take the place of right judgment. Does the Minister think extra resources will be required for the new body that he is creating, so that we can ensure that quick judgments will also be the right ones?

There is much to welcome in the clause, but it is not a panacea. It will not solve all the ills of the country, although I sure that the Minister, in all his modesty, would never claim that. I will welcome the Minister's response, especially on the issue of public transport in rural communities.

I welcome the Minister's response, especially on the issue of public transport in rural communities.

John Cryer (Leyton and Wanstead) (Lab): It is a pleasure to serve under your chairmanship for the first time, Mr Caton.

I want briefly to raise a point that I mentioned earlier when I intervened on the Minister. It concerns the vexed question of Kraft's takeover of Cadbury three years ago, which is still controversial. It may seem a specific point, but it still grates with a lot of people who remember it. If I remember rightly, a number of newspapers ran considerable campaigns against the takeover of Cadbury, and that has been reinforced since then. We discovered, however, that it was not possible for the then Government to intervene and prevent such a takeover, and I think that would still be true for this Government should the same thing happen again.

Let me explain a bit of the background. At that time I was the political officer of Unite the Union, formerly the Transport and General Workers Union—[*Interruption.*]

I notice the hon. Member for Skipton and Ripon flinching slightly when trade unions are mentioned. I arranged to take some people from the union, including people from a number of the plants owned by Cadbury, to see the then Minister, the noble Lord Mandelson—I use noble in the broadest possible sense.

When we went to see the then Secretary of State for Business, Innovation and Skills, we took with us a large box of fruit and nut chocolate, which was apparently his favourite form of chocolate. It was a bit lighter when we got into the office than it had been outside because I decided that a couple of bars were surplus to requirements and kept them.

The Secretary of State was very grateful, and told us that he had every sympathy with the idea that a British Government—or indeed any Government—should be able to intervene in that sort of takeover in the national or public interest, however we describe it, but that the legislation was not adequate to allow the Secretary of State to intervene in such circumstances.

Cadbury was a hugely successful company that had, I think, grown through its own efforts in each of the previous six years, whereas Kraft was perceived—accurately, I think—as a large, sclerotic company that expanded only by taking over other companies and closing down plants. Almost as soon as it bought out Cadbury, it closed down a plant in the west country that it had indicated—even if it had not given a concrete undertaking—it would keep open.

Ian Murray (Edinburgh South) (Lab): My hon. Friend will be aware of the two hugely critical reports by the Business, Innovation and Skills Committee into the takeover of Cadbury by Kraft, and the insistence of the chief executive of Kraft at the time on not attending that Committee to answer questions from Members of the House. That continued to the extent that the Committee actually considered serving a subpoena on the chief executive, which highlights the issues and the processes that took place during the takeover of Cadbury.

John Cryer: I had forgotten that the chief executive refused to appear, and I am grateful to my hon. Friend for bringing it back to mind. We gave evidence to the Select Committee, broadly in line with the issues that several members of this Committee have raised today. My concern is that the regulatory regime at the time was inadequate to cope with that sort of takeover, and looking through the Bill, I still cannot see how the CMA will be adequate for dealing with such an event.

David Mowat (Warrington South) (Con): The hon. Gentleman is right to say that the regime in those days made no allowance for such takeovers to be challenged on an anticompetitive basis, and neither does the legislation before us. If that is such an issue, however, why have the Opposition not tabled an amendment to allow such takeovers to be challenged on the grounds of public interest? That would have been perfectly possible.

John Cryer: I think that something may be tabled in the future, so I will be speaking about the issue again.

Chi Onwurah (Newcastle upon Tyne Central) (Lab): My hon. Friend is making some excellent points. I wish to make it clear that we have tabled an amendment that we expect to help deal with the issue he raised. In

[*Chi Onwurah*]

addition to the points raised by my hon. Friend, there was concern that the takeover was driven by debt and that the resulting company was laden with debt.

1.15 pm

John Cryer: That is absolutely true. Kraft's expansion had been based very largely on debt for a number of years, with closures and the sacking of large numbers of people all over the world.

I remember vividly the meeting with Lord Mandelson. As far as I know, he is not exactly a revolutionary Prometheus ready to bring down capitalism from within—

Chi Onwurah: He's changed. [*Laughter.*]

John Cryer: Yes. He said, "We've got to take a look at the takeover regulations, because we or a future Government should be in the position where we can say that, on the basis of the national or the public interest, we can intervene in such takeovers." The election then intervened and the rest is history, but we should now consider doing as many other countries do, and base some element of the legislation on being able to say, "Look, in the national interest, we are going to allow ourselves to intervene and prevent this takeover," whatever it may be. Germany has that sort of legislation, as do several other countries that have been pretty successful—certainly Germany has been. I wanted to raise that today, because it will come up again, and my suspicion is that future Secretaries of State will be in exactly the same position as the present one.

The Parliamentary Under-Secretary of State for Business, Innovation and Skills (Norman Lamb): Like other hon. Members, I find it a pleasure to serve under your chairmanship, Mr Caton. I am grovelling just as much as everybody else so far has done—but I mean it. That is the difference—it is entirely sincere and from the heart.

I welcome the shadow Minister's welcome for the purpose of the reforms; that is clearly noted. I was slightly concerned when she began, in a sense, to make the case for a return to public ownership of some companies that previously went into private ownership. I do not know whether a future Labour Government are planning a programme of renationalisation. She did not give any details of the sort of organisations— [*Interruption.*] I see frantic efforts by the Opposition Front Benchers to suppress the natural instincts—

Mr David Anderson (Blaydon) (Lab) *rose*—

Norman Lamb: And they have failed. [*Laughter.*]

Mr Anderson: I would just like to remind the Minister that in the previous Parliament, his party pushed passionately for the nationalisation of the banks.

Norman Lamb: There are circumstances where action has to be taken, and that was clearly the case, but I think the hon. Member for Newcastle upon Tyne Central was talking about a more strategic decision to bring

back into public ownership. I just say to the hon. Lady that she clearly has strong support from behind her, if not from beside her, for her plans for a return to a programme of renationalisation.

It was a little bit rich for one Opposition Member to suggest that the only thing that would prevent a renationalisation programme was the economic strategy of this Government, given that Labour's own Chief Secretary to the Treasury left office saying, "There is no money left," and the outgoing Government were spending £150 billion a year more than they were bringing in, in taxes—hardly a sustainable position. That in itself would probably deny them their natural instinct to start a renationalisation programme. The hon. Lady's argument appeared to be that she supported the reforms, but actually this was not the priority; the implication was that if Labour were in government, they would not be doing this. It strikes me as complacent to, essentially, simply support the status quo.

The hon. Lady cited a report by KPMG in support of the existing regime, but in fact she was referring to its comments about the merger regime. The comments over the page, on the non-merger regime, are more critical and recognise that there are real flaws in the system. The graph, which I can show the Committee, of the length of time it takes for antitrust cases to be enforced shows that the UK is one of the slowest of the countries on the graph.

Julian Smith (Skipton and Ripon) (Con): I am sorry to interrupt the Minister so early in his speech, but does he agree that the UK has had plaudits for the independence of its current regime? Also, the evidence during the witness sessions was strongly in favour of a very robust spilt between the initiation and the remedy section of the new organisation. Will he impress upon the new organisation the need to ensure that that happens?

Norman Lamb: The framework is designed to ensure that the separation is maintained absolutely, and that has been welcomed by not only witnesses to the Committee, but others who made submissions. I completely agree with my hon. Friend that it is essential that it is maintained and that the institution as a whole maintains its clear independence.

The Competition Commission has spent two years looking at local bus markets across the UK, excluding London, which as its own special rules, and Northern Ireland. Its report, published in December, found that competition actually pushes up standards for passengers—this from the Competition Commission, which the Opposition have spoken so fervently in favour of—but that in many areas bus operators face little or no competition. The key therefore is to improve the level of competition. I accept the point the hon. Member for Hartlepool made that in some areas lack of competition is very much the case, which leads to unsatisfactory services.

The Government believe that they have identified suitable remedies to remove the barriers to competition that the Competition Commission identified. The package of remedies is only one part of the Government's wider plan to improve bus services across local markets, set out in "Green Light for Better Buses", published on 26 March. We will reform the way in which we pay bus

subsidy, to get better value for taxpayers' money; we will incentivise partnerships between bus firms and local transport authorities, which is important; and we will support local councils in tendering for supported bus service contracts.

I should also note that the CMA will take over the Office of Fair Trading's specific role under the Transport Act 2000 in applying competition tests that apply when local transport authorities form schemes or make agreements with bus operators.

Fiona O'Donnell: May I ask for clarification on the specific point I raised? Will it be possible for a local authority to establish a bus company and tender for routes itself?

Norman Lamb: I am not an expert on the operation of the law relating to local bus schemes, so I run the risk of misleading the Committee if I give a definitive answer now. I will try to ensure that we get a written response to the hon. Lady.

The hon. Member for Newcastle upon Tyne Central also mentioned public interest set against competition. The regime for both markets and mergers will provide that the public interest can be considered in appropriate circumstances. For mergers, there are defined areas of public interest that can be taken into account; in markets, the only public interest that can be taken into account at the moment is national security. That could be added to. The previous Government chose not to do so, and under the current Government the list remains as it is. However, there is the capacity to intervene in those defined circumstances.

Chi Onwurah: I rise to correct the statement that the list of public interest reasons to intervene had not been added to. Long-term financial stability was added during the financial crash of 2008.

Norman Lamb: I meant that this Government had not changed the list inherited from the previous Government. I fully accept that that was added then specifically to address the situation in the banking sector.

Let me also deal with the points made about the Cadbury case. I do not recall all the details in play at that time, but it is important to be clear that this country has a robust mergers regime in place. That takeover was considered at European level, and it was determined that no competition issues were at stake. Whatever the then Secretary of State said in the meeting over the fruit and nut bars, he chose to do nothing about it in the entire period between then and the general election, although I detected a degree of disunity between the Opposition Members present and the former Secretary of State, which concerned me greatly. It cannot be true—I am sure I was somehow misled by the body language—but that was the impression I gained.

I stress the importance of foreign investment. We should not be seduced by any argument that foreign takeovers, by their nature, are wrong. Take Tata and its investment in Jaguar Land Rover, which has been incredibly important for jobs in this country. Japanese companies in particular have invested enormously in the automotive industry. We benefit in jobs from inward investment

into the UK. An ambition of the Government is to make the UK the most attractive place in Europe to invest, given the levels of skills in the economy, corporate taxation, regulation and so forth. That has to be the objective.

Graham Evans (Weaver Vale) (Con): Does the Minister agree that Tata is most welcome in this country? In my constituency it rescued a long-standing chemicals company, previously known as ICI. Tata has invested significantly, not only in my constituency but throughout the UK, protecting exports and jobs.

Norman Lamb: My hon. Friend makes a good point well, reinforcing the case that we should welcome investment from overseas, rather than be protectionist or resistant to such investment in any way.

Ian Murray: The point that my hon. Friend the Member for Leyton and Wanstead was making about takeovers is about the public interest test and ensuring that the new CMA is strong enough to deal with it. I do not discount the examples of Tata and so on, but the circumstances can be different: for example, in its takeover of Scottish and Newcastle, Heineken gave undertakings that it would be good for the company and the employees, but then there were huge issues around pension entitlements. We are seeking reassurance that the CMA competition regime will be robust and ensure that the public interest tests—looking after workers and their rights—are enshrined in the operation of the new CMA.

Norman Lamb: But there has to be a relevant public interest. The Labour Government chose not to extend the list of public interests that could be considered in this regard and, as I have said, this Government have not added to that list. It is important that we facilitate interventions in the public interest, but in narrowly defined circumstances. There is great danger in extending that principle and thereby undermining competition.

Mr Iain Wright: I absolutely agree with the Minister about protectionism and attracting foreign direct investment, which has been a great help to the automotive industry and others. He is making some very important points. May I take him down the route of considering the principle that applies when a successful iconic British company with stable and regular cash flows is being undermined by debt repayments, because the acquiring company has loaded it up with debt? What does he think, for example, about Manchester United and what is happening there?

1.30 pm

Norman Lamb: As a Norwich City fan, anything that undermines another premiership club—I have no doubt that Norwich will be competing with Manchester United to win—

Mr Wright: Does the Minister realise that he shares his support of Norwich City football club with the shadow Chancellor?

Norman Lamb: That is the one thing we have in common.

Chris Ruane (Vale of Clwyd) (Lab): And with the chief pairing Whip in the Labour Whips Office.

Norman Lamb: I should not stray, but it is interesting to note that I had lunch with the shadow Chancellor at Norwich City during the last Parliament, in the spirit of Christmas good cheer—his parents are my constituents. Another Labour MP in Norfolk did not have lunch with us. I wondered whether there was an element of conflict within the Opposition, but I was not in a position to inquire further. I will leave them pondering on who it might have been.

Julian Smith: I am delighted that the Minister has given a clear message from the Government that Britain is open for trade and that we are not going to accept any of these camouflaged protectionist arguments. Britain is open for business, including for companies such as Kraft, which I hope will invest for the future in this country.

Norman Lamb: I completely agree. It is very interesting and pleasing that, in discussions at EU level—I am on the Trade Council and therefore regularly discuss protectionism compared with free trade—the UK is always out there in front, arguing the case for free trade and opposing protectionism, along with Sweden and one or two others. I should acknowledge that that is a continuation of the previous Government's position. There are protectionist threats out there, particularly from some European countries, and in times of economic difficulty, there is always a temptation to go down that route, but it would be completely wrong to do so. We must ensure that we always make the case for open markets.

Neil Carmichael (Stroud) (Con): It is a great pleasure and surprise to serve under your chairmanship this afternoon, Mr Caton—a surprise, because I thought you were at the Environmental Audit Committee today, which is where I and perhaps the shadow Minister should be, too.

The argument about extending the public interest presents us with the problem of being too prescriptive. Although it is good to hear about the discussion about Cadbury—I was involved in that to some extent because it affected some employees near my constituency—the fact remains that we cannot prescribe what is going to happen next. However, as the Minister just said, we do need to ensure that we protect free trade. Does he agree?

Norman Lamb: I totally agree and I am grateful to my hon. Friend for that helpful intervention.

Let me make some progress. The UK has one of the best competition regimes in the world, but in the current economic environment we need to strive for improvement. We are not complacent, as I sense Labour might be. We will not simply allow the regime to remain unreformed when we know that there are weaknesses in it that have been drawn strongly to our attention. We need to strive for improvement and further to embed conditions in which companies can operate freely in competitive markets that encourage innovation, investment and growth and in which consumers secure the benefits of competition. Securing that generates jobs. Competition and a well functioning regime to promote competition establish the conditions in which jobs will be created.

Despite the current UK regime's world-class ranking, there are problems. Alexander Ehmann from the Institute of Directors said to the Committee:

“The UK may have one of the best competition regimes in the world, but it also has one of the slowest.”—[*Official Report, Enterprise and Regulatory Reform Public Bill Committee*, 19 June 2012; c. 6, Q11.]

I have already referred to the chart showing the UK's relative position. Data published by the Global Competition Review show that we were one of the three slowest countries for conducting investigations into anticompetitive agreements, and in the bottom four for investigating abuse of dominant cases. The current regime has also led to problems in the length of time it takes to conduct market studies and market investigations, which prolong consumer detriment and uncertainty in markets. For example, between 2002 and 2011, OFT market studies took between three and 21 months, and the end-to-end process of market investigation, including the time taken for the OFT to make a referral and the appeals process, ranged between 33 and 67 months. That, surely, is not acceptable, and it makes the case for reform.

The clause establishes a new Competition and Markets Authority, which will bring the Competition Commission and the competition and markets functions of the OFT together into one body. The creation of the CMA will provide a single strong voice for competition that can provide leadership for the sector; regulators on competition enforcement; a one-stop shop for businesses to help them understand and comply with competition law; and greater certainty for business for faster and clearer timetables and more robust decision making.

The CMA has been welcomed by business groups and practitioners, including the CBI, the Federation of Small Businesses, the Forum of Private Business and the City of London Law Society, so there is widespread support for it. They all think that it will provide efficiencies and boost business confidence. As Simon Pritchard of Allen and Ovary said to the Committee,

“you will get more bang for your buck.”

Creating a single body will lead, as he put it, to

“productivity gains—more output and more cases.”

That means that it will be good for competition, good for the economy and good for jobs. Similarly, Robert Bell of the City of London Law Society said of the CMA:

“It will help competition policy be more cohesive, and it will help streamline the regulatory process, which, in turn, will provide efficiencies and boost business confidence in the rigour of the competition system in this country.”—[*Official Report, Enterprise and Regulatory Reform Public Bill Committee*, 21 June 2012; c. 93, Q208; c. 103, Q234.]

The CMA will be the UK's premier competition authority and will have at its disposal a full range of approaches to tackle anti-competitive behaviour and to make markets work better for consumers and businesses. The clause gives the CMA a duty to seek to promote competition for the benefit of consumers.

Fiona O'Donnell: I am sure that the Minister will answer my question about resources. Those are all laudable aims, but will the CMA be resourced so that it can actually deliver on them?

Norman Lamb: I confirm that we are confident that the CMA will have the resources it needs to do the job that it is being created to do.

In support of the creation of the CMA, Katja Hall of the CBI told the Committee:

“We very much welcome the proposed merger...It should help to reduce duplication, in particular, which is our members’ key frustration with the current system”,

and Mike Cherry from the FSB said:

“We would very much welcome the merging of the Office of Fair Trading and the Competition Commission.”—[*Official Report, Enterprise and Regulatory Reform Public Bill Committee*, 19 June 2012; c. 6, Q10; c.18, Q49]

The Government are committed to ensuring a smooth transition process and will work closely with the OFT and the CC to minimise disruption to the organisations while they continue to carry out their important roles and services. The new CMA will be sufficiently resourced to deliver its functions, but will not be immune from wider pressures to help deal with the UK’s massive deficit, which, I remind the hon. Lady, we inherited from the previous Government. Savings delivered by the creation of the CMA will be mainly from streamlining and eliminating overlaps between phases 1 and 2 of investigations. Those savings will help deliver the Government’s existing spending review targets.

The clause gives the CMA the duty to seek to promote competition for the benefit of consumers, both within the UK and internationally. It will be concerned with how firms interact with each other—the supply side; and with customers—the demand side. In creating the CMA we have drawn from the best of the OFT and the Competition Commission. I again pay tribute to the work of those two organisations. The CMA will retain the separation of decision making between phase 1 and phase 2, referred to by the my hon. Friend the Member for Skipton and Ripon, in merger and market cases, with independent expert panellists taking the phase 2 decisions. Those features were highlighted as key strengths of the current regime by John Vickers and some other witnesses to the Committee, and we shall protect them. The provisions are set out in detail in schedule 4.

Question put and agreed to.

Clause 18 accordingly ordered to stand part of the Bill.

Schedule 4

THE COMPETITION AND MARKETS AUTHORITY

Chi Onwurah: I beg to move amendment 73, in schedule 4, page 60, line 22 at end insert—

‘(1A) The Chair shall be subject to approval by a Select Committee of Parliament.’.

The Chair: With this it will be convenient to discuss the following:

Amendment 75, in schedule 4, page 62, line 11, at end insert—

‘(2A) The Chief Executive shall be subject to approval by a Select Committee of Parliament.’.

Amendment 79, in schedule 4, page 62, line 40, at end add

‘and brought to the attention of the relevant select committee.’.

Chi Onwurah: We all agree that this is a very important Bill. There has been a lot of talk of the opportunity that the Bill represents, but we believe it also represents a missed opportunity. The poverty of ideas, mentioned by my hon. Friend the Member for Hartlepool, is evident.

While we do not have the radical changes we need to stimulate growth and deliver jobs and long-term sustainability in this part of the Bill, there are important changes to the competition environment. We believe that those changes merit real parliamentary scrutiny. I have been in the House for only two years, but I have long believed that as the representatives of the people, parliamentarians’ scrutiny is an essential force for democratic accountability. Simply put, the amendments would introduce some parliamentary oversight into how the proposed CMA will be managed.

I do not want to get off on the wrong foot with the Minister—

Chris Ruane: Too late.

Chi Onwurah:—by implying that I do not trust his or his bosses’ judgment when it comes to the appointments. By the time the merger takes place it might well be one of my hon. Friends sitting in that chair.

Chris Ruane: Which one, though?

Chi Onwurah: My hon. Friend the Member for Hartlepool, the former Minister, and my hon. Friend the Member for Edinburgh South are both undeniably future Ministers. Regardless of who holds the office, Parliament should have the right of approval through the Select Committee. We all recognise, and I hope would wish to promote, a general trend towards ever greater transparency in public life. I will surprise some of my colleagues by taking the opportunity to congratulate the Government—

Mr Iain Wright: Sit down!

Chi Onwurah: It is a rare experience for me and I will not dwell on it. I will say that, with the very notable exception of the Secretary of State for Health’s disaster, the Government generally seem to be moving in the right direction when it comes to scrutiny and openness. I would say that the Secretary of State for Business, Innovation and Skills and a certain Minister at the Cabinet Office may have taken things a bit too far when they were discovered disposing of confidential documents in public.

I welcome trends to transparency and propose that the CMA should be at the heart of that. Amendments 73 and 75 would subject ministerial appointments of the posts of CMA chair and chief executive to a parliamentary Select Committee. Paragraph 12 of the schedule requires the CMA to lay an annual plan before Parliament, and amendment 79 requires that report to be brought to the attention of a Select Committee.

1.45 pm

We are familiar with some of the Minister’s achievements, but members of the Committee may not be aware that in a previous life he was a keen user of the Freedom of Information Act. I am not sure whether he is still as enthusiastic now that he is in office in Victoria street.

I hope he welcomes the amendments, as they strengthen Parliament's scrutinising function. Indeed, I was slightly surprised that the amendments were not already included in the Bill. I am sure that is an oversight.

The coalition agreement may seem a long time ago, but allow me to refresh people's memories on the subject of scrutiny of public bodies. Page 21 of the agreement states:

"We will strengthen the powers of Select Committees to scrutinise major public appointments."

The amendments achieve that aim. For the sake of clarity, I also looked at the manifestos of each of the coalition parties. I keep a copy close by. The Conservative party stated that it would

"give Select Committees the right to hold confirmation hearings for major public appointments, including the heads of quangos".

The Liberal Democrat manifesto said something similar. Some might say that that manifesto does not mean an awful lot these days.

Norman Lamb: There is no need for that.

Chi Onwurah: I am not one of them. For the sake of clarity, I will read from the Liberal Democrat manifesto:

"We will increase Parliamentary scrutiny of the budget and of government appointments".

The Minister's colleague, the Chancellor of the Exchequer, has promised the Chair of the Treasury Committee a veto over the appointment of future chairs of the Office for Budget Responsibility. The Minister sat on the Committee for two years. I am sure he would have enthusiastically welcomed the extra power of scrutiny. We should be in absolutely no doubt that the chair and chief executive of the CMA will be major public appointments. As they are responsible for our competitive environment, I do not see how anyone could argue otherwise.

The independent OBR exists to examine and report on the sustainability of public finances—that will be subject to parliamentary scrutiny—whereas the CMA has the equally important task of overseeing the competition and market regime for one of the world's largest economies. Furthermore, if parliamentary protocol allows me to mention it, similar amendments have been considered favourably in another place with regard to the groceries code adjudicator. I know, because the Government recently told me so, that this House has absolute precedence. Nevertheless, I hope to excite a little competitiveness in the Minister with regard to parliamentary scrutiny so that this House can go at least as far as the other place has.

So, we have relevant precedents set by the Government and we have the public manifesto commitments of both coalition parties. It is strange that it is Her Majesty's Opposition who have tabled the amendments, but we are happy to help in this particular case. I am sure we will have speedy agreement from the Minister.

The Chair: Perhaps I should advise you, Ms Onwurah, that you can move only one amendment at a time. If you want to press amendments 75 and 79 to a Division, you will have to move those formally.

Chi Onwurah: Thank you, Mr Caton.

Fiona O'Donnell: I shall make a brief contribution, if I may. I hope that not including openness and transparency in the appointment of senior public servants has been an omission on the Minister's part. Let us not forget that the public will be paying their wages. I can feel the presence of the Minister as he was before—that idealistic young man—in so many of the Bill's clauses, but not in this one. Although I have been paying close attention to the proceedings, I have had time to muse on a short ditty, which I would like to share with the Committee—a short ditty to share with the Committee—

Chris Ruane: Which is very witty.

Fiona O'Donnell: I feel, perhaps, the hand of another presence in the Bill. The ditty goes: "The Chancellor had a little lamb, its fleece was white as snow, and everywhere the Chancellor went, the lamb was sure to go." I wonder if we are feeling more not right, but right-wing, pressure. I hope that the Minister will concede that there has merely been an oversight, and that he will welcome the amendment.

Norman Lamb: I am very grateful for that contribution. I thank the shadow Minister for the amendment, and I was pleased to hear her say that this is a very important Bill; her refrain is rather different from that of other Opposition Members who have called this a ragtag Bill. It is an important Bill—she is absolutely right—which is doing important things to improve the competitiveness of our economy, and I am pleased that she accepts that.

I am also pleased that the shadow Minister accepts that the Government are going in "the right direction" on both scrutiny and openness. She is absolutely right. As someone who has always campaigned for freedom of information, transparency and accountability, I am pleased to be in a Government who are pursuing the case for greater scrutiny and openness. We have a proud record of achieving that. She made a proposal that is designed to improve transparency, which is rather strange coming from a Labour Member, because when her party was in government it was the very opposite of transparent in so many respects. I am sure that, on reflection, the Opposition will share that view.

The Government are absolutely committed to increasing transparency and accountability in the public appointments process, and strengthening the ability of Select Committees to scrutinise major public appointments and hold Ministers to account for their decisions is essential to achieving that.

Ian Murray: I do not doubt anything the Minister says about the transparency of the Government, but how does he reconcile that with the fact that the other place has just decided not to allow the BIS Committee to approve the new head of the groceries code adjudicator?

Norman Lamb: I am waiting for inspiration on that, because I am not up to date with the developments in the other place. Hopefully, I will be in a position to respond later, and if not I will write to the hon. Gentleman.

A system is already in place, which was introduced by the previous Administration, for agreeing between Parliament and the Executive which of the Government's public appointments will be subject to a pre-appointment

scrutiny hearing. Under the system, the Secretary of State discusses and agrees with the Chair of the relevant Select Committee which appointments will have such a hearing. The Cabinet Office publishes a list of the appointments—the most recent one is from August 2009. A document entitled, “Pre-appointment Hearings by Select Committees: Guidance for Departments” was published by the previous Government in August 2009, and this Government will follow those guidelines. There is nothing between us and the previous Government on our commitment to the scrutiny of important public appointments.

In their response to the Liaison Committee’s “Select Committees and Public Appointments” report, the Government encourage Ministers to engage with Select Committee Chairs to ensure that the right appointments receive Select Committee pre-appointment scrutiny. The current system works well. The Government do not believe that there is any advantage in formalising the process in legislation, and there is no case for doing so in respect of individual roles such as that of the chair of the CMA. We will follow the guidelines laid down under the previous Government.

Under the current system, a pre-appointment hearing process is already in place for the chairs of the Competition Commission and the OFT. We are currently recruiting a chair-designate to the CMA. I should like to make it clear that that appointment will also require a pre-appointment hearing by the BIS Committee. However, the amendment tabled by the hon. Member for Newcastle upon Tyne Central would go further than her Government’s guidelines in saying that there would, in effect, be a veto. That is not appropriate. There should be proper scrutiny but not a veto. The Office for Budget Responsibility is the exception, not the rule; it is right that the head of that body, given its specific role, should be appointed as they are.

The Commissioner for Public Appointments code of practice for ministerial appointments to public bodies, which I have mentioned, requires the Government to state clearly in all publicity relating to the post that it is subject to a pre-appointment hearing by the relevant Select Committee. BIS has complied with that code during the recruitment process of the CMA chair-designate.

As with the appointment of the chair, the chief executive of the CMA will be appointed by the Secretary of State, but it will not be a public appointment. That is an executive post, not one where the post holder is regulating the Government or holding them to account, so there is a difference in terms of the appropriateness of scrutiny hearings before a Select Committee. The Government agree with the Liaison Committee that the key aim of the pre-appointment hearing is to establish the independence of the candidate from government. That would not be appropriate for a chief executive role, which is, by definition, a part of the executive and not a regulator of it. That is the distinction.

The chief executive will hold office as a member of staff of the CMA, as provided for in paragraph 9(5) of schedule 4 and, as such, he or she will be a civil servant. The recruitment process for civil servants is regulated by the civil service commissioners and is subject to full, fair and open competition. The CEO will, like any civil servant, be required under the terms of their employment to comply with the civil service code, which is the appropriate code for the position.

The Government believe that, generally, senior non-executive posts should be subject to pre-appointment hearings, because the post holders will play a key role either in regulating government or in protecting and safeguarding the public’s rights and interests, particularly in relation to the actions and decisions of government. It is vital for the reputation and credibility of the public body in question that the post holder is seen to be independent of Ministers and government. That is why it is not necessary for there to be a statutory requirement, as proposed in amendments 73 and 75, for a pre-appointment hearing by a Select Committee on the appointment of the chair or the chief executive of the CMA—and it is certainly not necessary for there to be an effective veto.

On amendment 79, it is not necessary for there to be legislative provision for the CMA to bring the annual plan to the attention of the relevant Select Committee. Opposition Committee members will have noted that paragraphs 12 and 14 of schedule 4 require the CMA to publish an annual plan, containing a statement of its main objectives and priorities for the year ahead, and to publish a report on its performance against those objectives, which must be laid before Parliament and is therefore subject to parliamentary scrutiny, both in Westminster and the devolved Administrations, for example, through investigations by a Select Committee. A Select Committee is within its rights to scrutinise the plan setting out the objectives, but it is not necessary for there to be a separate provision requiring it to be served on the Select Committee.

As the OFT must now, the CMA will have to account for its use of resources in its annual accounts, which will be audited by the National Audit Office. Given the transparency and accountability requirements, we do not consider that a legislative provision, such as that proposed by amendment 79, is required. I therefore ask hon. Members to withdraw their amendments.

2 pm

Chi Onwurah: I was surprised to learn that the proposals regarding the groceries adjudicator had been refused in the other place. It is perhaps a sign that the Government are not going as far in transparency and accountability as their manifestos or words intend.

Will the Minister clarify this point? I understand that he intends to follow the guidelines, but does he expect the chair of the CMA to be subject to Select Committee scrutiny?

Norman Lamb: We are currently recruiting a chair-designate to the CMA. The appointment will also require a pre-appointment hearing by the Business, Innovation and Skills Committee.

I also pointed out that the code, published by the hon. Lady’s Government in 2009, makes it clear that during a recruitment process, we should be clear and open with applicants that that process will happen. We have been clear throughout the process of recruitment of the chair-designate. Whoever is appointed will expect that process to happen.

Chi Onwurah: I appreciate that clarification. While I wish the Government would go further in accepting that the Select Committee should have approval, I am

[*Chi Onwurah*]

assured that there will be a Select Committee hearing. Regarding the CMA's plan, it would be much more appropriate if it was laid before a Select Committee.

What is changing about the CMA specifically, in comparison with the OFT and the CC, is that there will no longer be any consumer duties in the CMA. As we have heard from the Minister, the OFT's consumer duties will be transferred to Citizens Advice and the FCA—that is my understanding, and the Minister may wish to clarify. There will be no direct consumer protection duties, but the interests of the consumer are supposed to be paramount. In order to ensure that that is the case on a year-by-year basis, does the Minister not agree that direct scrutiny by a Select Committee would be the most appropriate form?

Norman Lamb: Just to be clear, the hon. Lady is right that the responsibility of consumer education and advocacy will go to Citizens Advice, but consumer responsibilities, such as for unfair contract terms, will remain with the CMA. It will continue to have a role in safeguarding consumers' interests where competition issues are at play in a market.

The CMA will be required by paragraphs 12 and 14 in schedule 4 to publish an annual plan containing the statement of its objectives and priorities for the year ahead, looking forward, and a report on its performance against the objectives, looking back. They have to be laid before Parliament. It seems entirely appropriate that the duty should be to Parliament as a whole.

Once the plan and the report are laid before Parliament, the Select Committee is absolutely at liberty to scrutinise either the plan or the report. It would be odd to impose a duty on the Select Committee; surely, it should be for the Select Committee to determine its priorities and work programme. It is at liberty to scrutinise the documents that are properly laid before Parliament, and I ask the hon. Lady to accept that that is appropriate.

Chi Onwurah: I thank the Minister for his comments and clarifications. I hope that, in future debates, we will explore the CMA's exact level of consumer duties. It was not my understanding that, as a competition authority, it would have consumer protection duties, so I look forward to receiving further clarification.

Given the Minister's assurances about the appearance of the chair of the CMA and his concerns about the Select Committee's work load or its freedom, as it were, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Chi Onwurah: I beg to move amendment 71, in schedule 4, page 60, line 27, after 'one', insert 'and no more than three'.

The Chair: With this it will be convenient to discuss the following:

Amendment 85, in schedule 4, page 68, line 19, at end insert—

- (f) at least three persons (“specialist consumer competition panel members”) appointed to the CMA panel under paragraph 1(1)(b) for the purpose of

being available for selection as members of a group constituted to carry out specialist consumer competition welfare functions on behalf of the CMA;

- (g) at least three persons (“specialist financial competition panel members”) appointed to the CMA panel under paragraph 1(1)(b) for the purpose of being available for selection as members of a group constituted to carry out specialist financial services competition functions on behalf of the CMA.’.

Amendment 90, in schedule 4, page 67, line 24, at end insert—

‘(2A) No person who participated in the CMA Board's consideration of whether to refer the matter to the chair shall form part of a group selected by the chair to investigate the matter.’.

Chi Onwurah: In March 2011, Laura Carstensen, the deputy chairman of the Competition Commission, said in response to the Government's initial proposals that “the design of a single authority and the stipulations for its operation should embed procedural fairness in the form of a two-phase procedure across its remit”.

The Minister has said that the two-phase procedure will be embedded, but we need more reassurances and, indeed, amendments to ensure that the procedure is embedded in such a way that it is reflected in the organisational culture, because there is a real risk.

Although an editorial in the *Financial Times* took the overall view that the Secretary of State's proposals were sensible, particularly on the anti-cartel regime, it was far less convinced about the wisdom of a merger. It stated that

“while some of the recommendations contained in his review of the UK's competition regime...are sensible, others may actually undermine policy rather than strengthen it. The biggest worry is the government's proposal to approve a merger between the OFT and the Competition Commission.”

The Minister has quoted several experts in support of the merger, but others are more concerned about the risks. The *Financial Times* also stated that

“the expected savings...of some £1.3 million per annum could be smaller than the cost to consumers and businesses of getting a single merger decision wrong. That might not matter if it were clear that the new regime would be much more effective than the old one. But this is far from clear.”

The current merger and markets regime is structured around three decision-making stages—phase 1, which is undertaken by the Office of Fair Trading and sector regulators; phase 2, which is undertaken by the Competition Commission in markets and mergers cases; and phase 3, which is the appeal stage. If we are to merge the CMA and the OFT, it is essential that the combined organisation nevertheless achieves organisational separation between the first two phases.

Organisational separation is sometimes called Chinese walls, for reasons I am not entirely clear about, or firewalls, which is a rather clearer metaphor. The idea is that one part of the organisation should not contaminate the other parts. As Sir John Vickers put it in his evidence to the Committee:

“When you have two organisations under one roof, you need an extra strong wall between the two parts.”—[*Official Report, Enterprise and Regulatory Reform Public Bill Committee*, 21 June 2012; c. 83, Q186.]

In the Minister's comments on the potential savings because of the overlap between phase 1 and phase 2, he did not reassure me that that wall would be strong

enough and clear enough to ensure that we have the fresh pair of eyes in phase 2, which will be so important in promoting fair decision making.

One of the key ways in which organisational separation between phase 1 and phase 2 activities is to be achieved is through the make-up of the CMA panel and the separation of it from the CMA's other duties. That division of responsibilities is made in part 2 of schedule 4. Phase 1 decisions in mergers and market cases are assigned to the CMA board, whereas phase 2 cases are undertaken by the CMA panel.

The CMA panel is to be appointed in the same way as Competition Commission member groups are at present, so they are independent panel members. It is for that reason that amendment 71 would limit the number of members who are on both the panel and the board. I would think that stands to reason, because otherwise my understanding is that in theory the entire board could be made up of panel members. If that was the case, they would naturally have an interest in promoting the same conclusions at phase 2 as at phase 1, effectively storming and overcoming the firewall. The Bill has a requirement that at least one member is a member of both the panel and the board, but it has no limit on the maximum number who can be on both.

Amendment 85 would further strengthen the panel by ensuring that there are consumer experts and financial experts on it. The Bill has requirements that there should be sector specialists, such as telecoms experts, or water experts or aviation experts, on the panel, but I strongly argue that the areas of consumers, finance, competition and welfare are equally technically complex and if we want to require the right diversity of specialist skills, we should ensure that we have consumer experts and competition experts there. That is all the more important because the loss of the OFT's direct consumer protection activities will have a tendency to make it less consumer-focused.

I will just observe here that while Monitor, the NHS regulator, is now one of the sector-specific regulators with competition powers, no NHS specialists are required to be on a panel. As we as the Opposition do not believe that Monitor should have competition powers, we do not seek to remedy that. We will discuss Monitor's powers in more detail in a later amendment.

Those are the proposed changes to the panel. While the panel is important, as it is the decision-making authority at phase 2, it is not enough to ensure separation. I am sure that many hon. Members are aware that in organisations different departments may win additional resources based on the charisma or strength of their department head. We see that in the Department for Business, Innovation and Skills today—or its inverse.

We want to ensure that any great movement of human resources from phase 1 to phase 2 activities can be externally tracked and identified. It is for that reason that we tabled amendments 76, 80 and 61. The first two would require that the annual plan and the annual report show not only the allocation of financial resources, as the Bill states, but also of human resources. We want to see whether people—because it is people who do the work—are being moved across these invisible, internal firewalls or Chinese walls. We are not proposing that the resources should be tracked at case level—

The Chair: Order. The amendments that you have most recently referred to are not in this group. You can address those later.

2.15 pm

Chi Onwurah: I apologise for confusing the two sets of amendments; I think that they were previously together.

Finally, I hope that the Minister will agree that strengthening the panel members and ensuring that they are not confused with the board members will strengthen the panel and make the separation between phase 1 and phase 2 activities stronger.

Norman Lamb: I thank the shadow Minister for the amendments. The Government share the sentiment behind them. A clear separation between phase 1 and phase 2 is important, and the Government's purpose is to seek to preserve the distinction between the two phases that currently exists within the new organisation. The separation of phase 1 and 2 decision making, and phase 2 decision making by independent panellists, are great strengths of the current system. The Government intend to preserve those features in the new CMA and have proposed arrangements that provide for panellists to undertake the key functions of the Competition Commission panellists.

Amendment 71 would limit to three the number of CMA panel members who could be appointed to the board. The Bill specifies that at least one panel member must be appointed to the board and preserves the separation of phases by requiring panellists who are likely to be part of a group that considers a phase 2 merger or market inquiry to be excluded from board discussions of a potential referral at the end of phase 1. I am pleased that the Opposition appear to accept the retention of the separation of phases and independent panellists, as well as the importance of ensuring that at least one member of the board has experience of phase 2 processes.

Amendment 71 is unnecessary, though, as the Secretary of State is unlikely in practice to want to appoint more than three panel members to the board. The Government said in our response to the competition consultation that we expect two or three panellists to be appointed to the board. That will ensure that the board has appropriate phase 2 expertise, which is important, without becoming too unwieldy.

Particular circumstances might arise, however, in which the Secretary of State wants to appoint more than three panellists to the board, for example because of the evolution of competition or corporate governance practice. Alternatively, where there are already three panellists on the board and none is available to participate in board discussions of a referral, perhaps because of a conflict of interest—they are likely to be on the phase 2 panel—the Secretary of State might want to appoint an additional panellist to the board. In those circumstances, it would be wrong to place an artificial constraint on the number of panellists on the board.

In effect, the amendment is too prescriptive. We fully accept that it is unlikely that there will be more than three panellists on the board, but to be prescriptive on the face of the Bill and prevent it in all circumstances would be wrong. I hope that the hon. Lady will withdraw amendment 71, although we share the sentiment involved.

[Norman Lamb]

Amendment 90 would add a further provision to strengthen the separation of phase 1 and phase 2 in merger of markets cases. The amendment would prohibit board members who have participated in board discussions of a referred matter from sitting on a phase 2 group that makes the final decisions. We agree with the intent of the amendment, which is designed to strengthen the important separation of decision making between phase 1 and phase 2. The amendment is, however, unnecessary. Paragraph 33 of schedule 4 already specifies:

“If the chair determines that...a member of the CMA Board might reasonably be expected to be a member of such a group, that person is not to participate in the CMA Board’s consideration of whether to refer the matter”.

Paragraph 33 is designed to achieve exactly the same effect as amendment 90, but it does so prospectively, looking ahead at whether there is likely to be a risk in the board’s discussion if an individual panellist is part of that discussion.

Given the provision in paragraph 33, we think it is unlikely in practice that a board member could participate in the board’s decision on a referral and then be considered for appointment to the group to which the matter is referred. Even if that did occur, we expect the chair would always want to exercise the power to appoint members of a group under paragraph 36 in a way that preserves the separation of phases. We also expect the board’s rules of procedure made under paragraph 31 and the rules of procedure for phase 2 inquiry groups made under paragraph 51, on which the CMA must consult interested parties, will further reinforce the separation of phases. I therefore hope the hon. Member for Newcastle upon Tyne Central will not press amendment 90.

Amendment 85 would add a requirement to appoint at least three consumer competition panellists and at least three financial competition panel members.

The CMA will be equipped with a number of tools, such as the markets regime and consumer enforcement powers, which I referred to earlier, to ensure that consumer benefits are considered across the economy, including in financial services. The Bill carries over many features of the panel structure under the Competition Act 1998 and sectoral legislation, which include certain requirements to appoint sector specialists who are available to sit on groups that determine appeals and references in the regulated sectors. The new regime also retains generalist panellists who may sit on any type of group.

The Competition Commission has more than 30 panellists, including lawyers, economists, accountants and business people. Between them they have the range and depth of expertise to deliver the commission’s responsibilities for inquiries across the economy, including financial services and consumer issues. The Opposition have already made clear the high regard in which they hold the Competition Commission. If they accept the current regime with the current number of panellists, I would have thought they can accept our proposed regime.

We expect a sufficient number and range of panellists will be appointed to the CMA for it to be able to cover consumer welfare and financial services-related functions. The specific appointments called for by amendment 85 are therefore unnecessary. Including particular sectors in the Bill seems inappropriate. At any point in time

there may be a particular focus on a sector, and there certainly is on financial services now, but in a few years’ time the focus may be entirely elsewhere. We want to ensure that there is a range of expertise on the panel so that a group selected from the panel can undertake and discharge its responsibilities. I therefore hope that the hon. Member for Newcastle upon Tyne Central will not press amendment 85.

Chi Onwurah: I thank the Minister for those clarifications and for confirming that he shares our sentiments on ensuring a separation between phase 1 and phase 2.

On the number of appointees to the board who can be on a panel, I will accept the Minister’s reassurances on the guidelines and expectations. However, with regard to ensuring that those who are part of the decision-making process in phase 1 are not also part of the decision-making process in phase 2, I did not find his assurances entirely convincing. I had identified that those paragraphs are designed to achieve the same thing as our amendment 90, but they are written in such a way that they need to be read at least 10 times before one can conclude that that is their objective. I speak from bitter experience here.

In describing the effect of those paragraphs, the Minister used phrases like “we would expect that”, “if it was not caught here, it would be caught there” and “ultimately the chair would not want to see”. What we have all agreed in Committee is that the separation between phase 1 and phase 2 is not only important, but should be sacrosanct. If that is the case, why does the Minister object to making it explicit? If amendment 90 seeks to do what the other paragraphs seek to do, it does so much more concisely and clearly for the benefit not just of those who are reading the Bill, but those who are working for the CMA in future.

On Amendment 85, it is not I who picks out certain sectors, it is the Bill that does that. It identifies certain specialists who must sit on the panel and it identifies the sectors where there are concurrent competition powers between the CMA and the sector, for example Ofwat or Ofcom. Apart from the three other areas that I mentioned: finance, where there are concurrent powers; consumer welfare—

Norman Lamb: I think the distinction is that the hon. Lady is talking on the one hand about regulated sectors, where there are sector-specific regulators with whom the CMA has to work, and the broader economy where there is not naturally a monopoly that is regulated.

Chi Onwurah: I thank the Minister. It is interesting that he raises the issue of a monopoly as being the driver for whether there should be sector-specific expertise. The financial sector has, or will have, a sector-specific regulator, the FCA, and there are also concurrent powers. I would therefore argue that the status is very much the same as with telecoms or water, apart from the fact that there was no monopoly operator in finance. I am not sure that that is relevant to the question of expertise.

When it comes to consumers, I recognise that that is a wider question, but I have already given the reasons why it is important for consumers and consumer expertise to be at the heart of the panel. I do not understand why the financial sector, which is a sector of such great importance, is being treated differently from the other

regulated sectors where there are sector-specific concurrent powers. Could the Minister take amendments 90 and 85 away to consider them or give further reasons why we should not press them to a vote?

Norman Lamb: I would repeat that we are absolutely at one in terms of the sentiment behind amendment 90: the separation between phase 1 and phase 2 and ensuring that individuals are not conflicted who then serve on a group selected from the panel to deal with a phase 2 investigation. I still believe that the amendment is unnecessary, because the board's rules of procedure on quorum and conflicts would be expected to deal with that issue. The CMA would be keen to preserve the separation of powers. It is part of the DNA of the organisation, and those aspects of the procedural rules will also be subject to the Secretary of State's approval. I say on the record that we absolutely recognise the importance of the separation of those powers.

2.30 pm

On the final point about specialist financial competition members, there is a distinction between those sectors that have a regulator, where it is absolutely right that the Bill deals with the relationship between the CMA and that sector regulator, because of a non-competitive situation in that sector—utilities is often such an example, as we have discussed already—and the financial sector. I have already made it clear that there will be close liaison between the work of the new Financial Conduct Authority and the CMA. It is inappropriate, however, for specific panel members to be appointed.

I ask the hon. Lady to reflect on the fact that she has said clearly that she regards the Competition Commission as a highly effective body. That commission has a range of some 30 panellists to call on, including lawyers, economists, accountants and business people. It is widely recognised that they have the range and depth of expertise to deliver the Competition Commission's responsibilities for inquiries across the economy, including financial services. If the hon. Lady is so complimentary about the existing body and its effectiveness, she should be equally satisfied that bringing that model into the new body will meet her concerns.

Chi Onwurah: I thank the Minister, although I am somewhat disappointed by his apparent reluctance to take away genuine constructive suggestions for the improvement of the Bill. While I accept that the Bill sets out to do what amendment 90 does, the concern about the confusing and drawn-out language remains.

On amendment 85, I do not understand the Minister's distinction between the financial sector and the other regulated sectors, where he said there was a competition issue. If the Minister does not believe that there is a competition issue in the financial sector, I fear that he is somewhat out of touch with the concerns of many small businesses and, indeed, individuals.

However, given that the Minister is so reluctant and that we have many amendments to go, I will not test the Committee's patience by pressing for a vote, but I hope that the Minister will consider changes to improve the language of the Bill in order to achieve real separation. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Chi Onwurah: I beg to move amendment 72, in schedule 4, page 60, line 35, at end insert—

‘(8) Of the persons appointed to membership of the CMA Board under sub-paragraph (1)(b) at least one must be a member of the Consumer Focus board or other representative of consumers as designated by the Secretary of State.’

The Chair: With this it will be convenient to discuss amendment 77, in schedule 4, page 62, line 39, at end insert—

(c) set out the consumer benefit which will be achieved as a result of the objectives and priorities as set out in 2(a).’

Chi Onwurah: We are making startling progress. In less than an hour, we have gone through many amendments and now better understand much of competition law and the markets.

The Government propose that the OFT and the Competition Commission should merge. We understand that. They hope to make cost savings, of which we are slightly sceptical, and to strengthen the overall regime, which we certainly support. We also believe that it is possible for the merger to make more efficient use of resources. However, as the Minister has acknowledged, and as is clear from the breadth and number of Opposition interventions, we believe that the CMA must focus on consumers and on using competition to achieve the welfare of consumers. Consumer welfare must be the key objective of the CMA and all its interventions.

The Bill proposes that the OFT will lose its consumer activities to citizens advice bureaux. We have concerns about the resourcing of Citizens Advice, but we recognise that it is well qualified to be a consumer champion. There is a parallel consultation on the consumer landscape; the Opposition want to see more powers for consumers, so we will seek to ensure that that is the consultation's result. As part of those better outcomes, it is consequent that consumer activities currently held by the OFT would be better placed elsewhere.

Leaving the consumer entirely out of the CMA risks creating a technocratic organisation focused on process rather than the consumer. Consumer welfare must be the key policy objective of the new organisation. The Government have rejected our amendment aimed at emphasising the long-term interests of the consumer, which is a decision that we feel the consumer will regret. The Government, however, will surely accept the importance of ensuring that the loss of consumer activities from the OFT does not result in a technocratic organisation without consumer focus.

The impact assessment by the Department for Business, Innovation and Skills states:

“Whether or not a new CMA retained responsibility for OFT's consumer functions there would be consequent risks: if they were retained, it would be necessary to ensure that consumer concerns received due weight in a body with a primary focus on competition; if they were removed,”—

which is the proposal before the Committee—

“the risks would result from transition issues and a potential loss of integration between competition and consumer issues.”

It is essential that we have complete integration between competition and consumer issues, because competition without consumer welfare at its heart does not deliver

[*Chi Onwurah*]

the consumer benefits that we need. The Opposition strongly believe, and I understand that the Minister agrees, that competition must not be an end in itself; it must be directed entirely at delivering benefits for consumers.

In order to help achieve that, we have tabled amendment 72, which requires that the CMA board has at least one member from Consumer Focus. That would put a consumer champion on the board, and we would know that the consumer is represented at the heart and head of the CMA's deliberations. We would have far more confidence that consumer welfare will be given due focus in each and every decision made by the CMA.

That proposal would not be enough, however. One person on the board cannot do everything, so to ensure that the consumer will be entirely embedded in the organisational culture of the CMA we have proposed amendment 77, which relates to the annual plan. A number of priorities are set out in paragraph 12(2) of schedule 4, although I note that assessment of the consumer benefit is not included. Paragraph 12(2)(a) states that the plan must

“set out the CMA's main objectives for the year and indicate the relative priorities”,

while paragraph 12(2)(b) states that it must

“provide a summary of the proposed allocation of the CMA's financial resources”.

The word “consumer” is not there, but the consumer should be at the heart of the CMA's plans. To achieve that, we propose that consumer welfare should be considered in the plan.

The Competition Commission and the OFT already estimate the consumer benefits that they generate, and we heard earlier that it is estimating a £465 million benefit for the market investigation regime, for example, so surely it is not a significantly additional burden to ask it to plan for the consumer benefit that it should be generating, and to share that transparently with all its stakeholders. The advantage of putting that in the plan is that it would be in the CMA's performance report. Without the amendment, there will be no real reflection of the consumer welfare generated by the CMA in its plans. Is that acceptable for an organisation whose sole purpose, we agree, is to deliver consumer welfare?

Norman Lamb: I am grateful to Opposition Members for their suggested amendments. I was pleased to hear the shadow Minister say specifically that Citizens Advice is well qualified to be a consumer champion. There is absolute agreement on that. She referred to leaving the consumer entirely out of the CMA, and I am completely confused by that. The Bill introduces in the very creation of the CMA a duty on it to promote competition for the benefit of the consumer. All its work on competition is for that purpose, so it must be central to—not absent from—its work.

Chi Onwurah: We have discussed the duties of the CMA, so I recognise that the word “consumer” was somewhere at the back end of the organisation's duties, but those of us who have worked in the real world and in organisations know that having a duty somewhere in a document is not the same as having a day-to-day accountable responsibility that provides contact with

consumers, and their issues and concerns. Right now, that is what the OFT has. I do not understand how the CMA has those same duties, experiences and activities, but if I have missed something about the CMA's consumer duties and responsibilities, perhaps the Minister will enlighten me.

Norman Lamb: I am grateful for the hon. Lady's intervention. In her speech she raised the question whether the CMA has consumer functions. She said that the word “consumer” is somewhere at the back end of its responsibilities, but it is in the very first clause of part 3 of the Bill, which sets out the duties of the organisation. It is up there in lights in clause 18 that the purpose and responsibility of the organisation is “to promote competition...for the benefit of consumers.”

Neil Carmichael: I find it fascinating that the shadow Minister thinks that the word “consumer” is absent. Can the Minister imagine deliberations about competition that would not have the interests of the consumer firmly in the list of priorities?

Norman Lamb: I am grateful for my hon. Friend's intervention. He makes the point perfectly. It is central to the CMA's purpose when considering whether a market is working effectively, or whether a merger might be anticompetitive, to think in terms of consumers' interests.

The shadow Minister asked whether the CMA will have consumer functions, and the answer is very definitely yes. It will have primary expertise on unfair contract terms legislation and additional consumer enforcement powers to address business practices that distort competition or impact on consumer choice in otherwise competitive markets, such as tricking consumers into tie-in contracts that might inhibit them from switching suppliers or subjecting them to excessive surcharges and using misleading reference pricing.

2.45 pm

The CMA will also act as the single liaison office for the EU regulation of consumer protection co-operation and have an international consumer role, for example, to represent the UK in the OECD's committee on consumer policy. The CMA will be centrally interested in the consumer, and the way in which competition works for the benefit of the consumer.

I shall comment on amendments 72 and 77, which relate to the CMA's consumer role. In our discussion on amendment 70, I set out the important role that the CMA will have in ensuring that markets work well for consumers and the tools that it will have available with which to deliver that. I will not repeat the details, but will reiterate the importance that the Government place on the CMA's role in delivering benefits for consumers.

Amendment 72 would add a requirement to appoint a consumer representative to the CMA board. We share the concern of Opposition Members that the reforms promote consumer interests. That is why the CMA's objective will be to seek to promote competition for the benefit of consumers as the main duty in clause 18. The CMA will have consumer enforcement and market powers; it will work closely with other consumer bodies,

for example, through the strategic intelligence, prevention and enforcement partnership; and it will inherit the OFT's super-complaint function, which provides a fast-track process for complaints by consumer bodies.

Given those arrangements, which I set out in detail in our discussion on amendment 70, amendment 72 is not necessary. Consumer interests will be at the heart of the CMA. The amendment would also undermine the effectiveness of the CMA. We agree with the point made in the Opposition's own 2001 White Paper, "A World Class Competition Regime." I am sure they will all be very familiar with that. Decisions should be made independently, on the basis of sound economic analysis of the effects on competition. The OFT was given independence of decision making, and politics was largely removed, so that there would be greater certainty for business and more clarity in the regime.

As I am sure we will discuss further, independence also means that there should be independence between phase 1 and phase 2, merger and markets processes, and independence of decision makers from investigators in antitrust cases. Independence also applies to particular sectoral interests. To be absolutely clear: the board will have a quasi-judicial role. When it is deciding on a case originally raised by a consumer body in a super-complaint, its decision must be free of any perception of bias. That is really important, I am sure the hon. Member for Newcastle upon Tyne Central would agree.

While I would expect that the board and the panellists of the CMA will have great expertise on consumer issues, it would be inappropriate to put any person purporting to represent a particular interest, consumer or otherwise, on the board of the CMA, given its quasi-judicial function. As I mentioned earlier in connection with amendment 70, in any event we will transfer the OFT's super-complaint function to the CMA, so that consumer bodies, such as Consumer Focus—which the hon. Lady wants inappropriately to put on to the board—Which? and Citizens Advice can make a complaint to the CMA on issues that significantly harm the interests of consumers and expect it to be fast-tracked. There would also be a conflict of interest where a representative of such an organisation, with a super-complainant status, also sat on the board of the CMA. I am sure the hon. Lady, on reflection, would accept that.

Amendment 77 would require the CMA to set out the consumer benefit that will be achieved as a result of the objectives and priorities set out in its annual plan. In the current regime, the OFT is not subject to a statutory requirement to estimate impacts in relation to its work. The OFT is currently obliged to do that by virtue of its spending review settlement, not under legislation, which requires it to publish annually an estimate of direct savings to consumers from its activities and to assess the associated benefit-to-cost ratio against the current target of 5:1. That requirement also encourages the OFT to maximise benefits to consumers in deciding what work to take forward. Indeed, the OFT's figures for 2011 show that it had delivered a benefit-to-cost ratio of 7:1, which was well ahead of its target. That is a good performance.

At present, the OFT and the Competition Commission estimate the impact of their past work over a rolling three-year period, using a common approach. Looking backwards over three years helps to make the impact estimates more precise and helps level out any peaks or

troughs in impact. Requiring the CMA to estimate the impact of its future work would be significantly less precise. Besides methodological difficulties in making forward-looking estimates on particular cases, the CMA's case load cannot be predicted. Merger cases are, self-evidently, responsive to market developments and the CMA cannot pre-empt the outcome of independent market inquiries. The amendment could also leave the CMA at risk of judicial review, if forecasted consumer benefits were not realised, and could incentivise the CMA to underestimate and then underachieve.

I hope that, having heard the arguments about why the amendments would be unhelpful and unnecessary, the hon. Lady will ask leave to withdraw the amendment.

Chi Onwurah: I thank the Minister for his comments, but I get the impression that he has no intention of accepting any improvements to the Bill.

Norman Lamb: If they come along, we will. We are waiting for them.

Chi Onwurah: Well, let me address a few points. The hon. Member for Stroud asked whether the Minister could imagine a circumstance in which consumers would not be at the heart of the CMA's investigations. That is absolutely relevant. For example, consumers are not directly involved in wholesale markets. I could provide many other examples, including the concrete market. Direct consumers are not necessarily involved in such markets, but clearly the consumer interest needs to be represented. To achieve such representation, I should have thought that it would be helpful for any organisation to have a consumer representative on the board.

Norman Lamb: But will the hon. Lady accept—this is a central point and it is important that we get a clear, direct answer—that it must be inappropriate and would be a conflict of interest if, on the one hand, there was the potential for a super-complaint to be raised by Consumer Focus, and on the other hand, for a representative of Consumer Focus to sit on the board?

Chi Onwurah: I am not a lawyer, so I have not spent as much time with lawyers as some have. I hoped that the Minister would propose a relevant organisation, or a way of doing that, perhaps with representatives and board members recusing themselves as appropriate, to achieve the aim. He talked about independence and expertise. I am sure that we should be able to find a consumer representative who is both independent and expert in those areas, and who is able to act in a quasi-judicial role.

Neil Carmichael: Will the hon. Lady give way?

Chi Onwurah: No; I have taken many interventions.

Given the Minister's approach, I will not press the amendment to a vote. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Chi Onwurah: I beg to move amendment 74, in schedule 4, page 61, line 26, at end insert—

[Chi Onwurah]

‘(4) No member of the CMA shall receive remuneration that is more than 20 times that of another member of the CMA.

(5) No person shall hold any position set out in sub-paragraph 1(1) and sub-paragraph 9(1) (the “chief executive”) for longer than a period of six months without being in the direct employment of the CMA.’

The Chair: With this it will be convenient to discuss the following:

Amendment 76, in schedule 4, page 62, line 38, after ‘financial’, insert ‘and human’.

Amendment 80, in schedule 4, page 63, line 23, after ‘financial’, insert ‘and human’.

Amendment 82, in schedule 4, page 63, line 26, at end insert—

- (i) an assessment of the adequacy of staff skills in relation to the performance of the CMA’s functions;
- (b) an estimate of the resource needed adequately to perform its functions for the two financial years following the year in which the annual report in 14(1) refers.’

Amendment 84, in schedule 4, page 63, line 26, at end insert—

‘(2A) The first annual report of the CMA following Royal Assent must include an assessment of transition costs in both financial and competition terms.’

Amendment 61, in schedule 12, page 188, line 4, at end insert—

- ‘(d) the resources which will be assigned to the market study.’

Chi Onwurah: We have made remarkably good progress, but we still have more to consider. The amendments have been grouped together because they address a key aspect of the CMA that the Bill seems to ignore. The Government are smashing the OFT and the CC together and giving almost no attention to the necessity of keeping the best characteristics of each of the different organisations, or to setting out the key principles and values on which the organisations should be based.

Organisational culture is defined as the collective behaviour of humans who are in a part of that organisation. It is also formed by organisational values, visions, norms, working language, systems and symbols. It is a pattern of collective behaviour. Organisational culture affects the way people in groups interact with each other, with clients and with stakeholders. I think we have seen clearly failings in organisational culture. The most recent example is Barclays bank, where the organisational culture led to the LIBOR scandal. I cannot emphasise enough how important it is to ensure that an organisation of such importance to our economy as the CMA starts out with the right kind of organisational values.

We want to ensure that we start with a statement of what the organisation is about and what its values are, so we start with a statement of inclusivity, which I know has the support of the Minister, as well as the Prime Minister. Amendment 74 states that

“No member of the CMA shall receive remuneration that is more than 20 times that of another member of the CMA.”

I understand that the Prime Minister himself has expressed general support for that principle in the public sector. Will Hutton reported back more than a year ago on his

review of fair pay in the public sector, and although he did not recommend a cap, he did recommend transparency. Is it not appropriate that a radical Liberal Minister, such as the Under-Secretary of State, should lead where others less courageous may fear to tread? Do we not want to send a strong message to industry, particularly at this time, by saying that the CMA will start off with inclusivity and fairness at its very heart?

The amendment would also ensure that the scandal of indirect payments for tax avoidance reasons in the public sector is not repeated in the organisation, by providing that anyone holding a position for more than six months should be directly employed by the CMA. I am sure all members of the Committee wish to crack down on tax avoidance wherever it occurs—it occurs far more in the private sector than in the public sector. As cracking down on tax avoidance is Government policy, I was surprised to find that it was not already part of the founding character of the CMA, but I am happy to help correct the oversight.

In discussing amendment 71, I spoke of the importance of the new organisation’s culture and in particular of retaining the separation between first and second phase activities. The Minister has refused to accept the amendment to clarify phase 1 and phase 2, but we can at least improve the transparency of the new organisation so that independent observers can decide whether the right organisational separation is in place. For that reason, amendments 76, 80 and 61 would ensure the tracking of human resources, but not at a case level, which would be over-burdensome and could lead to litigation if respondents considered that their resource allocation was unfair. Tracking at a general level, however, in the annual plan and in relation to phase 1 and phase 2 activities seems an appropriate balance. I hope the Minister agrees.

3 pm

Amendment 82 addresses the widespread concern that the CMA will not have adequate resources. Failure to ensure proper resourcing will cost businesses dearly in time and have a negative effect on consumers. Remember the *Financial Times* observation that getting things wrong in only one merger case could cost more than the entire savings achieved.

Neil Carmichael: To make a general point, the amendment is not the first to require reports and considerations within the CMA, but if we have too many of them the CMA will find itself doing so much internal work that it will not have any time to examine issues of competition. Does the shadow Minister not recognise that as a potential danger?

Chi Onwurah: The reporting requirements are already significant. I am sure that the hon. Gentleman agrees that public sector organisations need to be transparent and to give an account of themselves. We are seeking to prioritise what is in those reports, which is generally information that should be available within the organisation—if the organisation does not know where its resources are, it is already in difficulty. I take his point, but our proposed amendments are about ensuring the transparency of information that has already been collected within the organisation.

Amendment 82 is about ensuring that the CMA has adequate resources, and the easiest way to do that—considering the hon. Gentleman’s point—is to enable the CMA to give an assessment of its own resources and of whether they are sufficient to perform its functions adequately in the following two financial years. That might lead to conflicts of interests in as much as the CMA will not want to be seen to criticise the Government of the day, be that the coalition or the future Labour Government for which we all hope. By recognising that conflict of interest, however, it becomes a key advantage of the proposal because it ensures that a strong chair will have to take responsibility for whether he or she has assured the right level of resources for the organisation over the ensuing two years.

I hope that the Minister will accept the need, again, to let sunlight shine—the Prime Minister’s slogan, I believe—

Chris Ruane: It has not been doing too well, recently.

Chi Onwurah: I know, but we can all hope for a last-minute change. To encourage greater transparency, let the CMA be the poster boy for transparent, open organisations with the right values of inclusivity and fairness enshrined.

Norman Lamb: I thank hon. Members for their proposed amendments, which suggest changes to schedules 4 and 12. The hon. Lady expressed disappointment that I have not been willing to accept any Opposition amendments, but I am desperately waiting for one that we can accept—one that makes sense and would enhance the Bill.

In an environment of economic austerity, fair play in the public sector is essential, as is public bodies being transparent and accountable for setting their objectives and allocating financial resources. I therefore welcome the sentiment of the amendments. Over the past decade, however, under the previous Government, there have been far too many examples of public sector fat cats. When I spoke for my party on health matters, I came across so many cases of people within the NHS receiving ridiculously large payments and being paid off, apparently for failure, with enormous payouts and pension payments. The era of enormous rewards for failure in the public sector has to end, and this Government are taking action to ensure that it does.

Following the publication of the “Hutton Review of Fair Pay in the Public Sector”, the Government have already implemented some measures to support its recommendations. For example, public bodies, such as the OFT and the Competition Commission, publish details about pay, including the names of the most senior civil servants with salaries of more than £150,000. Too often in the past, there was a complete lack of transparency; there certainly was about the very large payments for the termination of employment in the health service and elsewhere.

Geraint Davies (Swansea West) (Lab/Co-op): Are there any plans to have a level playing field and to introduce such requirements for the private sector—particularly, given what we have heard, for the banks—or will that just be pushed under the carpet?

Norman Lamb: The Government have made it absolutely clear that rewards for success are right and should be encouraged, but rewards for failure are unacceptable in

the private sector and are completely wrong where we, as the custodian of taxpayers’ money, have direct control. I hope that the hon. Gentleman shares that view about very highly paid public sector workers who are paid off under secret deals, with the guarantee of very large pension payments, and often at quite a young age. Too often, that was the experience under the last Government and it has to end, because he is talking about taxpayers’ money and he simply cannot play fast and loose with taxpayers’ money in that way.

Geraint Davies: Will the Minister extend that argument to the Royal Bank of Scotland, in which we have a very significant share?

Norman Lamb: I have made the case very clearly that the public sector should reward success. An example of that is the Royal Mail, which has been remarkably successful in its performance over the past year. We should reward success, but not failure.

In the remuneration reports of their annual resource accounts, public bodies will be required to publish the pay multiple or ratio between the total remuneration of the highest-paid director and the median total remuneration of the staff excluding that highest-paid director. We do not agree with placing a ban on managers earning more than 20 times the pay of the lowest-paid person in their organisation, as suggested in amendment 74. That suggestion was rejected by the Hutton review on the grounds that a 20:1 maximum multiple would impact on as few as 70 senior managers.

I can tell the hon. Member for Newcastle upon Tyne Central that in the OFT, the banded remuneration of the highest-paid director in 2011-12 was £275,000 to £280,000, which is 6.8 times the median remuneration for the work force of £40,570. Imposing in legislation a ratio of 20:1 might create a return to the culture of public sector fat-cattery. Given that ratio and a median remuneration of about £40,000, the figure for the OFT—will someone do the maths: what is 20 times £40,570?. Anyway, it would be a hell of a lot of money. This Government have no intention of allowing the sort of levels of pay that appear to be acceptable to the Opposition.

The remuneration, allowances and expenses of the chair and the chief executive of the CMA and of members of the CMA board and the CMA panel will be determined by the Secretary of State. They will also be subject to the approval of the Chief Secretary to the Treasury if they are above £142,500 pro rata a year. We have complied with the process in seeking to recruit the chair-designate of the CMA, who will receive a salary of between £170,000 and £190,000 pro rata. The remuneration paid to members of the CMA board, including the chair and the chief executive, will be published annually in a remuneration report, which will form part of the CMA’s resource accounts; that level of transparency tended to be missing in the past. Therefore, we do not consider that a statutory requirement is needed specifically for the CMA to ensure fair pay.

The amendment would not achieve its desired effect for two reasons. First, paragraph 1(1)(a) and (b) of schedule 4 defines CMA members as the CMA chair, the CMA board and the CMA panel, but not CMA staff, for which there are separate provisions in paragraph 9. As such, the ban would apply to the remuneration of

[Norman Lamb]

only the members I have just referred to, and not CMA staff, at whom I think the amendment is directed. Secondly, the amendment does not take into account that CMA panel members will be paid per diem when engaged in inquiries and not receive remuneration when not working. That would render the ban unworkable.

We also disagree with the part of the amendment that would require all people who are members for more than six months to be in the direct employment of the CMA. It is quite right that the staff of the CMA who are in full-time employment should not be employed through personal service companies and therefore be able to avoid paying full national insurance contributions, a practice the hon. Lady commented on. Following publication of the Treasury's review in May 2012 of the tax arrangements of public sector appointees, Departments and their arm's length bodies are to be required to ensure that board members and senior officials with significant financial responsibility are on the organisation's payroll unless there are exceptional circumstances, in which case the accounting officer should approve the arrangements. Such exceptions should exist for no longer than six months. The Government have also published a consultation on the provision, with the expectation that it will be legislated for in the Finance Bill 2013. Such arrangements will also apply to the CMA, its board members and senior officials. I hope that that reassures the hon. Lady.

Membership of the CMA will include both non-executive directors and independent panel members. Both types of member are needed to bring in external expertise to the management of the CMA or particular inquiries. It is an accepted principle of good corporate governance that non-executive directors should scrutinise the performance of the executive management while providing it with external advice, support and challenge. Likewise, a great strength of the current competition regime that we wish to preserve is that phase 2 merger and market decisions are taken, as we have discussed, by independent panellists. They cannot perform their independent roles, however, if they are in the direct employment—that is, if they are employees—of the CMA. I ask the hon. Lady to withdraw the amendment, because I hope she can see the flaw in it.

Turning to amendments 76, 80 and 82, schedule 4 will require the CMA to publish each year an annual plan and an annual report, both of which are required to be laid before Parliament and are subject to scrutiny; one looks back and the other looks forward. Paragraph 12 of schedule 4 not only requires the CMA to set out in the annual plan its objectives for the coming year and the relative priorities, as the OFT is currently required to do, but makes a new provision that requires the CMA to indicate how it proposes to allocate its financial resources to the carrying out of those objectives. The CMA must also consult publicly on that before it is finalised.

3.15 pm

Geraint Davies: Earlier, the Minister suggested that there should not be anyone from Consumer Focus on the board, as there might be a conflict of interest, because they might be representing consumers. Now he seems to be saying that there will be people on the

board who have worked part-time at various companies to house their money in a tax-efficient way and who may be earning considerably more than the director of the CMA, in an organisation that might be looking into markets in which those people are operating in an inappropriate way. It seems to me that these proposals do not hang together very consistently.

Norman Lamb: I am grateful to the hon. Gentleman for that intervention, but it is entirely appropriate for the board to have non-executive directors who can provide external guidance and support to the organisation. Of course, if there is a conflict of interest in a particular case—if a board member had a financial interest in a matter under discussion, for example—they should exclude themselves from that discussion, but the importance of having non-executive directors on the board is surely accepted on both sides of the debate.

Paragraph 14 of the schedule requires the CMA to report on its performance at the end of the year. That includes setting out how it has delivered its objectives, reporting on major decisions and investigations and providing a summary of how its financial resources were allocated. As a Government Department, the CMA will also be required by the Government Resources and Accounts Act 2000 to prepare a set of resource accounts each year. There is a standard format for those accounts which Departments including the CMA must follow, and which requires information to be published on staff numbers and related costs. Both the OFT and the Competition Commission already publish information relating to their staff, such as the development, diversity and engagement of their staff, and we expect the same of the CMA.

Collectively, these measures aim to ensure transparency and accountability of the CMA's objectives and performance and the allocation of resources against them. Additional requirements, as proposed by amendments 76, 80 and 82, for the CMA to have to set out how it allocates staff would be difficult to forecast on the CMA's reactive work, such as mergers and market investigation references made by sector regulators. How can one determine an allocation of staff in the period ahead when one has no idea what merger propositions may come forward and have to be dealt with or what may come through sector regulators? The CMA has a reactive role, which cannot be predicted ahead of time. In these cases, human resource will have to be allocated as cases come in. For those reasons, we do not consider that it is necessary for there to be an additional statutory requirement for the CMA to report on the skills of its staff or how they are allocated to objectives.

In amendment 84, Opposition Members seek to make an additional requirement on the CMA's first annual report after Royal Assent to provide an assessment of the transition costs, both in financial and competition terms. Again, it is understandable and reasonable that there should be an assessment in due course of those costs, but evaluation of policy is essential to ensure that we are getting it right. Such an evaluation must provide an assessment of the costs and benefits over an appropriate time period—to do otherwise would not provide an accurate picture of the impact of the policy.

An assessment of the costs and benefits to the competition regime within the first year of the reforms would be far too soon to be a realistic assessment of the

transition costs in both financial and competition terms. The Government's impact assessment of the proposed reforms to the UK competition regime, which includes the transition to the CMA, commits the Government to a review of the policy in 2018. That is an appropriate point at which to consider the impact of the transition to the CMA in both financial and competition terms. For that reason, we do not consider that it is necessary for there to be a statutory requirement for the CMA to include an assessment of those transition costs in its first annual report. Obviously one can imagine that when anything happens or when action steps are taken, the competition consequences may well be some way down the line. I hope the hon. Lady would recognise that to do so precipitately at the end of the first year would be too soon.

Finally I come to amendment 61. As it stands, schedule 12 sets out provisions around the statutory time limits for market investigations which are expected to speed up the markets process. It also describes the process for launching a market study. When launching a market study, the CMA will now have to publish a market study notice. The primary reason for this is to act as a trigger for the statutory time limit and the associated information-gathering powers. The Bill states that a market study notice must specify: first, the matter that the study will focus on; secondly, the time period for submissions from interested parties; and thirdly, the dates when the CMA is required to publish its proposed decision and its final market study report.

Amendment 61 seeks to add an additional requirement: the notice would also have to state what resources the CMA would be assigning to the market study. While I think we all agree that transparency as a principle is a good thing, and that public bodies should try to be as transparent as they can in their activities, I do not in this case believe that additional requirement is appropriate. I believe it would be inappropriate for the CMA to state up front what resources it would use to undertake any particular market study. It is highly probable that this could change over the course of the study, for example if particular expertise were required, or if it became clear after an initial period that the case was more complex than initially appeared and more resource was therefore required.

Often at the very early stage it is impossible to know what the investigation might uncover and what further work might be necessary. It is also not clear what is meant by resources. This could be any number of measures. For these reasons I do not believe there is any need to publish the information the hon. Lady has suggested in each market study notice. It would be impossible accurately to forecast what resources would be required when one had little idea what might be necessary in terms of the scope of the investigation in those early stages. I therefore ask the hon. Lady to withdraw the amendment.

Chi Onwurah: I am coming to the conclusion that the Minister shares all my sentiments but none of my conclusions. I thank him for the clarifications that were helpful, of which there were a number. If he feels that 20 times the minimum salary is not the right figure he is at liberty to put in a much lower figure. I think the Opposition would support him. I got the impression that he was suggesting, particularly in response to the comment by my hon. Friend the Member for Swansea

West, that CMA panel members' independence would be threatened by paying national insurance to the Exchequer. I am not sure that I agree with him on that point. Given the clarifications that the Minister has offered, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Chi Onwurah: I beg to move amendment 78, in schedule 4, page 62, line 31, at end insert—

'11A The CMA is to have a unit dedicated to matters affecting competition issues amongst small and medium-sized enterprises.'

The Chair: With this it will be convenient to discuss the following:

Amendment 60, in clause 48, page 41, line 16, at end add—

“consumers” includes small businesses, up to 50 employees in size.’.

New clause 9—*Small business super complainants*—

(1) Section 183 of the 2002 Act is amended as follows:

(2) For subsection (1)(b), after “him”, insert “except for any business with fewer than 50 employees or a number to be set out in an order by the Secretary of State.”’.

Chi Onwurah: These modest amendments seek to introduce more consideration of a key issue here which has already been raised by many of my hon. Friends: the competition issues faced by small businesses. We want the CMA to feel its responsibility and accountability to small businesses very keenly. Government Members like to talk about how we must strip away employment protection from employees of small businesses, but we have heard little about levelling the playing field so that small business can compete better in both existing and emerging markets. We know how important small businesses are. They make up 99.3% of all businesses in the UK, contribute 51% to GDP and employ 58% of the private sector work force.

Anne Marie Morris (Newton Abbot) (Con): I entirely support the focus on the smallest of businesses. As the hon. Lady knows, I have been concerned about this area since I entered Parliament. However, will her proposal add to the burden for small businesses? Has she thought about excluding small businesses, so that a small merger between small businesses does not have to go through this bureaucracy? Will what she proposes be simpler, or will it add complexity?

Chi Onwurah: I thank the hon. Lady for that intervention. Let me immediately reassure her that what is proposed will not add any burdens to small businesses and will increase their representation. Regarding the carve out for mergers, we will be discussing mergers later in the Bill's progress, and I will then go into the reasons why we are not proposing to carve out small businesses. We recognise, however, that small businesses are at a disadvantage in this area, and we would be happy to discuss how to improve that. The proposal does not add to the burden for small businesses: it addresses the issues that they face.

Let me say why the amendments are so necessary, drawing on my experience both as a founding partner of a small business start-up and as an employee of a regulator. Within regulators and organisations such as the CMA, the attention is all too often on the big

[*Chi Onwurah*]

companies. They have the huge legal departments, regulatory affairs departments and public affairs consultants, and all that works itself into officials' schedules.

Neil Carmichael: I would find the amendment easier to understand if I was aware of what definition the shadow Minister was using for a small or medium-sized business, because that will be critical here.

Chi Onwurah: That is a very good point. The definition for a small and medium-sized business is one with fewer than 50 employees, but we are happy to discuss the appropriate definition for each amendment if that will help to ensure that the Minister accepts both the sentiment and the amendments.

The threat of being sued concentrates the mind, and regulators and competition authorities are always averse to legal actions when large companies make it clear that their intention is to sue. The Minister with responsibility for communications recently blamed the mobile companies' legal threats for the delays in releasing essential spectrum. Moreover, large companies have the resources to read the 200, 300 or 400-page consultations and decisions that regulators, of which the CMA will be one, put out. This tale may be apocryphal, but I understand that the Competition Commission once published a 600-page decision. In any case, small, dynamic businesses that are desperate to grow are not in the habit of spending their management time reading regulatory papers. Even if they do have the time to complain about competition issues, they are unlikely to have the resources to put together all the appropriate legal documentation. A level playing field is so important for small businesses.

Geraint Davies: Does my hon. Friend agree that having lots of red tape and regulation is in the interest of big business because they are a barrier to market entry for small business, for the reasons she has explained? People should be mindful that, although some big businesses say, "We don't want regulation," on the side they try to push more regulation to bog down their competitors, which take their market share, and eventually they take them over because they are an irritation.

3.30 pm

Chi Onwurah: My hon. Friend is absolutely right. In heavily regulated areas such as banking or the telecoms sector—which are often heavily regulated for good reason—understanding regulation can be a barrier. Helping small businesses to understand regulation and the competitive environment is important.

Amendment 78 would establish

"a unit dedicated to matters affecting competition issues amongst small and medium-sized enterprises."

Anne Marie Morris: If there is a unit focused on a particular group, I do not see how that changes the level of regulation with which businesses have to comply. The shadow Minister's argument is that the new organisation would somehow reduce the burden.

Chi Onwurah: This is not about reducing regulation but about improving the competition environment, reducing the barriers to small businesses' taking advantage of the competition environment and ensuring a level playing

field so that small businesses can fight for their rights in the existing competition environment without having to employ the army of lawyers, and so on, that large businesses do. The small unit could raise the issues that small businesses face so that small businesses do not have to raise those issues themselves. The amendment is about having a champion at the heart of the CMA for small businesses.

Anne Marie Morris: What would be the cost of that unit? One of the challenges of helping the smallest businesses is that, effectively, we would be putting into the unit the resource that those businesses lack, which would be a cost to the taxpayer.

Chi Onwurah: The hon. Lady raises a good point, but I remind her that the CMA has a duty to ensure a level playing field. The Minister has already said that the CMA will have the necessary resources to meet its duties. The amendment is an organisational way to ensure that the CMA meets its duties for small businesses.

On the creation of the CMA, the FSB said:

"The FSB is of the view that the competition regime to date has not been as favourable to small businesses as...to big businesses. We especially feel that the Office of Fair Trading (OFT) has not been sufficiently effective in enabling consumers to benefit from the small business market."

The FSB went on to say:

"Government is consulting on a proposal to merge the competition functions... This is welcome however the new body must have a dedicated unit looking at the issues affecting small businesses."

The amendment would go some way towards addressing the concerns expressed by the FSB. More general concerns have been raised about the ability of small business to engage with competition authorities, and I am sure Members are aware of those issues.

A dedicated SME unit would ensure that SMEs and representative bodies have a clear and obvious point of contact that can act as an advocate within the new organisation from the beginning. That would ensure that the new regulator is encouraged to think small first and that SMEs had an important voice.

Amendment 60 would ensure that small businesses are adequately represented by adding them to the definition of "consumer." As with amendment 78 and new clause 9, the amendment has the explicit, enthusiastic support of small business organisations. Recognising small businesses as consumers has been a long-standing issue for small businesses, as I remember from when I worked at Ofcom. Small businesses, particularly micro-businesses, need equal protection and support on many issues. Micro-businesses consume products and services like domestic households, rather than in vast quantities like larger organisations. They should, therefore, be afforded the same level of protection as domestic households. In his evidence to the Committee, Mike Cherry said,

"Our key message would be that, in very many cases, small businesses are, in fact, no different from consumers."—[*Official Report, Enterprise and Regulatory Reform Public Bill Committee*, 19 June 2012; c. 18, Q49.]

That is a key message for the national policy chairman of the Federation of Small Businesses to give.

Proposed new clause 9 would allow but not compel any organisation representing small businesses to apply for super-complainant status. The super-complaint process

is a fast-track system for designated bodies to bring to the attention of the OFT market features that appear to be significantly harming the interests of consumers. The Minister mentioned how successful he thought it had been for consumers. The consultation included a similar proposal that drew the support of the Federation of Small Businesses and the Forum of Private Business, which said,

“We welcome the move to strengthen the voice of small business by extending the super-complaint powers to SME bodies.”

The FSB has said it would not be in a position immediately to apply for super-complainant status, but also welcomes our amendment:

“It is very welcome that the amendment would permit, but not compel, any organisation representing SMEs to apply for super-complainant status. The flexible approach of the amendment seems sensible.”

Those are the words of the FSB, yet the Government chose not to adopt the proposal to extend super-complainant status to SMEs, on which they had consulted. They said in response to the consultation,

“Given the lack of significant support for this proposal, and in the absence of evidence of the type of issues that may be brought to the CMA as a potential SME super-complaint, the Government has decided not to extend the super-complaint mechanism to SME bodies.”

But we have heard that there was and is significant support for the extension. I hope that the Minister will be able to explain in more detail why he chose not to go forward with that proposal.

SMEs and small businesses are a vital source of innovation in our economy. It is incredibly risky not to take this opportunity, at a time when we are looking for growth in the economy and know increasingly that small businesses are the engine of growth. By ignoring their needs and clear, stated preferences for some of the proposals dropped from the Bill and in our amendments, the Government are running the risk of letting down SMEs.

Norman Lamb: I do not want to be mean-spirited, but sentiment, yes, amendments, no. Let me explain why.

Simon Danczuk (Rochdale) (Lab): Don't bother!

Norman Lamb: Perhaps hon. Members simply want to go home.

I fully accept that anticompetitive practices are detrimental to SMEs. Abuse of dominant position by incumbents in the market and anticompetitive mergers, for example, can deter or prevent smaller firms from entering the market. Equally such practices and poor competition in markets can lead to higher prices and poor quality for SMEs as customers of goods and services.

I believe it is vitally important that markets work well and in doing so provide opportunities for SMEs to thrive. That is, in a sense, why the Competition Commission reported as it did on groceries. That led to the establishment of the groceries code and the adjudicator process, which is being considered in the other place.

However, I do not believe that the amendments are an appropriate way to ensure that happens. Amendment 60 would bring small businesses, defined as those with

fewer than 50 employees, within the definition of consumers for the purpose of the competition reform part of the Bill. Inevitably, that is an arbitrary cut-off point, as I suspect any cut-off point has to be. The proposal would enable the CMA to launch a market study into a market that seemed not to be working well for small businesses. New clause 9 would bring small businesses within the definition of “consumer” in part 4 of the Enterprise Act 2002, which deals with market investigations, meaning that super-complaints, as the hon. Lady indicated, could be brought to the CMA over potential competition issues affecting small businesses.

Although I appreciate the sentiment behind the amendments, I do not believe that they align with the general thrust of competition policy, not only in the UK, but internationally, which focuses on individual consumer welfare. The change would represent a departure from the existing purpose of market studies and super-complaints run by the OFT. Neelie Kroes, the former European commissioner for competition at the European Commission, stated:

“Consumer welfare is now well established as the standard the Commission applies when assessing mergers and infringements of the Treaty rules on cartels and monopolies. Our aim is simple: to protect competition in the market as a means of enhancing consumer welfare and ensuring an efficient allocation of resources.”

I know that hon. Members would like to see the super-complaints system, which is described in section 11 of the Enterprise Act, extended to SMEs. When dealing with competitive markets, however, we need to be careful about blurring the lines between consumers and competitors. As hon. Members will know, the Government consulted on whether to extend the super-complaints system to SMEs, and the majority of responses opposed the proposals. Respondents felt strongly that SMEs should not be given special status over their competitors, allowing them to challenge business practices that might be pro-competition and efficiency-enhancing. Furthermore, the Government did not receive any evidence of the type of issues that may be brought to the CMA as a super-complaint. It is therefore not clear that such proposals would provide the support to SMEs that hon. Members seek.

Conversely, I believe that the Bill contains a number of measures that will deliver real benefits to SMEs on the ground every day. It will deliver faster decision-making and greater predictability of competition processes and decisions, decreasing the detriment to small businesses where they are customers. It will also reduce barriers to entry by making it easier for the CMA to tackle anticompetitive mergers, and it will reform antitrust to ramp up deterrents of anticompetitive and abusive behaviour. In addition, it will streamline processes on market studies and market investigations, reducing the burden on SMEs that may be involved in such processes. We also want to make it easier for SMEs to seek interim relief from anticompetitive practices, which is something that the Government are addressing in their consultation on private actions, in order to provide the capacity for small businesses and consumers to bring private actions to gain a remedy.

Julian Smith: The Minister is making a lot of sense, as usual. Will he do as much as possible to encourage those who will hire staff for the new organisation to

[Julian Smith]

choose some people—more than the other two organisations have had historically—who have a small business background, whether for the board or the executive staff?

Norman Lamb: I am grateful for that intervention. It is important that the organisations understand all types of business. We should also remember that the existing body, the Competition Commission, identified problems in the groceries market that were detrimental to small suppliers to large supermarkets, because of an imbalance of power. That body took steps to protect the interests of small suppliers and businesses, so there is evidence of the interests of small organisations being taken into account. The way that the analysis went was that if small suppliers were treated badly and oppressively, that would ultimately have an effect on the interests of individual consumers, who would lose out. It concluded that it was right to intervene, but I entirely take the point of my hon. Friend's intervention.

3.45 pm

The Bill's provisions are on top of a wide range of broader measures that the Government have been prioritising to support SMEs, such as lightening the regulatory burden by introducing a three-year moratorium on new domestic regulation affecting micro-businesses and start-ups, which will apply to some of the measures in the Bill. My hon. Friend the Member for Hertford and Stortford, my fellow Minister, always quotes the number of new regulations introduced by the previous Government every working day. He has indicated that it was six—six new regulations affecting small businesses every working day. Burdening businesses with layer upon layer of regulation has caused enormous damage. The Government are seeking to reduce the regulatory burden on small businesses.

The Government are improving access to finance through a wide range of measures, including the national loan guarantee scheme, which will provide up to £20 billion of guarantees for bank funding over two years, allowing banks to offer lower-cost lending to SMEs. We are also creating a more competitive tax regime, including a range of measures to support investment, as well as reducing the headline rate of corporation tax by an additional 1% from April, so it is now the lowest rate of any G7 country, which I think we should applaud.

I know that hon. Members are particularly interested in the financial services sector and how competition there impacts small and medium-sized businesses, and I share that concern. Small businesses tend to be consumers of such services. Access to finance for SMEs is one of the Government's top priorities, as illustrated by some of the measures that I have mentioned.

Simon Danczuk: Does the Minister accept that banks and financial institutions have not been lending to SMEs? The Government have had two years to sort that out and have come up with a whole variety of projects and initiatives, but they have not got the financial institutions lending to SMEs. That is putting pressure on SMEs, to the point where many are going to the wall.

Norman Lamb: I appreciate that there remains a problem for many small businesses seeking access to finance. One of the problems is that the balance sheets of many such institutions were so damaged as a result of the crash in 2008 that they are obliged to try to rebuild those balance sheets, to ensure that the system is more secure in the future than it was under the unacceptably light-touch regulatory regime of the previous Labour Government, which caused much damage.

Simon Danczuk: Does the Minister accept that the Conservative party, while in opposition, called for a lighter touch of regulation than what was taking place at the time?

Norman Lamb: I am acutely aware that you are just about to tell me to get back to the subject, Mr Caton. I am predicting your intervention, so I will return to the Bill.

The Financial Services Bill contains measures to improve consumer protection and the promotion of competition in the financial services sector by the new Financial Conduct Authority. The Enterprise and Regulatory Reform Bill must therefore be seen to be complementing those measures, ensuring that the CMA has strong powers and streamlined processes to promote competition in the financial sector, as with other sectors of the economy.

The Financial Services Bill also includes provision for sector-specific super-complaints to the FCA, and those provisions, unlike those in the Enterprise Act, do not prevent bodies representing small and medium-sized businesses that fit the relevant definition of "consumers" from making super-complaints. That is to the FCA, and I suspect that that gives the shadow Minister some comfort.

The issue of what type of consumer body should have access to super-complaints in the financial services sector is a complex one, which will require more detailed criteria than can be set out in the legislation. However, the Government will publish draft criteria on super-complainant status in the financial services sector for consultation later this year.

Amendment 78 seeks to provide a statutory requirement for the CMA to have a dedicated unit to consider competition issues that impact on SMEs. I will outline to the Committee how the work of the current competition bodies delivers real benefits for SMEs. In the recent market investigation on local buses—to return to that important subject—the Competition Commission introduced remedies to open up markets and to encourage new entrants, such as ensuring access to bus stations and discouraging so-called cheap exclusion measures, including stand blocking.

Similarly, the OFT's competition advocacy paper on "Government in Markets" and follow-up case studies on "Choice and Competition in Public Services" have given guidance to policy makers in Whitehall and beyond on how to identify and minimise unintended long-term impacts on markets when fulfilling other policy objectives. They have been welcomed by the Federation of Small Businesses as valuable pieces of work that will help its members to open up options in bidding for lucrative Government contracts.

Although that demonstrates that the competition authorities do a good deal of work to support SMEs, it has been said that the current landscape is sometimes confusing for them. For example, the Forum of Private Business has said that the existence of two competition bodies has led to confusion about the allocation of responsibilities for small business issues, and that small firms are often unsure where to go when faced with competition issues. It has therefore welcomed the creation of the CMA.

The Government's vision of creating a one-stop shop on competition will provide a focused and streamlined landscape that will benefit SMEs. That is in addition to the other measures I have outlined, which will provide real benefits to them through strengthening powers to tackle anticompetitive behaviour and mergers, and by speeding up competition processes to reduce the burden on small businesses.

Geraint Davies: On the level playing field for SMEs, the Government have announced today that they intend to recruit 30,000 people for the Territorial Army to make up the shortfall of 20,000 professional soldiers who have been sacked. It strikes me that the direction of travel of the Committee, which is to reduce regulation and reduce protection for employees from unfair dismissal, will make it less likely that employees in SMEs will want to join the Territorial Army. Obviously, SMEs have difficulties, so how will the Government square the circle—

The Chair: Order. I think we are now moving too far away from the Bill.

Norman Lamb: I am so grateful to you, Mr Caton, for saving me from that question. It was a good try but, as you said, it was somewhat off the point.

It is vital that the CMA can allocate its resources independently, so that it can effectively respond to priorities in the competition arena and deliver the greatest benefits for UK competition as a whole. I do not believe that restricting the CMA's flexibility in assigning its resources will benefit SMEs in the way that amendment 78 suggests, and it is not therefore necessary to legislate for the CMA to have a dedicated unit dealing with SME issues. To have a person on a board or a special unit smacks of tokenism; let us just get the system right to ensure that it delivers results for SMEs. I suspect they will see more benefits from that than they would from the proposed dedicated unit.

This Government are committed to supporting SMEs, which are the lifeblood of the UK economy. I do not believe that the proposals in amendments 78 and 60 and new clause 9 are appropriate ways of ensuring that SMEs can benefit from competitive markets. I therefore ask the hon. Member for Newcastle upon Tyne Central to withdraw amendment 78.

Chi Onwurah: It is really disappointing and surprising that Government Members have failed to support the interests of small and medium-sized enterprises, which they often claim to champion. The Minister said that SMEs should not be special cases and that we need to get the organisation working. However, SMEs are special cases, because they do not have the resources to engage

with regulators and competition authorities on an equal playing field, as have the large organisations with their lawyers and their advocates, so they do need special support.

The Minister has talked about getting organisations working in the interests of small and medium-sized enterprises, but how successful has that been with the banking organisations and in other areas? All the measures that he discussed, which are designed to help small and medium-sized enterprises—even, I am afraid I to say, a bonfire of the quangos and reductions in regulation—have yet to actually yield fruit. Does he accept that we need a dedicated organisation in the CMA—not for reasons of tokenism, but exactly the opposite—to ensure that there is a champion?

When it comes to markets and market investigations, the point of redefining consumers to include small businesses is that businesses buy products and services in a similar way to consumers and individuals. For that reason—the similar behaviour—there is support for the proposal.

Finally, to argue that the proposals do not have support, when we have had direct expressions of support and evidence from the Federation of Small Businesses and other small-business representatives, is inaccurate. In the absence of more direct reassurances or a promise to consider finding other ways of putting small and medium-sized enterprises at the heart of the organisation, I wish to test the opinion of the Committee on small and medium-sized enterprises and ensure that they get the support from the CMA that they deserve.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 12.

Division No. 18]

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
Burt, Lorely	Mowat, David
Carmichael, Neil	Ollerenshaw, Eric
Evans, Graham	Prisk, Mr Mark
Johnson, Joseph	Smith, Julian
Lamb, Norman	Wright, Jeremy

Question accordingly negatived.

Chi Onwurah: I beg to move amendment 81, in schedule 4, page 63, line 26, at end insert—

- (f) an assessment of the consumer benefit realised during the year;
- (b) an assessment of the level of organisational separation between first and second phase activities in the CMA;
- (c) an assessment of the performance of each of the sector regulators in using their competition powers to address competition issues in their sector and any barriers identified.

I will overcome my disappointment at seeing the amendment and my championing of small and medium-sized enterprises falling.

4 pm

Amendment 81 considers reporting requirements, which may not seem an exciting topic for this stage in the afternoon's proceedings, but if the Committee will bear with me they will find that they are. The first two parts of the amendment seek to ensure that consumer benefit is at the heart of the organisation by increasing reporting requirements on the organisation. The Minister has already made it clear that he is not predisposed to accept such amendments. The third part of the amendment deals with another issue that we have not yet considered.

I have spoken about the different sector regulators. I may even have mentioned that I have worked for Ofcom in the past but I have not mentioned their names in detail. The sector regulators are: the Gas and Electricity Markets Authority, the Water Services Regulation Authority—this is going to get more interesting—the Office of Rail Regulation, the Northern Ireland Authority for Utility Regulation, the Civil Aviation Authority and Monitor. I worked with most of these regulators when I worked for Ofcom because networks have a lot in common in regulatory and competition terms, be they carrying sewage or gas. But there is one concurrent regulator mentioned with which I have not worked and that is Monitor.

Monitor was set up by the previous Labour Government in 2004 to authorise and regulate NHS foundation trusts. However, it was not given competition powers until the Health and Social Care Act 2012. We all remember that Act. It strove to fragment and privatise the NHS by the back door to turn health services in this country into a free market.

On its website Monitor says:

“One area of the Bill which received a significant amount of attention during its passage through Parliament is competition. There were concerns that Monitor would pursue competition as an end in itself. It was never Monitor's intention to do this and the Government amended the Bill during its passage through Parliament, to provide reassurance on this point.”

It says that its role

“will focus on making sure that competition is fair and that it operates in the interests of patients...we will have the power to impose licence conditions to prevent anti-competitive behaviour ...Monitor will have a key role in making sure that the players within the sector work together to give patients choices about their health care.”

Among other things, Monitor will seek to ensure

“a level playing field for all providers.”

I believe I am not alone in having considerable concerns about these competition powers. Why is it seeking to ensure a level playing field for all providers when we know that our constituents want a great national health service that they can turn to regardless of their own circumstances, rather than a conglomeration of private sector providers? It is because the Government are turning our national health service into a market. Our constituents do not want a level playing field. They want the NHS. The Government have repeatedly denied that these measures would open up the NHS to European competition law but at the same time they are giving Monitor concurrent competition powers with the CMA, which the Bill brings into being.

The Health and Social Care Act gives Monitor powers to fine hospitals up to 10% of their turnover if they breach licence conditions. I fear, Mr Caton, that you will not allow us to rerun the debate on the Health and Social Care Act here, although I am happy to be corrected.

The Chair: No, you are quite right.

Chi Onwurah: We all know that the Act did not have sufficient time to be effectively debated—

Julian Smith: On a point of order, Mr Caton. I am a new Member but we seem to be veering way off course and way off the current subject. This current speech is highly political in nature.

The Chair: It is just about relevant to what we are discussing, but I would like the hon. Lady to be even more relevant, if possible.

Chi Onwurah: I thank you, Mr Caton, for that guidance, but I want to point out that I would be pleased if my speech was not relevant because competition powers and the Competition and Markets Authority were not relevant to Monitor. Unfortunately it is relevant, because Monitor has competition powers and we are considering—the clue is in the name—the Competition and Markets Authority and it has concurrent powers with Monitor, so it must work with Monitor to consider competition in our beloved health service.

While we cannot hope to address in this Committee the ideological fault lines at the heart of the marketisation of the NHS, we can hope to make its consequences more apparent, as the Competition and Markets Authority has responsibility for competition in all markets. Amendment 81 would require that the CMA report on “an assessment of the performance of each of the sector regulators in using their competition powers to address competition issues in their sector and any barriers identified”

and through that the performance of Monitor in regard to competition, which is part of its responsibility, would be assessed by the competent competition authority. The CMA will report on whether and how Monitor is using its competition powers.

Let us remember that the Government said that Monitor's competition powers would not be used for the marketisation of the national health service. The amendment would enable us to track the extent to which the Government are keeping their promises on not marketising the national health service. The Bill already obliges the CMA to produce a concurrency report, but this is more about process—it is entirely about process—rather than about the performance of the regulators. Certainly in the case of Monitor and in the case of all the regulators, we are more interested in the performance.

There are also other regulators whose performance should be a matter of concern for the CMA and they would be caught up in these report requirements. One of the concerns expressed during the consultation period was that some regulators use their regulatory powers to address competition issues rather than their competition powers because they are easier to address and less easy to appeal. The amendment would also identify where that is the case.

Enabling the supreme competition authority in this country to assess and report on the performance of all those with concurrent powers seems an excellent way of ensuring transparency and ensuring that we understand the exact limits of competition in some of those sector-specific areas.

Norman Lamb: I will try to be as brief as I can, because I am sure that hon. Members from all parts of the House are losing the will to live and will want to end this sitting as quickly as possible.

I will deal with the competition issue in regard to health. The hypocrisy of the Opposition knows no bounds. Every Opposition Member stood on a commitment at the last election to have “any willing provider” in the health service and there is now a complete volte-face into resisting any sort of competition.

Graham Evans: I remind Opposition Members that the right hon. Member for Leigh (Andy Burnham), the then Labour Secretary of State for Health, said that he welcomed the contribution that the private sector would have in the health service.

Norman Lamb: The right hon. Gentleman welcomed competition through any willing provider, and he committed to it in the Labour party’s manifesto. The Labour party then did a volte-face.

Nothing in the Bill will directly extend competition in the provision of NHS services or increase opportunities for particular providers, whether public, private or voluntary, which will be matters for health commissioners. Nor will the Bill extend competition or its applicability to NHS services. Where there is competition in the provision of NHS services, which the Labour party supported in government, the concurrency provisions enable Monitor to consider complaints of anticompetitive conduct or behaviour instead of reserving them for the CMA. I have addressed the concerns on the health service, so I ought to press on and address the amendment.

Transparency and accountability are essential for the CMA’s success and for maintaining the confidence of business and consumers alike. In our earlier discussion on the CMA’s annual plan and performance report, I set out a number of requirements in the Bill, including a new provision to publish a forecast of the allocation of the CMA’s financial resources, and in other provisions that will apply to the CMA as a public body to ensure that it is both transparent and accountable.

By the same token, we must ensure that we do not place unnecessary statutory requirements on the CMA where those requirements can be delivered through non-legislative means. The obsession with legislating for everything is, I suspect, a mistake.

Proposed new sub-paragraph (f) would make it a statutory requirement for the CMA to provide an assessment of the consumer benefits realised during the year. We believe that can be delivered without a legislative provision. The OFT, for example, does not have a statutory requirement to measure the benefit to consumers of its annual portfolio of work, but it is required to do so through non-legislative means.

The OFT is required under its spending review settlement to publish an impact indicator in its business plan, which means the OFT must publish annually an estimate of direct savings to consumers from its activities, and to achieve an associated benefit-to-cost ratio of at least 5:1. That requirement encourages the OFT to maximise benefits to consumers in deciding what work to take forward. Indeed, the OFT’s figures for 2011 showed that it had delivered a benefit-to-cost ratio of 7:1, well ahead of target. We will adopt a similar, non-legislative

approach for the CMA. We share the shadow Minister’s sentiment, but we do not believe that proposed new sub-paragraph (f) is required.

Proposed new sub-paragraph (g) would require the CMA to include in its annual performance report an assessment of the level of organisational separation between the two phases of its activity. The Government recognise that organisational separation, as we discussed earlier, is a key strength of the current regime.

Preserving separation of decision making between phase 1 and phase 2 will be important to the CMA’s success and fundamental to the organisational design. Several of our witnesses made that point. Robert Bell of the City of London Law Society, for example, said,

“we are pleased to see in the Bill that the checks and balances between first-stage and second-stage merger investigations and market investigations have been retained.”—[*Official Report, Enterprise and Regulatory Reform Public Bill Committee*, 21 June 2012; c. 107, Q244.]

The institutional arrangements will include, for example, that panel members are not permitted to sit on groups where they participated in a board decision to make a referral, which we discussed in relation to a previous amendment. And groups must take their decisions independently of the board. The board and panellists will be keen to uphold separation to ensure the CMA’s decisions are regarded as fair and robust. A lack of separation could open the CMA to judicial review. The board will also be required to produce and consult on rules of procedure for phase 2 inquiries, and those will promote separation of decision making. The individual case decisions of the CMA will also be highly transparent and, of course, will be subject to judicial review. Having to report annually on organisational separation would therefore be a burdensome requirement—more paperwork—with little or no added benefit.

4.15 pm

Finally, with regard to the suggestion made by hon. Members to require the CMA to report on the performance of sector regulators in using their competition powers, the benefits of doing so are already achieved in the Bill. The CMA will interact with sector regulators in a number of ways. First, it will take on the Competition Commission’s role in determining appeals and references to the sector regulators’ licensing decisions, including those designed to promote competition. Secondly, the CMA’s market studies and reports will be able to look at the impact on competition of the sector regulators’ decisions. Thirdly, the Bill will also require the CMA to publish an annual report on the concurrency arrangements and decisions of the sector regulators on whether to use their concurrent powers. The Secretary of State may also make regulations that allow the CMA to take cases from the sector regulators in certain circumstances.

Alongside those powers, we want to improve the culture of co-operation between the CMA and the regulators, so that they share more information and expertise and so that the regulators are more comfortable referring markets or passing antitrust cases to the CMA. That co-operation is likely to be undermined if the CMA is required to assess their performance. It is not the job of the CMA to performance-manage the regulators. The relationship should involve co-operation and mutual assistance. The proposed assessment would in any case be inadequate, as the CMA would not be asked to look

at the broader legal framework in the regulated sectors and would find it difficult, as a competition-focused body, to assess how the regulators have balanced their other objectives against competition. That is simply not part of the CMA's role. Therefore, following the points that I have made, I request that the amendment be withdrawn.

Fiona O'Donnell: I promise you that I will not detain the Committee for long, Mr Caton. I just want to press the Minister on the role of Monitor, as it is his choice not to take my intervention. I will not stray into the territory of discussing whether our use of the private sector, which was only in the patient's interest, varies from the Government's approach, which is an open market. Will the Minister clarify whether the NHS is for the first time subject to EU competition law? In the event that Monitor—

The Chair: Order. I am afraid that you have also wandered outside the scope of the amendment.

Chi Onwurah: I will say only in passing that it will be essential for the Minister to understand the reach of EU competition law into the health service as part of his responsibilities to the CMA, because the CMA will, as he says, be working with Monitor as a sector-specific regulator and due to its competition powers. He may be putting off the evil day when he will have to answer for the Competition Commission's competition law activities within competitive markets in the UK—if that includes the national health service.

This amendment about reporting is particularly important, because Monitor is a new sector-specific regulator. It did not exist under the previous regime. It

has been brought into the remit of competition law and of the CMA under this Government. We feel—I certainly do as a constituency MP—that we have a duty to understand how Monitor is performing as a sector-specific regulator with competition powers. It is therefore important to press the issue to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 12.

Division No. 19]

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
Burt, Lorely	Mowat, David
Carmichael, Neil	Ollerenshaw, Eric
Evans, Graham	Prisk, Mr Mark
Johnson, Joseph	Smith, Julian
Lamb, Norman	Wright, Jeremy

Question accordingly negated.

Ordered, That further consideration be now adjourned.
—(Jeremy Wright.)

4.21 pm

Adjourned till Tuesday 10 July at half-past Ten o'clock.