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Public Bill Committee

ENTERPRISE AND REGULATORY REFORM BILL

Twelfth Sitting

Tuesday 10 July 2012

(Morning)

CONTENTS

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Saturday 14 July 2012

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: † Hugh Bayley, Mr Graham Brady, Martin Caton, Mr Charles Walker

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

James Rhys, Steven Mark, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 10 July 2012

(Morning)

[Hugh Bayley *in the Chair*]

Enterprise and Regulatory Reform Bill

Written evidence to be reported to the House

ERR 31 The City of London Law Society's Competition Law Committee

ERR 32 UK Music

ERR 33 Publishers Content Forum (PCF)

10.30 am

The Parliamentary Under-Secretary of State for Business, Innovation and Skills (Norman Lamb): I beg to move,

That the Order of the Committee of 19 June 2012 be amended as follows:

(1) in paragraph (1)(i), for "10.30 am and 4.00 pm" substitute "9.00 am and 1.30 pm";

(2) in paragraph (4), for "8.00 pm" substitute "5.30 pm".

The programme order provides for this Public Bill Committee to meet at 10.30 am and 4 pm on Tuesday 17 July, but on Thursday 5 July the House of Commons ordered that the House will sit on Tuesday 17 July as if that day were a Wednesday. On Wednesdays, Committees do not sit between 11.25 am and 1.30 pm, and my motion will achieve that effect for this Committee. I hope that that makes sense.

Question put and agreed to.

The Chair: The hours are set out as the first item on the amendment paper and, as the Minister has said, they will be our sitting times for next Tuesday.

We now return to the Bill. I remind Members that I do not intend to allow a separate debate on schedule 4, and that their contributions to the debate on amendment 83 must be relevant to that amendment.

Schedule 4

The Competition and Markets Authority

Chi Onwurah (Newcastle upon Tyne Central) (Lab): I beg to move amendment 83, in schedule 4, page 64, line 27, at end insert—

'*Consumer research*

16A (1) The CMA must make arrangements for ascertaining—

(a) the state of public opinion about the manner in which financial services are provided to consumers;

(b) the experiences of consumers in relation to the provision of financial services;

(c) the experiences of such consumers in relation to the handling, by institutions within the financial services sector, of complaints made to them by such consumers;

(d) the experiences of such consumers in relation to the resolution of disputes with institutions within the financial services sector; and

(e) the interests and experiences of such consumers in relation to other matters that are incidental to, or are otherwise connected with, their experiences of the provision of financial services or of the availability of associated facilities.

(2) The CMA shall consult with concurrent regulators where necessary.

(3) The CMA shall publish the conclusions from research carried out under section (1) every two years.

(4) The CMA shall produce a report stating its conclusions and any recommendations from section (1) to the Secretary of State every 2 years.

(5) The Secretary of State shall publish a response to the report within 60 days.

(6) Arrangements made by the CMA for the purposes of this section may include arrangements for the carrying out of research in one or more of the following ways—

(a) by members or employees of the CMA;

(b) by persons who are neither members nor employees of the CMA.

(7) This section does not restrict the CMA's power to make any arrangements they consider to be incidental or conducive to the carrying out of any of their functions.

16B (1) The CMA must make arrangements for ascertaining—

(a) the level of competition in the financial services sector; and

(b) the effects of the competition environment in the financial services sector on

(i) the availability of finance to small and medium-sized enterprises;

(ii) the availability of finance to high growth businesses;

(iii) the availability of finance to businesses in general.

(2) The CMA shall consult with concurrent regulators where necessary.

(3) The CMA shall publish the conclusions from research carried out under section (1) every two years.

(4) The CMA shall produce a report stating its conclusions and any recommendations from section (1) to the Secretary of State every two years.

(5) The Secretary of State shall publish a response to the report within 60 days.

(6) Arrangements made by the CMA for the purposes of this section may include arrangements for the carrying out of research in one or more of the following ways—

(a) by members or employees of the CMA;

(b) by persons who are neither members nor employees of the CMA.

(7) This section does not restrict the CMA's power to make any arrangements they consider to be incidental or conducive to the carrying out of any of their functions.'.

It is a great pleasure to be with you once again, Mr Bayley. Indeed, I know that the day will pass more easily and productively with your guidance and good humour.

We made a lot of progress through our amendments on Thursday, but unfortunately not in improving the Bill. The Minister seemed to share all my sentiments, but none of my conclusions. Long-termism, improved support for small and medium-sized enterprises, close monitoring of the competition activities of the new NHS competition regulator—all were rejected. Let us hope that the Minister will have more success in matching his Government's actions with his sentiments today.

The amendment is of grave importance. On Thursday, the ex-chief executive of Barclays bank, Mr Bob Diamond, came before the Treasury Committee to account for what he knew about the LIBOR scandal, which is basically a price-fixing racket as well as a matter for the Serious Fraud Office and, in my view, a judge-led inquiry. That follows various mis-selling scandals—payment

protection insurance and credit default swaps—and widespread concern about credit card interest rates, the lack of competition in retail banking and lending to small businesses. I raise those points to emphasise what we all know, which is that financial services are of great national importance and particular public concern. Competition in and for financial services affects the people of the UK each and every day, so why does a Bill that seeks to reform our competition and market environment make absolutely no mention of them?

The Bill is a general one, as the Minister has said and will perhaps say again, but it references all the sector-specific regulators. Let me identify them: the Gas and Electricity Markets Authority, the Water Services Regulation Authority, the Office of Rail Regulation, the Northern Ireland Authority for Utility Regulation, the Civil Aviation Authority and Monitor. What about financial services regulation? Perhaps that is not mentioned in the Bill because financial services is a subject of considerable debate everywhere else. It may be specifically because of the Financial Services Bill that is making its way through Parliament and that is now in another place. I know that the Financial Conduct Authority, which is to be established by the Financial Services Bill, will have competition responsibilities, which in itself has been a subject of much debate.

The FCA's strategic objective will be to ensure that relevant markets function well. It will also have three operational objectives: securing an appropriate degree of consumer protection; promoting and enhancing the integrity of the UK financial system; and promoting effective competition for the benefit of the consumer. However, it will not to my knowledge have competition powers, as opposed to responsibilities. Perhaps the Minister knows otherwise and can clarify that point. What specific competition powers will the FCA have concurrent with the Competition and Markets Authority?

The shadow Financial Secretary to the Treasury, my hon. Friend the Member for Nottingham East (Chris Leslie), tabled an amendment to the Financial Services Bill to enable small and medium-sized enterprises' representatives to act as super complainants. We tabled a similar amendment, which was rejected. The shadow Financial Secretary's amendment was considered inappropriate, although it was not clear why. The Minister hinted that the Government might introduce their own amendment, but what will be the process for raising competition issues in the financial industry? Will first and second phase investigations take place in the same organisation, but with internal Chinese walls? What will be the CMA's relationship to the FCA? Will they have joint responsibilities? Will one appeal to the other?

I am not the only hon. Member to be a little confused by the Government's approach to financial services regulation. The Treasury Committee's report into the Financial Services Bill concluded that proposals for the FCA to have a "plethora of...objectives" risks confusion and should be reviewed. The Committee also warned that the FCA's accountability mechanisms needed to be improved. It suggested that the new regulator should carry out reviews of the costs and benefits of regulation, as we proposed for the CMA.

We should be clear that the Bill would bring about a major change in the regulatory environment of financial services. The Minister lauded the actions of the Office of Fair Trading in protecting consumers, but the OFT will no longer have such responsibilities, and, for the FCA, this will represent a significant challenge.

As the Financial Services Authority pointed out in its report, "Approach to regulation", published in June last year,

> "The FCA will need a sound economic understanding of the way relevant markets operate in order that its regulatory interventions will promote competition and will effectively address the problems identified. This requires an approach to financial services markets that is significantly different to that of the FSA, both analytically and culturally."

The amendment seeks to address some of those issues by ensuring that, at the very least, information on the financial markets and the experience of consumers will be available to the CMA. The amendment states:

> "The CMA must make arrangements for ascertaining—
>
> (a) the state of public opinion about the manner in which financial services are provided to consumers;
>
> (b) the experiences of consumers in relation to the provision of financial services;
>
> (c) the experiences of such consumers in relation to the handling, by institutions within the financial services sector, of complaints...;
>
> (d) the experiences...in relation to the resolution of disputes...and
>
> (e) the...experiences of...consumers in relation to other matters that are incidental to, or are otherwise connected with, their experiences of the provision of financial services".

The amendment also requires that:

> "The CMA shall consult with concurrent regulators where necessary."

That achieves two purposes. First, it ensures that the relevant consumer experience of sector-specific regulators with regard to financial services is included. It also ensures that, if there is a financial services regulator with concurrent powers for competition in financial markets, the CMA must work with it. I hope the Minister will clarify where competition powers for financial services will lie.

The Bill does not seem to envisage the CMA having concurrent powers with the financial regulator. As I have said, reference is made to Ofwat—the water regulator—Ofcom and Ofgem, as well as other sector regulators, but there is no reference in the Bill to a financial services regulator. I hope the Minister will explain why that is. It seems short-sighted. We know that the financial services sector faces many challenges because of events past and behaviours unfortunately still present.

There are also technological opportunities and challenges for financial services that might further complicate competition issues. Let me give two examples. When I was at Ofcom, I was surprised to find that premium-number services were not regarded as financial services. Calling a number could result in a charge of hundreds of pounds. Many scams were in operation and telephone calls were effectively being used as a form of currency, yet that did not attract any regulation. However, the situation did attract a lot of complaints and eventually the industry cleaned itself up with the self-regulatory body PhonepayPlus.

It was clear there was a potential overlap between financial and sector-specific regulation. That potential has been realised with the rise of mobile banking. In many countries in the developing world mobile phones are used as form of banking, with air time being a

[Chi Onwurah]

currency, one that is accessible and tradable in the most challenging circumstances. That is often the case in countries where banks do not have the trust of the people; we are beginning to know how that feels. People would rather have their money in their phone than in a bank faraway. I saw that when I lived and worked in Nigeria. One challenge there was the question of the kind of regulation that should apply: should it be financial or communications? Can the Minister answer that point?

Last Tuesday the UK Cards Association was here in Westminster demonstrating contactless cards that will enable people to use their mobile phones as virtual wallets and as cheap terminals. Small businesses that are not able to invest in a credit card terminal will find that their mobile phone becomes one. That is a great opportunity, particularly with the supposed demise of cheques. How should regulation and competition law be applied to such telemobile banks, and who will apply it? Increasingly we see convergence between banking and telecoms, and many new business models.

My second example is similar but poses a more pressing question. There are virtual banks and service providers to whom existing regulations do not apply. I am sure the Minister is familiar with PayPal. Will he explain who will regulate competition in the market in which PayPal is a player? Will competition regulation be the responsibility of the CMA or of the FCA? What position will the CMA take on such issues? Will it be well placed to come to an informed position, given that it has no specific powers regarding the financial services industry?

The amendment would require the CMA to publish every two years the conclusions of research carried out into the financial services sector. It should also produce every two years a report stating its conclusions to the Secretary of State. The amendment would also require the CMA to consider the small and medium-sized enterprise lending market by researching the levels of competition in the financial services sector and the effects of the competition environment in that sector on the availability of finance to SMEs, high-growth businesses and businesses in general.

10.45 am

Yesterday, the Leader of the Opposition called for more competition in banking. He said:

> "We need to take excessive power away from the banks so that they serve the interests of the consumer once again. That means better competition. Real competition. We should bring forward the competition review. And we should break the dominance of the big five banks."

He called for the creation of two new major high street banks, so that there can be more competition between banks, both for consumers and for small businesses. He called for easier switching of bank accounts between banks. He also called specifically for the proposed Vickers competition review, currently scheduled for 2015, to be brought forward to 2013. In the Minister's reply, will he set out whether he will do that and exactly how competition in the financial sector will be regulated?

Geraint Davies (Swansea West) (Lab/Co-op): It is a great pleasure to serve under your chairmanship, Mr Bayley.

The question at hand is how the Competition and Markets Authority will relate to business. People are asking why we cannot have just the Financial Services Authority. Like many others in the room, I have had specific experience of growing businesses. The Bill is supposed to be about how we re-engineer a business for economic growth. An obvious key question is how micro-businesses and SMEs get access in the different phases of their evolution—they might be in a fast growth phase or going through difficulties because of short-term problems with demand—and how to have a flexible approach in which the banking community is not continuously pulling the rope at a business's weakest moment. The Minister may say, "Well, they can just go off the FSA", but that is not what small businesses do.

I was at Swansea Metropolitan university a week or so ago. It is the most successful university in Wales for generating small businesses that pass the three-year mark. I was talking to people who were generating innovations in multi-media, computer gaming and all sorts of fast-growth, export-oriented products. I found the same old story: the big transitions were from an idea to a product, to a brand, to scalability, to market access and to brand leadership. How can a business go on that journey without proper funding? Will it be crushed or taken over during that journey and picked off, because it does not have the means to grow?

The banking community is not providing the means. One question that one could ask conceptually about the words "competition" and "market" is what the financial community is doing to help competition, market access, market building, exports and economic growth. There is clearly a failure. It is obvious that the FSA or its successor will not be focused, alongside the business community, on that key issue for British success in a global marketplace.

I welcome and support the amendment. I have already referenced the issue of starting a new product or business from infancy. Another issue is established businesses that are going through difficulty. I have had personal experience of that, as I started a travel business some time ago, during a previous Conservative boom and bust. At the time—this was in 1989, a long time ago—the business was going well and there was a pretend Tory boom, but suddenly interest rates went up and house prices went down. The question for me was how to get funding in that difficult period. As it happened, I was able to get a second mortgage on my flat. I knew that if I went to a bank, it would either have said, "Sorry," or charged penal interest rates, even if my business had downstream orders—in that case, holiday orders—that would generate cash flow and the loan was a short-term bridge. I have met many businesses that have had such generic problems.

There are other problems, such as consumers who buy foreign currency and are told, "Look, we're not charging any commission," which misses the point that they should be looking at the rates, not the commission. The financial community creates intentional confusion to make out that a good deal is on the table when it is not. Perhaps the FSA's successor can do something about that. That is a consumer issue, but we need such changes for the business basis: new product development, small-business growth and even medium-to-large business growth.

On the interface between financial transactions and small business growth, credit card facilities are of key importance. Those who run, say, a restaurant or anything online, need credit card facilities, and some credit cards have them over a barrel. In sectors such as tourism—which might be regarded at certain times, such as during recession, as high risk—over night those people can stop businesses trading or impose bonds or fees, or whatever. So it is not clear that the financial community acts in a fair and balanced way towards certain small business areas.

I am not asking for answers to all those questions, but they are key questions and reasons for the dynamics of the relationship between business and the financial community. That underlines the importance of my hon. Friend's amendment, which I have no hesitation in supporting. I hope the Minister will think twice before hurtling ahead and saying that everything he has thought before is a complete answer to the world's problems. I also hope he realises that the amendment would be a major improvement to the business community's ability to grow success and would offer somewhere to turn when a bank says, "Sorry, you cannot have any money. What's more, we have taken away what overdraft facility you have," and the business says, "Well, we're going to go bust, and we have orders down the road." The bank manager, Mr Lamb, says, "That's not my problem," but I think it is a problem—lambs to the slaughter. The Government need to realise that this is a moment in time when the financial community has been called to order, and the Bill is a one-off opportunity to make amends. We have had reference to other markets, and surely this is the most important market because it is the lubricant for economic growth.

Norman Lamb: I join other members in confirming that it is a pleasure to serve under your chairmanship again, Mr Bayley. I also confirm that I do not have a complete answer to all the world's problems.

Chris Ruane (Vale of Clwyd) (Lab): The Secretary of State for Business, Innovation and Skills does.

Norman Lamb: That is why he is the boss.

Chris Ruane: The Deputy Prime Minister is the boss.

Norman Lamb: I have not made a very good start and am already facing plenty of abuse from Opposition Members.

I am grateful to the hon. Members for Newcastle upon Tyne Central, for Edinburgh South and for Hartlepool for their proposed amendment. The Government will strengthen the UK's competition regime by creating a single Competition and Markets Authority with a strong focus on promoting competition for the benefit of consumers. The CMA will have a range of powers to deliver its objectives and, importantly, the independence to decide its own priorities. Key to the CMA's success will be the arrangements for ensuring fair and robust decisions. The new institutional arrangements and other reforms to the competition tools are intended to streamline and improve the efficiency of the competition regime. The CMA will also work closely with the new Financial Conduct Authority, which will have lead responsibility for promoting competition and consumer interests in the financial sector.

I will now address some of the questions raised by the shadow Minister.

Geraint Davies: Will the Minister give way?

Norman Lamb: Let me address this point, and then I will be happy to give way. To fulfil its new competition objective, the FCA will need to keep markets for financial services under review, and it will, of course, be able to review financial markets. When it wishes to engage the CMA—the overall competition authority under the new regime—the Financial Conduct Authority will have a tailored power to refer matters to it. If the CMA receives an appropriate referral from the FCA, it may refer a matter for market investigation or bring Competition Act enforcement proceedings. That mechanism was widely supported by consumer groups, the industry and the Treasury Committee. The referral mechanism will not prevent the FCA taking the lead in addressing competition issues, but it will respect the expertise and powers of the CMA.

The Government believe that the FCA should have a far stronger role in competition than that of the Financial Services Authority, which relates directly to some of the shadow Minister's concerns. That commitment is reflected in the FCA's objectives and constitutes a radical departure from the model of competition "have regards" currently in place with the FSA. The FCA's new competition mandate will mean that it will able to use the powers available in its regulatory toolkit—including rule making and firm specific powers—actively in pursuit of competition, for example, promoting transparency and ease of switching, which is key, and tackling barriers to entry, which was another issue raised by the shadow Minister. There is real concern about the concentration of power in the banking sector. If one goes to Germany or the United States, one is conscious of a large number of regional and local banks and so forth, increasing competition in that sector. The FCA can look at barriers to entry as well as addressing anti-competitive conduct relating to product design and sale. That reflects the Government's commitment to having the FCA seek market-led solutions that promote competition whenever possible, but it still allows for protection and intervention when markets fail or market-led solutions are not appropriate.

The shadow Minister made specific reference to PayPal. The CMA will work with all sector regulators—I am conscious that there are a number of them—to deal with competition issues relating to individual sectors. The regulators have different but complementary duties and powers. Under the concurrency arrangements, the CMA and regulators will discuss in specific cases which of them would undertake any Competition Act enforcement action.

The amendment would undermine the independence, focus and effectiveness of the new regime, with consumers and businesses bearing the cost. To be effective, the CMA needs to be able independently to determine its own priorities, but that would be undermined by the obligation to undertake regular reviews in one particular sector. The Government are determined to improve financial regulation and to put in place better protections for consumers. That is one of the key objectives of the new regime introduced by the Financial Services Bill.

Geraint Davies: The Minister has now said on a couple of occasions that the primary focus in terms of the mandate is consumer interest and we should respect that. However, the business community is another consumer, because businesses are consumers of financial services. It is all very well going down to the consumers—we all agree with protecting consumers, and regulators are normally completely focused on that, which is great—but small businesses' interests are not being served in this particular case. It is not that the consumers are not. We are talking about intervention to stop businesses or banks doing the wrong thing. We want the money to go to viable businesses. We want that interest in the Bill, because it is about businesses, not consumers.

11 am

Norman Lamb: The competition principle, which is recognised internationally, is that one ultimately always looks at the interests of the consumer. Often, there is conduct in a particular market that might have a significant impact on small businesses and that will ultimately have an impact on consumers, because it may restrict, for example, competition in that market. That is why, if the hon. Gentleman will recall, the Competition Commission reached the conclusions it did while investigating the groceries market. It focused on the impact on consumers, but it took the view that there was a potential negative impact on consumers through how some supermarkets sometimes treated their suppliers, which are often small businesses. Because of that ultimate impact, it proposed a groceries code that specifically addressed the relationship between the supermarkets and their suppliers—small businesses—about which the hon. Gentleman indicated concern. It also proposed that there should be an adjudicator to enforce that code. One always looks at the effect on consumers, but consumers may be affected by how large companies deal with their suppliers. I hope that addresses his point.

The current competition authorities already undertake work in the financial sector. For example, the OFT has reviewed barriers in the retail banking sector, cash ISAs and credit card interest rates. The CMA will no doubt want to keep development in the sector under close review. The amendment does not recognise that markets and market regulation evolve, and requiring the CMA—

Chris Ruane: Atishoo!

Norman Lamb: Bless you. That was quite a shock. I cannot cope with all the shocks I am experiencing at the moment.

Requiring the CMA to carry out specific studies every two years may limit the ability of the CMA to do work in sectors that may be more of a priority at that time. Obviously everyone's concern currently is with financial services, but at some future date the concern may lie elsewhere, be it energy markets or something else.

Simon Danczuk (Rochdale) (Lab): Throughout this Committee we have seen that both the Minister and the Government have a reputation for devising and developing policy based on anecdote. The amendment gives the Government and the Minister the opportunity to devise policies based on evidence and research and I would have thought that they would welcome that.

Norman Lamb: I am enormously grateful for that intervention, mischievous though it was. Any suggestion that the Government are basing their policies on anecdote is simply and completely untrue. The CMA is based on a lot of consultation and analysis of how the existing system operates, and the Government's absolute intention is that the new body will always act on the basis of evidence. Requiring the CMA to undertake reviews every two years in one particular sector, wherever the priorities may actually lie, would impinge on its independence and potentially impinge on its ability to focus its resources where they are most importantly directed.

Chi Onwurah: The Minister has said on a number of occasions that the requirement to carry out reviews every set number of years would impinge on the CMA's independence, but sector-specific regulators are already required to carry out reviews of their sector every set number of years. I am familiar with the telecommunications sector and European Commission law requires that market reviews be carried out every three years. We are not saying that the financial review we are proposing has to be every two years. If the Minister would prefer another time period, then let him say that. As my hon. Friend the Member for Swansea West said, it is very important that the right evidence is available in order to monitor and make the right decisions about the financial services.

Norman Lamb: I am grateful to the hon. Lady for that intervention. The key difference is that this body has the overarching responsibility for competition across the whole of the economy. For it to have to undertake reviews every two years or any other period one might choose in one specific sector seems a bit otiose and inappropriate.

The amendment also does not recognise that the CMA needs to be able to choose which tool to deploy. The amendment may require the CMA to provide a general report on the financial sector during the course of a more targeted investigation. In these circumstances, the reporting requirement could waste resources if the CMA was trying to focus on one really significant issue in financial services that was causing concern, but then had to undertake its general review. That would be a waste of resources and could interfere with an investigation or even act as a disincentive to initiate a separate investigation. It would become process driven—we must carry out our two-yearly review—rather than focusing on the mischief that might emerge at any particular time.

Geraint Davies: Does the Minister not also accept that the nature of financial markets is moving so quickly in a global environment that a holistic evaluation on a regular basis, whether it is three, four or two years, is required? We are moving around in the global marketplace, and consumers and businesses are in danger of not getting the best deal. We need an overview from a strategic body and that is what this is. We are not PC Plod going along investigating and saying, "Oh no, we can't look for the cat because we've got to do a review of strategic crime in London." This is a strategic approach and we can do the cat stuff as well.

Norman Lamb: I do not envisage that this body will be characterised as PC Plod. As the hon. Gentleman says, it is rapidly evolving. There will need to be a constant watch over what is happening, but we have the FCA and then we have this body with the overall responsibility for competition across the economy. Keeping it under constant review is sensible, but to impose a bureaucratic requirement that there should be this process every two years seems inappropriate when we are focusing on one particular sector whose responsibility is across the whole economy.

David Mowat (Warrington South) (Con): Is it not the case that whatever the merits of the amendment—and there are some points in it that would gain approval—it is being made to the wrong Bill? The FCA is the initial competition authority. It will make a referral to the CMA, which will do a first-phase investigation as necessary. To the extent that a two-year review should be done, if that is the view of the Opposition that amendment should have been made to the Financial Services Bill which set up the FCA, not to the overarching CMA.

Norman Lamb: My hon. Friend makes a very good point. The shadow Minister made the point that other sector regulators focus on particular sectors and are charged with carrying out reviews in those sectors. Likewise, the FCA will be responsible for the financial services sector. That is where the immediate responsibility lies. Of course, this body has to be able to look at where the particular mischief lies at any particular time across the whole of the economy, rather than having a bureaucratic obligation every two years to look at a particular sector.

The amendment also does not take account of the proposed arrangements for co-operation between the FCA and the CMA. These will ensure that the two bodies work together to ensure that their respective expertise is applied to the financial sector in an efficient and effective way. The financial scrutiny regime in the Financial Services Bill includes powers for the OFT and the Competition Commission to require the FCA to respond to their advice on competition problems caused by financial regulation. The FCA will also have powers to ask the OFT to consider whether a feature of the financial services market prevents, restricts or distorts competition. The OFT will then be under a duty to respond to the FCA within 90 days. The roles of the OFT and the Competition Commission will, as we know, be transferred to the CMA once the Enterprise and Regulatory Reform Bill is enacted. So the overall effect of the legislation being pursued by this Government will be to significantly strengthen the competition oversight and scrutiny of the financial services sector which the FSA, the current body, has not had the powers to effectively undertake. I therefore ask the hon. Member to withdraw amendment 83.

The Chair: I call Chi Onwurah.

Hon. Members: Hear, hear.

Norman Lamb: Why don't I get that?

Chi Onwurah: I thank the Minister for his response and for clarifying certain points concerning the regulation of competition in the financial services for the first time, whether in this Bill Committee or in other Bill Committees, such as the Financial Services Bill Committee. We have moved a step further in our understanding of where the key competition responsibilities and powers will lie for financial services. However, the Minister has not solved all the world's problems, and he has raised more questions than he has answered. It is rather disingenuous of the Minister to imply that this amendment amends the wrong Bill when, before today, we were not clear as to where competition responsibilities for financial services would lie. The Minister has said clearly that the primary lead on financial services competition will be the Financial Conduct Authority.

Norman Lamb: I certainly will not accuse the hon. Lady, in a rather unfair way, of being disingenuous. Does she accept, on the basis of what I have said to her, that the new Financial Conduct Authority will have a far stronger role in competition, which is absolutely necessary, than the Financial Services Authority, an organisation established under her party's government, has had to date?

Chi Onwurah: I thank the Minister for that intervention. The clarity he has brought by answering the questions put to him makes it clear that the Financial Conduct Authority will indeed have a stronger role than the Financial Services Authority. Whether it is more effective than the OFT in addressing competition issues remains to be seen because, as the Minister himself said, the OFT has done much—not enough, but much—to address competition issues. He gave a number of examples and we hope that the FCA will have the expertise and the resources to achieve that, but we recognise that the resources and the skills of the FCA are not directly of concern here.

Let me set out what is of concern here and what remains to be answered. My understanding from what the Minister said is that the FCA will have competition powers similar to a sector-specific regulator now. He has implied that it will, for example, have the power to refer competition issues to the CMA. It will have phase 1 referral powers or, after investigating an issue, it will be able to refer to the CMA, which will then rule on whether there is a significant competition issue and what undertakings are required to address that.

11.15 am

Will the Minister confirm that is the model? If that is the model, it again prompts the question why all the other sector-specific regulators are named and identified in the Bill but there is no reference to the FCA. The Minister has implied that all the legislation regarding the FCA and CMA working together is to be found in the Financial Services Bill. Will the Minister confirm that it is that Bill that would require the CMA to work with the FCA?

On the subject of regular reviews, if it is the duty of the FCA to carry out regular reviews, we might be inclined to withdraw the amendment. The Minister has referred on a number of occasions to bureaucratic reviews. The requirement for regular reviews is commonplace in competition law, and happens in the telecommunications industry. Will the Minister clarify whether the FCA will be required on a regular basis to have reviews, evidence-gathering and so on?

Finally, my hon. Friend the Member for Swansea West raised a number of pertinent and compelling points about SMEs, which I do not feel that the Minister fully addressed.

Norman Lamb: He can look after himself.

Chi Onwurah: That may be true, but I would like further clarity on small businesses' access to finance. That is a great issue for us at the moment as we seek growth in the economy. The Minister's boss, the Secretary of State for Business, Innovation and Skills, often refers to that. The market in finance for small businesses is clearly not as competitive as it should be: 85% of all loans to small businesses are with the four major banks. Will that particular market for small business finance be a subject of investigation by the FCA, despite the fact that, as my hon. Friend the Member for Swansea West pointed out, small businesses are not identified as consumers? Will that particular market be a candidate subject of investigation for the FCA? If that is not the case, where in the Government's plans for legislation are the measures to address small business finance competition?

Geraint Davies: Given that, as my hon. Friend has already pointed out, finance, unlike gas, is not mentioned under the CMA, and given that we also have the FCA, will there not be a natural instinct for the CMA to say, "Hold on. We have all these things to do in different markets. We have got the FCA to do the finance; we don't have to worry about that"? The linkage between the business community, economic growth and finance, which is so important for British prosperity, will therefore fall through the gap between the two bodies. With the amendment, it would be a clear that the CMA was required to look at the financial community. Its staff could not say, "We're too busy; the FCA will do it, " and if someone asked, "What about business?" reply, "What can you do? If they had wanted us to do that they would have written it down, and they haven't, so we won't."

Chi Onwurah *rose—*

Simon Danczuk: Will my hon. Friend give way?

The Chair: The hon. Lady might want to respond to one Member before she takes another intervention.

Chi Onwurah: Thank you, Mr Bayley, for that excellent guidance. My hon. Friend the Member for Swansea West makes an excellent point. As the Minister has said, the Financial Conduct Authority is a new authority, as is the CMA, and yet the Bill contains absolutely no guidance, legislation or proposals about how they should work together. Financial services are of huge importance, and one would expect that that should be made absolutely clear, at least initially, so that the business community and the rest of us who are concerned about the business community can be confident that their concerns will be addressed.

Simon Danczuk: The Minister has spoken much in Committee about the public perception of employment rights. Given that we have been through probably one of the most catastrophic financial sector disasters in history, will not the public be puzzled as to why the Government are refusing to regulate or to examine the financial authorities in detail regularly? They will be concerned that the Government are stepping back from examining those authorities. On that basis, the Government should accept the amendment.

Chi Onwurah: My hon. Friend makes an excellent point. The financial crisis of 2007-08 was the greatest market failure that we have seen. Although the Minister expressed the hope that, in a matter of years, financial services might no longer need to be a priority with regulators or Governments, I fear that the public will be astonished to learn today that financial services competition and regulation is not to be a priority of the new Competition and Markets Authority.

I have asked the Minister several questions, and I want to give him the opportunity to respond before I decide whether to press the amendment to a vote.

Norman Lamb: I am grateful to the hon. Lady for her additional comments.

On the point made by the hon. Member for Swansea West, the shadow Minister has already accepted, following my intervention, that the new Financial Conduct Authority will have a much stronger focus on competition in financial services than the Financial Services Authority has hitherto had. The Government's absolute intention is to have a much more effective regime to address competition issues in financial services. It is absolutely not the Government's intention that the new body will be unable to focus on financial services when that needs to be its focus. It will rightly be an independent body, and it will determine its priorities and commit its resources in the most effective and optimal way.

The Government, and particularly the Secretary of State, absolutely recognise the problems of access to finance for small businesses. We have already taken several steps to seek to improve access to finance. That is a big and enduring problem, for which there is no quick fix and no easy solution, because of the shock received by the banking sector. There is a very strong case for more competition in banking, as everybody recognises. I absolutely share Opposition Members' view about the importance of ensuring a regime in which small businesses can get access to finance when they need it.

Geraint Davies: Does the Minister agree that despite enormous quantitative easing—the billions put in—and Project Merlin and everything else, all that has happened is that banks have propped up their balance sheets and money has not gone through to the business community? There would be no great cost in accepting that there should be an explicit duty on the financial community. After all, as in gas and other markets, it is no big problem putting a line in, but it would send a clear signal to the financial community that the emerging body, alongside the FCA, will focus on the financial community and that it has to get its act together. That would be an important move in terms of perception as well.

Norman Lamb: It is actually quite important that banks rebuild their balance sheets after what happened to them—in part owing to weak and ineffective regulation

not only in this country, but internationally. The Labour Government must take their share of responsibility for the ineffective regulation that led to the crisis in 2008.

Geraint Davies *rose—*

The Chair: Order. The Minister is not giving way.

Norman Lamb: The Chair is absolutely right. I am not giving way.

The FCA will keep competition under review. That is obviously central to its purpose, so it will constantly maintain a review of competition. The hon. Member for Newcastle upon Tyne Central was absolutely right to raise concerns, but that will be central to its objectives.

Let me say a little more about the way in which the CMA and the FCA will co-ordinate on competition. The FCA and the CMA will need a memorandum of understanding, but we do not need to provide for that in the Bill to make that happen. The OFT has MOUs in place with the FSA and other similar sectoral regulators such as Ofcom without the need for legislation. I see no reason in principle why the CMA and the FCA should not have one MOU to cover both competition and consumer protection, including, for example, co-ordination regarding the FCA's powers to enforce unfair terms in consumer contracts regulations.

On the relationship between the CMA and the FCA, both regulators have an important role to play in promoting effective competition. The FCA needs a mechanism to engage the CMA if it is to make sure that the CMA's powers and expertise are effectively brought to bear in the financial services sector. That addresses exactly the concerns raised by Opposition Members. The FCA will therefore have a power of referral to the CMA—first to the OFT and in due course the CMA—under a corresponding duty to respond within 90 days. The availability of the power will not prevent the FCA taking the lead in addressing competition issues where it is best placed to do so.

On an appropriate referral from the FCA, the CMA may have the information and analysis it needs to take action—for example, to launch a market investigation reference—almost immediately. It will also be able to consider whether enforcement action under the Competition Act 1998 would be more appropriate. There are clear benefits to the referral mechanism in terms of enabling the CMA in its role as the principal competition authority to bring its expertise and experience to bear in taking action to address restrictions or distortions of competition. These are pragmatic arrangements that will reflect the fact that the FCA will have no track record of or experience in making market investigation references or capacity to enforce competition law itself. As such, it will be essential that it has a mechanism to draw on the expertise and powers of the CMA.

In conclusion, the intent of the amendments to ensure that there is a focus on competition issues in the financial services sector is absolutely right. That is why the Government are legislating to create a body—the Financial Conduct Authority—that will have a much greater focus on competition in financial services than the FSA has had to date. That significantly improves the regime for ensuring proper competition in financial services. On top of that, there will be the relationship, which I have sought to describe, between the FCA and the CMA—the overarching competition authority—so that it can use its expertise and experience in taking on those issues as appropriate.

Geraint Davies: Will the Minister give way?

Norman Lamb: I am conscious that we need to move on. I have tried to address all the issues raised by Opposition Members. I hope that, on the basis of that reassurance, the shadow Minister will withdraw the amendment.

11.30 am

Chi Onwurah: I thank the Minister for those clarifications, and I believe that we have moved forward in our understanding of the way in which the FCA and the CMA will work together and the process by which referrals will be made from the FCA to the CMA. I am particularly pleased to learn that a memorandum of understanding will be put in place between the CMA and the FCA. However, I remain concerned that the Minister sees no need to legislate for that or to refer to that in the legislation.

Norman Lamb: I simply made the point that it has happened between the OFT and the FSA, two organisations that inevitably have to work together. It makes absolute sense for them to enter a memorandum of understanding. If that approach was appropriate under the previous Government, it would seem to be appropriate now. There is no need to legislate for something that the two organisations will obviously want to do.

Chi Onwurah: While I see the sense of what the Minister is putting forward about the reasonableness of leaving the matter to the CMA and the FCA, I say again that the change to our competition environment is quite significant, which the Minister acknowledges. To carry out that change at this time but make no mention of the new authority, the FCA, or the financial services sector, which is on the minds of many of our constituents right now, in a Bill that refers to every other sector and identifies their relationship, is not the best way forward. I would like to test the Committee's feeling on that point.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 12.

Division No. 20]

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	Lamb, Norman
Bridgen, Andrew	Morris, Anne Marie
Burt, Lorely	Mowat, David
Carmichael, Neil	Ollerenshaw, Eric
Evans, Graham	Simpson, David
Johnson, Joseph	Wright, Jeremy

Question accordingly negatived.

Question put forthwith (Standing Orders Nos. 68 and 89), That the schedule be the Fourth schedule to the Bill.

Question agreed to.

Schedule 4 accordingly agreed to.

Clause 19 ordered to stand part of the Bill.

Schedule 5

Amendments related to Part 3

Norman Lamb: I beg to move amendment 21, in schedule 5, page 79, line 39, leave out paragraph 32 and insert—

32 (1) Section 52 (advice and information) is amended as follows.

(2) In subsection (1), for the words from the beginning to "the Director" substitute "The CMA".

(3) In subsection (1A), for the words from the beginning to "the OFT" substitute "The CMA".

(4) In subsections (2) to (6) and (8), for "OFT" (in each place where it occurs) substitute "CMA".'.

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

Government amendments 22 and 55.

Norman Lamb: This is exciting stuff, so please stay calm if you can, Mr Bayley.

Amendment 21 is a technical drafting amendment—but none the less exciting—to schedule 5 of the Bill on the transfer of functions to the CMA. It will affect section 52 of the Competition Act 1998, which requires the director general of fair trading—the predecessor of the OFT—to publish one-off guidance about the new prohibitions of the Competition Act and the OFT to publish guidance about its duties under the 2004 EU modernisation regulation, with which I am sure hon. Members will be familiar. The amendment of those provisions needs to reflect the transfer of the OFT's functions to the CMA, including its one-off duties to publish guidance. To ensure that the Bill is drafted in a consistent manner, the amendment will additionally change the reference to the "the Director" in section 52(1) of the 1998 Act to "The CMA".

Amendment 22 is also a technical drafting amendment to schedule 5 and affects paragraph 5(3)(a) of schedule 2 to the 1998 Act. Those provisions require Ofcom to consult the director general of fair trading before publishing a list of networking arrangements that are excluded from the cartel prohibitions in chapter 1 of the 1998 Act. The reference to the director general was not amended by the Enterprise Act 2002 when the OFT was created, and the amendment will fix that so that the provisions refer to the CMA rather than the director general.

Amendment 55 is a technical drafting amendment to schedule 15 and affects paragraph 5 of schedule 1 to the 1998 Act. Part 1 of that schedule excludes mergers from the chapter 1 prohibitions of the 1998 Act in certain circumstances. The OFT has the ability to withdraw that exclusion, but that ability does not extend to protected agreements, which are defined in paragraph 5 where references are made to various types of merger reference decisions involving the OFT, the Secretary of State and the Competition Commission. The Bill, as drafted, replaces "the Competition Commission" with "the CMA". The amendment makes the paragraph more consistent with other parts of the Bill, which provide that merger references are made by the board to the chair of the CMA for the constitution of an inquiry group, and it does so by removing "to the Competition Commission" wherever those words occur.

I am grateful to hon. Members for sticking with me on this exciting stuff.

Chi Onwurah: I thank the Minister for explaining the nature of his amendments and my colleagues and the Committee for listening with such rapt attention. Although, as I have said, this is my first Bill Committee, I am aware that what is termed a technical amendment may on occasion hide deeper and more meaningful changes. On this occasion, however, I can find no objection to the amendments.

Amendment 21 agreed to.

Amendment made: 22, in schedule 5, page 81, line 29 at end insert—

'In Schedule 2 (exclusions: other competition scrutiny), in Part 3, in paragraph 5(3)(a), for "Director" substitute "CMA".'.—*(Norman Lamb.)*

Chi Onwurah: I beg to move amendment 92, in schedule 5, page 83, line 28, after 'subsections', insert '(1A),'.

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

Amendment 91, in schedule 5, page 84, line 14, after 'subsections', insert '(1A),'.

New clause 10—*Mergers: duty to take account of longer-term competitiveness in considering whether to make references*—

'(1) Section 33 of the Enterprise Act 2002 is amended as follows.

(2) After subsection (1) insert—

"(1A) When considering whether or not a situation results in a substantial lessening of competition for the purposes of (1) above, the CMA shall take into account the longer-term ability of the merged entity to compete effectively.".

(3) Section 22 of the Enterprise Act 2002 is amended as follows.

(4) After subsection (1) insert—

"(1A) When considering whether or not a situation results in a substantial lessening of competition for the purposes of (1) above, the CMA shall take into account the longer-term ability of the merged entity to compete effectively.".'.

Chi Onwurah: Amendments 92 and 91 are consequential on new clause 10, which will strengthen the conditions under which mergers should be considered by the CMA. New clause 10 inserts a new subsection into the amended Enterprise Act 2002 on the Office of Fair Trading's duties to make a reference to the Competition Commission under certain merger situations. The consequential amendments mean that the new clause fits within the transfer of powers. Sections 22 and 32 in the Enterprise Act concern the duty of the OFT to make references to the Competition Commission in relation to anticipated

or completed mergers. This will still only apply when it is a relevant merger situation, with two or more enterprises ceasing to be distinct enterprises—this is slightly technical—and the turn-over of one of those enterprises in the UK is more than £70 million.

Our amendment also retains the test that a merger must result in a substantial lessening of competition in order to be referred. The change is that the new clause adds the following subsection to that test:

"When considering whether or not a situation results in a substantial lessening of competition for the purposes of (1) above, the CMA shall take into account"—

this is the key phrase—

"the longer-term ability of the merged entity to compete effectively".

The new clause will mean that the CMA will take a longer term view of the possible merits and demerits of mergers and takeovers in the UK. I am sure that Members on both sides are familiar with high-profile mergers and takeovers in the past few years, some of which have certainly not been in the best long-term interests of employees, consumers and businesses. Just last week we read the news that the owners of Manchester United will relocate the club's management to the Cayman Islands and sell off shares with few voting rights in order to pay off some of the debt they used to buy the club.

As a Newcastle fan I have to declare an interest, which is that I hold Newcastle's success to be much more important than Manchester United's, but as a football supporter I am with all football supporters in feeling that we too rarely get the owners that the fans deserve. Football has done amazing things over the past decade or so—working to kick out racism and homophobia; reducing hooliganism; making games more family-friendly—but we still have ownership structures that do not act in the interests of the fans or the beautiful game. Indeed, those practices may well be against the new UEFA rules.

Ian Murray (Edinburgh South) (Lab): I am delighted to declare an interest as a fan of the famous Heart of Midlothian football club. One of the biggest concerns in Scottish football at the moment is, of course, the demise of Rangers. Ownership of that club, and ownership across football, has been a huge issue and one that it would be very suitable for the new CMA to investigate in the future.

Chi Onwurah: I thank my hon. Friend for that intervention. He is absolutely right that takeovers in the football industry have led to a situation in which we have ownership that is not in the interests of football fans. I hope that the CMA will take that into consideration.

David Mowat: As it happens, I am a Manchester United fan, but the ownership and takeover of Manchester United have absolutely nothing to do with this amendment. This amendment would not in any sense have stopped what happened at Manchester United with the Glazers as far as I can see. If it would, will the hon. Lady say how?

Chi Onwurah: I will come to the exact way that the amendment would address some of these issues with regard to takeovers, mergers and other competition implications.

Neil Carmichael (Stroud) (Con): I am a supporter of Newcastle United, so I agree with the hon. Lady on this particular aspect. What I am struggling with is how this discussion has a huge amount of relevance to this particular amendment; chiefly because she is really talking about the structure of companies and clubs, which is more properly a matter for the Department for Culture, Media and Sport and how it might address football governance.

Chi Onwurah: I thank the hon. Gentleman for that intervention. He makes an excellent point, which may put Newcastle United supporters in the majority on this Committee—[*Interruption.*] Perhaps not. He and his hon. Friend are right to suggest that this amendment will not address all the issues around ownership, takeovers and mergers, but it will help to address some of them. I will explain how. Leveraged buyouts in football and more widely should concern us all. Kraft's takeover of Cadbury is perhaps the best—or worst—example of short-term interests taking precedence over the long-term interests of a great British company. Reflecting on the takeover, Lord Mandelson, the Secretary of State at the time, said:

"It is hard to ignore the fact that the fate of the company with a long history and many tens of thousands of employees was decided by people who had not owned the company a few weeks earlier, and probably had no intention of owning it a few weeks later".

The Kraft/Cadbury affair flagged a weakness, not just in our regulatory system, but in our economy as a whole. Our approach to fixing it should attack both. This amendment seeks to strengthen the hands of the CMA in any future case and, hopefully, would prevent some of the situations arising in the first place.

The Labour party has an ongoing review into the impact of short-termism on British business. The review is currently nearing the end of its initial phase of investigation and has been carrying out interviews with a wide range of top business people, investors, academics, employees and civil servants. The EEF, IOD and CBI have all expressed their support. It is led by Sir George Cox, a former director-general of the Institute of Directors and a director of the New York Stock Exchange Euronext. Sir George will report in due course. We on this side of the House are committed to putting together a strategy for the UK's economy that will prevent a fast-buck, short-term culture.

With this new clause, we do not seek to pre-empt our report. It is not in itself a solution to the deep-set structural problems that we have in our economy. It looks only to address the competition side of the argument and is the first in a series of steps. Our review will set out in more detail the role that Government should have in driving a more long-term approach within UK business. The review is looking at the time scales under consideration by boards and senior management in evaluating corporate risk in opportunities; by institutional shareholders and managers in making investment and governance decisions; and the extent to which these match the long-term needs of business. Changes to the takeover code have already been considered in the wake of the Cadbury takeover by Kraft and proposals to strengthen the position of companies that find themselves

[Chi Onwurah]

the target of hostile takeover bids were rejected by the code committee following the Kraft affair. The consultation did not attract enough support, but the committee said:

"The Code Committee understands that qualifying periods (or weighted voting rights) could be introduced through changes in company law. If such changes were to be made, the Code Committee considers that it would be logically consistent for the Code to be amended accordingly. In the absence of such changes, the Code Committee does not believe that the Code should be so amended".

So the code committee believes that the changes should be made through company law.

Peter Cadbury advocated similar changes in that consultation. In a letter to *The Times* in November 2009, he said:

"Is it too late to implement a measure of this nature before another fine British company is surrendered to short-term interests, and with it the danger that much of its manufacturing base will be transferred to Eastern Europe?"

Peter Cadbury is a direct descendant of the founder of Cadbury Brothers. He has been a corporate finance adviser for more than 40 years and owns a corporate advising business.

That letter was written more than two years ago. On 25 October 2010, the Secretary of State launched what he called

"the first stage of a review into corporate governance and economic short-termism".

That is the Kay review of UK equity markets and long-term decision making. Yet, 20 months later, we are debating an Enterprise and Regulatory Reform Bill that contains nothing to reform corporate governance or address short-termism.

David Mowat: Having established that the example of Manchester United has nothing to do with the amendment, I find it difficult to see how the amendment would have made any difference to the outcome of Kraft's Cadbury bid. There may be public interest issues, but the amendment does not address that takeover. There is nothing in the amendment.

Chi Onwurah: The hon. Gentleman displays impatience to get to the root of the matter, which I applaud, but to say that the amendment would have no impact on a case similar to the Kraft Cadbury deal is wrong, and I will explain why.

I was rather looking for an intervention from the Minister to explain how or when his Government will introduce a Bill to address short-termism in the British economy. Last week, Government Members voted against our amendment to require the CMA to have a general regard for long-termism in going about its business, but I hope they will be more supportive of this amendment.

The amendment would give the CMA the power to take a longer-term view on the impact of such deals when deciding whether to investigate further. That is the critical point, to address the hon. Gentleman's intervention. We believe the Government should be putting in place measures to ensure that short-termism is not rewarded in Britain. Changing the takeover code would be one such measure, but as the code committee has said:

"In the absence of such changes…the Code Committee does not believe that the Code should be so amended."

In his submission to the committee's consultation, Peter Cadbury had this to say on the takeover code:

"Recent experience has led me to believe that as a consequence of short termism, the City Code, as presently drafted in respect of hostile takeovers, operates to the considerable advantage of the Offeror, and unfairly against the interests of the Offeree, its employees and the wider interests of the company. I believe that the simplest, and most effective way to remedy this imbalance would be…to disenfranchise all shareholders, who acquire shares during an Offer Period.

A more level playing field needs to be established to allow longer term investors a greater say in determining the future of British…companies, having proper regard to issues affecting management, employees, customers, suppliers and not just the potential for short term financial advantage."

The then director general of the CBI, Sir Richard Lambert, backed similar changes to the code:

"George Cadbury and his family believed that a successful business depended on a long-term partnership between genuine investors, their employees and the interests of their consumers. We share that belief."

But there needs to be legislation, too. The amendment is not about one company or one episode, but about improving a test that has, in general, worked well over the past 10 years. The Government have talked a lot about fostering long-termism, but we have yet to see any action. Although the amendment does not address the takeover code or company law, I would like the Minister's views on when his Government will promote long-termism.

Graham Evans (Weaver Vale) (Con): I would like to make two points. First, the hon. Lady mentioned 2009 and short-termism, but her Government had been in power for 12 years; why did they not do anything about short-termism? Secondly, I remember what happened with Cadbury very well. Irrespective of the takeover by Kraft, which is an international company of very good quality, the Cadbury family and company would probably have closed the plant in south-west England anyway.

Chi Onwurah: Like a number of hon. Members, the hon. Gentleman's position seems to be that he will not support anything that the previous Government did not do, while at the same time criticising everything that they did do. We have acknowledged that stronger regulation should have been in place. Now that the Government have been in power for two years, we might have expected to see progress in that direction.

John Cryer (Leyton and Wanstead) (Lab): What the hon. Member for Weaver Vale said about the plant in Keynsham may or may not be the case, but the point about the takeover is that Kraft, without being too specific, indicated that the plant would be kept open, and as soon as the takeover went through, it was shut.

Chi Onwurah: I thank my hon. Friend for his clarification of that scandalous episode in British business.

Graham Evans: May I clarify my point? The factory in the south-west was earmarked for closure before the takeover. I am not trying to defend Kraft for a moment. Kraft may have intimated to Mr Mandelson that the factory would be kept open, but irrespective of the takeover, it was earmarked for closure.

Chi Onwurah: It is my recollection that Kraft did more than intimate; it gave the impression to the wider public that the factory would remain open.

Ian Murray: The point is that there were two very critical reports by the Select Committee on Business, Innovation and Skills into the undertakings that Kraft gave when it took over Cadbury. Immediately after the transfer of business, Kraft's undertakings did not come to fruition, including various pension funds undertakings.

Chi Onwurah: I thank my hon. Friend for bringing those excellent Select Committee reports to the Committee's attention. As I think we would all agree, in that case, the merger process left a lot to be desired, which gives us even more reason to look for measures to promote long-termism.

Mr Iain Wright (Hartlepool) (Lab): To clarify a point on which the Business, Innovation and Skills Committee is very firm, in its takeover proposal of September 2009, Kraft said:

"Our current plans contemplate that the UK would be a net beneficiary in terms of jobs. For example, we believe we would be in a position to continue to operate the Somerdale facility, which is currently planned to be closed and to invest in Bournville, thereby preserving UK manufacturing jobs."

A week after the takeover, Kraft announced that it would shut the Somerdale plant. When the takeover panel investigated the matter, it said that

"Kraft's initial statements in relation to Somerdale breached the Takeover Code",

particularly rules 19.1 and 19.3. Are we not discussing the fact that Kraft's initial communication, on which shareholders may have made a decision, was misleading?

Chi Onwurah: I thank my hon. Friend for that intervention, which clearly shows that Kraft misled shareholders and the public, rather than making general intimations. That point goes to the heart of the need to change the culture of the City and of takeovers, and the amendment aims to be part of that.

12 pm

David Mowat: I make the point again that I do not defend what happened with the Kraft takeover. There may be public interest issues around the takeover and, as part of that, the takeover code, but new clause 10, which is concerned purely with the competition issue, would not have made a difference to the outcome, so the point is not relevant to new clause 10.

Chi Onwurah: I thank the hon. Gentleman for that intervention, and for saying the public interest test needs to be changed. I will come on to that. To be able to say that new clause 10 would not have made any difference, we would need to be able to look into the minds of those considering the consequences of the merger at that time.

New clause 10 requires the CMA to consider the long-term ability of the resulting entity to compete effectively in the market. If an entity is laden with debt, that has an effect on its ability to compete effectively, as I will show. The amendment by itself would no doubt give speculators, such as those who were involved in that Kraft Cadbury takeover, something to think about before buying up shares in companies for a few weeks before selling them on at a higher price after a deal has been done.

The amendment does not go as far as many of my hon. Friends, and perhaps some Government Members and people in industry, would like. It does not attempt to change the reasons for public interest referrals so as to include, for example, employment or investment concerns. It does not attempt to change the takeover code either. That may come, but the Opposition like to be evidence-based in their approach, rather than take an "anecdotes r us" approach. Our proposals will follow on from our reviews and the evidence we find in them.

The amendment looks purely at the competition consequences following a takeover, but it gives the CMA the power and the duty to look at the long-term competition consequences. That makes absolute sense in pure competition terms. It is all very well to say that a merged entity will not result in a significant lessening of competition, which is the test, but what happens if it is so reliant on debt that it cannot compete effectively?

We can, and should, recognise that the ownership structure may determine the strength of a company as a competitor in all markets. In the football market, the chocolate market and all other markets, the ownership structure may determine the competitive strength of a company. It may be desperately trying to maintain its cash flow to make its interest payments and not go under. If it does not go under, it certainly will not be a competitor. A recent US research paper, "Bankruptcy risk model and empirical tests", by H Eugene Stanley and colleagues, found that the relationship between relative debt and bankruptcy risk generally followed a power law. That means that a company with half the debt is twice as likely not to fail. So there is certainly a relationship between debt structure and the likelihood of bankruptcy, which in turn has an impact on the level, and likelihood, of competition.

This is a very reasonable amendment. It deals purely with the competition issues. It does not attempt to change company law or the takeover code, but it also sends a strong signal. It should be the first step in helping to build the economy of the future—the economy that my right hon. Friend the Leader of the Opposition has called for, which is based on long-termism, patient investment and responsibility shared by all, not on predatory behaviour.

John Cryer: It is always a pleasure to serve under your chairmanship, Mr Bayley. I want to speak briefly again about the Kraft takeover, partly because there seems to have been a misapprehension among Government Members, particularly the hon. Member for Skipton and Ripon. I am sorry that he is not here today. I imagine he is out on manoeuvres in preparation for the day when the trade unions try to take over the world and he is summoned by destiny to prevent that. The hon. Gentleman gave the impression that even questioning a particular takeover or merger makes us a cross between Bismarck and Stalin, wanting to nationalise everything that moves.

My view is that there should be a national or public interest test when judging major takeovers and mergers. That would not affect many takeovers and mergers,

[John Cryer]

only certain key ones, such as the Kraft takeover of Cadbury. The record that Kraft had at that point was not widely admired. Kraft had managed to expand consistently over many years, but not by the efforts of the people running the company. It had a record of taking over company after company, closing plants and very often shipping out production to developing countries, at much lower rates of pay and often without the quality controls we expect in this country, Europe and north America. It had become laden down by debt, as my hon. Friend the Member for Newcastle upon Tyne Central mentioned.

On the other hand, Cadbury was, and still is fortunately, though it is only three years since the takeover, a company that had expanded about six years in succession by its own efforts. It is arguably one of the most successful and recognised brands in British history. That is what led to a campaign against the takeover by, among others, the *Daily Mail,* hardly an organ of the hard left. The chief executive of Kraft refused to talk to the Select Committee inquiries, which were very good and produced admirable reports, and refused to meet anybody connected to Cadbury, such as employees' representatives, other than the management. Cadbury had a very good history of industrial relations.

The takeover happened only three years ago, but we will be looking at the consequences for a long time. I hope it works out well; I do not want to sound like the voice of doom. I hope things go well for the people working at Cadbury and Kraft, but it is early days. We have to see what happens. Such a takeover would not have occurred in Germany, for instance, because the Government would have been able to say it was not in the national interest and would not allow it to happen.

It is not the only takeover in British history that has been deeply controversial and perhaps to have had the potential to undermine a strategic part of the economy. I will give one example. We think now of the 1970s as an era of massive regulation and Government intervention. To some extent that is a myth. One takeover that springs to mind was that of Norton Villiers Triumph in 1975. Basically, the company was the entire British motorcycle industry. It was taken over by a corporate raider with all sorts of promises of expansion. Within weeks, all three plants—all in the west midlands, an area with economic problems—were closed down and asset-stripped, and that was more or less the end of the British motorcycle industry, at least for quite a long time.

Chi Onwurah: I thank my hon. Friend for citing an excellent example. The nature of the ownership of the party taking over the company and its asset-stripping led to a substantial reduction in competition in the motorcycle industry in the long term. That is exactly the sort of example that the amendment is designed to capture.

John Cryer: I am grateful to my hon. Friend. That is absolutely true. Japanese companies were able to become more dominant, not due purely to the excellence of their products, but because their British competitors had been removed from the market.

I must comment briefly on football as I feel strongly on the subject. As someone who is mad keen on all sorts of sport, I feel that money and corporate interests have become far too dominant in many sports, particularly football. We have seen that in the history of many clubs. I have an uneasy feeling that we will see a lot of premiership clubs experience enormous financial difficulties over the next few years. I hope I am wrong, but we might see some go to the wall. That sort of corporate dominance will, I suspect, dominate the Olympics. I accept that is completely beside the point, before the hon. Member for Warrington South intervenes on me. It has nothing to do with new clause 10; I just wanted to get it off my chest.

In conclusion, I see new clause 10 as a modest safeguard. It would not be an undue intervention in the workings of the market or the economy. I want to see a national or public interest power given to the Secretary of State. We would then have to put our faith in the Secretary of State to intervene appropriately, as I am sure he would, because he is such a decent sort of bloke. New clause 10 would be a start and I hope that the Minister will consider accepting it.

Norman Lamb: I guess I need to declare an interest again, to set the record straight. I am a Norwich City supporter. I suspect I am on my own in that in this room—I have no support here.

I thank Opposition Members for their suggested new clause and amendments. Following the interesting debates that we had last week around similar issues, we have considered these amendments at some length. I am also grateful to Members for talking after a sitting last week about the new clause and the seriousness with which they wanted to address the issue in debate. I completely accept their seriousness in wanting to address the need for long-termism in the economy. As I understand it, they are concerned about corporate takeovers that are cleared by competition authorities because they have no detrimental impact on competition, but which may have other consequences later down the line. We very much share those concerns around long-termism in corporate behaviour, but the question is about the mechanism to address it. There is a danger that we would load the competition authority with the responsibility of addressing all ills of corporate behaviour, when it might be inappropriate to do so.

When Lord Mandelson was giving evidence at the time of the Cadbury-Kraft takeover—I know that Opposition Members take his words seriously and follow his every word—he said:

> "You have to form a judgment about whether it is desirable and necessary to change legislation to introduce some sort of public interest criterion that the Government might operate in relation to takeovers and mergers. I am unconvinced that such a change is necessary or desirable. I would rather stick, for the time being, with the terms and the spirit of the 2006 Companies Act, which said that directors needed to discharge their responsibilities by taking a properly balanced view and pursuing 'enlightened shareholder value', a value that is not limited to the short-term. One, incidentally, that recognises the value of effective relationships with employees, stakeholders and suppliers and, indeed, the community more widely. This approach, in our view, is likely to drive long-term performance and maximise overall competitiveness of that company."

He did not want to interfere with the competition regime or framework.

The Kay review delivered an interim report on its findings in February and will make recommendations to the Secretary of State in its final report later this

month. The review will inform future Government policy on addressing short-termism in equity markets and corporate governance more widely. The Government will consider the review's recommendations carefully.

There has been a lot of reference to the Kraft-Cadbury takeover. I have no detailed knowledge of the absolute circumstances, but I would not defend anyone who misleads in any public statements and I fully recognise that there were difficulties in the early stages of the takeover. While I recognise that the loss of jobs following the takeover was immensely distressing for everyone involved, fears about the future of Cadbury—the hon. Member for Leyton and Wanstead said that he hopes it remains successful—under Kraft's ownership are not supported by recent evidence; £50 million has been invested to improve the competitiveness of Cadbury's plants over the past two years. Bournville is now Kraft's global centre of excellence for chocolate research, where £17 million has been invested and 54 additional high-value jobs created, with another 44 at Kraft's R and D facility in Reading. Elsewhere, Oreo biscuits are being manufactured in the UK for the first time, creating new jobs in Sheffield, and investment has been made in Kraft's coffee operations in Banbury. Overall, Kraft has invested £130 million in its UK business since the acquisition.

12.15 pm

It is worth reinforcing the point—I know that Opposition Members accept this—that we must never allow the debate to become one about the wisdom of allowing foreign investment in our country. It is essential and a clear priority for this Government to make the UK an attractive place to invest and base a business. Anything that seeks to dissuade foreign investors from coming to the UK and investing here would absolutely be a retrograde step. We must always remember that.

The shadow Minister chastised the Government for taking two years to address long-termism. I must say that the Opposition took 13 years and never addressed long-termism in the economy. The Government want to build a stronger culture of long-term commitment to sustainable company growth based on co-operation between ultimate owners, fund managers and the corporate sector. We do not want investors to try to make a quick profit at the expense of the long-term health of the UK economy. However, I am not convinced of the appropriateness of the competition regime in achieving those aims. The competition regime is there for a specific purpose: to ensure that the economy is competitive in the interests of consumers. We must always remember that central duty.

The new clause would place a duty on the CMA to take into account the longer-term ability of a merged entity to compete effectively when it is considering whether to make a reference under phase 2 of the merger regime. The purpose would be to allow mergers to go ahead only if the merged company is judged to be able to compete effectively in the long term. Another way of looking at the duty might be to oblige the CMA to consider whether the merger might improve the ability of one or both of the merging parties to compete in the longer term.

The CMA—the OFT in the existing regime—will make a reference to phase 2 if it believes that it is or may be the case that first, a relevant merger situation has been created, and secondly, the situation has resulted or may be expected to result in a

"substantial lessening of competition within any market or markets for goods or services in the UK."

To the extent that the ability of the merging parties or the merged entity to compete impacts on the level of competition in the market, the CMA will already have to consider that as part of its assessment of any merger, just as the OFT and the Competition Commission do. Their task is to assess whether the merger will substantially lessen competition in the market, which would be bad for consumers and the economy more widely. It is very much a competition test, in line with tests used in other countries around the world. However, if the CMA was required to take a broader view of the ability of the merged entity to compete, it would take the UK's regime out of step with the international standard and blur the clear lines between the current competition test and other considerations.

The Opposition have rightly lauded the international standing of the UK's competition regime, but if the amendment were accepted, it would put at risk the UK's international standing, because it would introduce factors that would not be central and appropriate for its competition duty into the equation that the CMA would have to consider. For example, a merger that created a monopoly would almost certainly create an entity with an enhanced ability to operate effectively in the long term. However, it would not be a good thing for competition or consumers. We have to stay focused on the importance of promoting competition in the interests of consumers. Aside from the fundamental point about moving away from a purely competition-based test, the amendment would add a requirement for the CMA to consider the long-term ability of the merged entity to compete.

Currently the OFT and Competition Commission consider the impacts of any merger versus the counterfactual—what would have happened if it had not gone ahead—over the foreseeable future. There is no precise period for how long this is, and it will vary from market to market. For example, the appropriate period in, say, power generation markets and social media markets is likely to be quite different. The further one looks out from that particular point in time, the harder it becomes to predict what the competition environment will look like in the years ahead.

Furthermore, there will be all sorts of other external factors that would have an effect on the ability of the merged entity to compete effectively, and which competition authorities are not best placed to try to predict. I therefore think that we need to be careful about extending the competition regime in the way that the amendments propose. However, as I have said, we have a lot of sympathy with the purpose and intent—I will not use the word "sentiment", which was perhaps overused last week—behind the amendments. Indeed, the intent of encouraging long-termism in companies is something about which the Secretary of State, the Government and I are passionate.

The issues have already prompted several work areas to be taken forward by the Government. I should make it clear that the measures in the Bill that seek to strengthen the voluntary merger notification system are in part a response to those issues. These will provide strength and powers to the CMA to pause mergers, so that it can investigate the issues and ultimately address any competition issues effectively.

In addition, following a consultation last autumn, the Takeover Panel to which the shadow Minister referred and which oversees the City code on takeovers and mergers, made a raft of changes to the takeover code to strengthen the position of target companies during takeovers. The changes have already shortened virtual bid periods, reducing the period of uncertainty for target companies. There has also been an increase in representations from employee representatives—it is important that their concerns are heard—as a result of the changes that have been made.

Stemming from concerns around short-termism in corporate behaviour, we also have Professor John Kay's review. He is conducting an independent review of investment in UK equity markets looking at how to encourage shareholders to support long-term decision making by UK companies. The principal focus is to ask how well equity markets are achieving their core purposes—improving the performance of UK companies and enhancing resulting returns to investors.

The Government look forward to receiving Professor Kay's recommendations, and we will consider them carefully. We will work with hon. Members on the issues the review raises to promote a long-term approach by UK companies. I am sorry that I have to disappoint hon. Members once again, but I do not believe that their amendments are the best way of achieving their aims. If Opposition Members think about the potential consequences of their amendments in facilitating a monopoly situation, while it might be sustainable for that organisation, it would, as I said earlier, be completely contrary to the principles of competition.

I hope I have reassured the Committee that the Government share concerns about the importance of promoting long-termism, and we are already exploring ways to address them. I therefore urge the hon. Members concerned not to press amendments 91, 92 and new clause 10.

Mr Iain Wright: I was not planning to speak in this debate, but I am very conscious of what the Minister has said. He has made a thoughtful response and he mentioned four important points. First, he mentioned the vital role played by foreign direct investment in the competitiveness of the British economy. The Opposition agree with that. We have seen how over the last 25 years or so in the automotive industry it has revolutionised productivity and efficiency to the point where the British car industry is now one of the best in the world. The Minister mentioned three other principles: the interests of consumers; the duties of directors under the 2006 Act; and the ability of companies effectively to compete in the long term. Can I take him back to Manchester United as a case study with regard to those three principles?

I declare an interest. I am a season ticket holder at United: Hartlepool United, which is obviously the best and most successful club in Hartlepool. This is an important point. The people who have taken over Manchester United took over a successful debt-free company and bought it by loading it up with debt. Off the top of my head, the annual turnover of Manchester United this year is around £367 million. Interest payments are around £71 million. In the last three or four years Manchester United as a company has made an operating loss. In addition, the prospectus for the listing on the New York stock exchange published last week revealed that members of the Glazer family have taken out loans at preferential rates on the back of Manchester United's assets.

Manchester United does not seem to have been run in the long-term interests of the club or its supporters. My understanding is that season ticket prices and other prices at Old Trafford have gone up substantially since the Glazer family took over. As for the issue of the owners of the business extracting value as quickly as possible, regardless of the long-term value and regardless of the club's long-term ability to compete effectively both domestically and in Europe, Manchester United did not win the premiership this year and the prospectus for the New York stock exchange says that interest payments may hinder its ability to compete and buy players in future.

On the basis of all that and the three principles that the Minister mentioned—the interest of consumers; the ability of the club to compete effectively in the long term; and the duties of directors under the 2006 Act—how does he think Manchester United has been run? Is there anything that can be done with regard to directors' responsibilities? Is he looking at this to make sure that we can have effective competition? I shall be very interested in his thoughts.

Norman Lamb: The hon. Gentleman raises legitimate concerns about the way in which football is administered and how some owners have acquired clubs through debt. I just do not think that they are competition issues. That is where the problem lies. I come back to the point that I made right at the very start. We can identify all sorts of concerns about corporate behaviour but we should not load all of those concerns on to a competition authority which is there to ensure that there is a well- functioning, competitive economy which acts in the interests of consumers. I share the hon. Gentleman's concerns about the matters he has described, but I do not think they are relevant to the operation and function of this organisation.

Chi Onwurah: I start by thanking the Minister for his response and for the thoughtful way in which he has considered the aim of the amendment and the best way to achieve it. I also thank my hon. Friends for their contributions. The debate has highlighted the fact that the Opposition see real competition issues when it comes to debt-fuelled mergers and takeovers that have happened in football and other areas for some time.

12.30 pm

The Minister began by saying that our concern was about cases where there was a takeover without a substantial lessening of competition, and that we wanted to be able to address it in some other way. That is not entirely accurate. The point and principle of the new clause is about takeovers where there is no apparent substantial lessening of competition in the short term, but there may be in the long term, taking into account the ability of the merged entity to compete. The Minister is absolutely right—and other Members have made the point—that this does not address all the concerns about takeovers. It is because we do not want to load other concerns on to competition law, such as employment issues, which my hon. Friend the Member for Leyton and Wanstead

raised, or investment issues, that we are proposing this reasonable first step to enabling the CMA to look at the longer-term ability of the resulting entity to compete.

Norman Lamb: Does the hon. Lady share my concern that if she takes her amendment to its logical conclusion, it potentially protects the interests of a monopoly that might be in the process of being created through a merger? I made the point earlier that a merger creating a monopoly would almost certainly create an entity with an enhanced ability to operate effectively in the long term. Surely that is not what she would want, because it would be completely contrary to the interests of competition and therefore in the interests of consumers.

Chi Onwurah: I thank the Minister for the opportunity to clarify that. No, I do not share his concern. I do not know whether he has had advice from competition lawyers. It is clear to me that the test is about a substantial lessening of competition and for that reason we are not changing the test. A monopoly is an absence of competition, so if a monopoly were to be created, that would undoubtedly be a substantial lessening of competition in the short term and in the long term. That scenario is not a danger, given that a monopoly is the absence of competition. On that basis, this clause seeks only to give the CMA the opportunity to look at the longer-term competitive environment and to address the concerns of debt-fuelled takeovers where the resulting entity will be less able to compete. My hon. Friend the Member for Leyton and Wanstead gave an example of that in the motorcycle industry. We have discussed the football industry, where competition happens both on the field and in the boardroom, and the example my hon. Friend the Member for Hartlepool gave of Manchester United being in less of a position to compete for players would certainly impact on its ability to compete on the playing field in the longer term.

This amendment is very reasonable and quite a small first step. While the Minister talked about the importance of not confusing public interest and competition law, I believe there may be an argument for extending a public interest, but that is not what this amendment proposes. It focuses clearly and specifically on competition law. As for inward investment, I support the Minister's and my hon. Friend's points that in this clause we are in no way looking to deter those who wish to invest in this country. Inward investment has been a major force for good in many areas and in many industries. However, when it comes to competition law, inward investment, like all investment, should be considered on the basis of the resultant competitive environment. Where the resultant entity is going to be less able to compete effectively in the long term, that should be an issue for consideration by the CMA.

The Minister implied that this was something that the CMA does already, in considering the ability of the resultant entity to compete, and that what this amendment would change would be by making it consider the ability of the resultant entity to compete in the longer term. That gets us back to the agenda of promoting long-termism, which is where we on this side want to focus the measures in the Bill. So unless the Minister would like to clarify the ability of the CMA to look at the long-term ability of the resultant entity to compete, I would like to test the opinion of the Committee on this amendment.

Question put, That the amendment be made:—

The Committee divided: Ayes 9, Noes 12.

Division No. 21]

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	Lamb, Norman
Bridgen, Andrew	Morris, Anne Marie
Burt, Lorely	Mowat, David
Carmichael, Neil	Ollerenshaw, Eric
Evans, Graham	Simpson, David
Johnson, Joseph	Wright, Jeremy

Question accordingly negatived.

Norman Lamb: I beg to move amendment 23, in schedule 5, page 87, leave out line 28.

The Chair: With this it will be convenient to discuss Government amendments 24 and 25.

Norman Lamb: There is more exciting stuff to come, so hold tight, Mr Bayley. Amendments 23, 24 and 25 are technical, drafting amendments to schedule 5 which deals with transfer of functions to the CMA. Amendment 23 removes the current provision in the Bill that specifies that where the CMA exercises functions under or by virtue of sections 56(3) and 56(6) of the Enterprise Act, this function is to be exercised to a group rather than the board. These latter provisions cover the case where a phase 2 public interest merger inquiry reverts back to an ordinary merger inquiry because the Secretary of State decides not to make an adverse public interest finding or the CMA cancels a public interest reference under section 53 of the Enterprise Act but the effect on competition still needs to be investigated. In such cases the functions of the CMA are to be exercised by the merger inquiry group rather than the CMA board.

Amendments 24 and 25 also give these functions to the group and furthermore clarify that where the group has taken its final decisions on the merger and then disbanded, the CMA board may enforce the orders made by and undertakings agreed by the group. The amendments uphold the separation of decision making between the board on one hand and the independent panellists on the other, which is so important to the success of the CMA, while also giving the CMA an efficient and effective mechanism for enforcing an independent group's remedies after it has been disbanded.

Amendment 23 agreed to.

Amendments made: 24, in schedule 5, page 89, line 12, at end insert—

'( ) after "(6)" insert "—

(a) ".'.

Amendment 25, in schedule 5, page 89, at end insert ', and

( ) at the end insert '; and

(b) for the purposes of section 34C, the group constituted in consequence of the reference under section 45 is to be treated as if it were constituted in consequence of a reference under section 22 or (as the case may be) 33.'".—*(Norman Lamb.)*

Schedule 5, as amended, agreed to.

Schedule 6 agreed to.

Clause 20 ordered to stand part of the Bill.

Clause 24 ordered to stand part of the Bill.

Schedule 8 agreed to.

Clauses 21 and 22 ordered to stand part of the Bill.

Schedule 7 agreed to.

Clause 23 ordered to stand part of the Bill.

Clauses 25 and 26 ordered to stand part of the Bill.

Schedule 9 agreed to.

Clause 30 ordered to stand part of the Bill.

Schedule 12

MARKETS: TIME-LIMITS

Chi Onwurah: I beg to move amendment 62, in schedule 12, page 188, line 35, leave out '6' and insert '3'.

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

Amendment 65, in schedule 12, page 188, line 35, leave out '6' and insert '12'.

Amendment 63, in schedule 12, page 189, line 32, leave out '6' and insert '3'.

Amendment 66, in schedule 12, page 189, line 32, leave out '6' and insert '12'.

Amendment 64, in schedule 12, page 189, line 41, leave out '6' and insert '3'.

Amendment 67, in schedule 12, page 189, line 41, leave out '6' and insert '12'.

Chi Onwurah: We have made such rapid progress through so many of the clauses and schedules that I fear that amendment 62, being of a technical nature, may be a disappointment to some members of the Committee; but though technical, it is very important. We have passed through the general clauses of the Bill and we are now at the meat of the CMA's activities. They include market studies involving examining markets, which may not be working well for consumers, and the CMA will have the power to impose remedies when an adverse effect on competition is found. The OFT's "Positive Impact" report noted that market studies and market investigations saved consumers £479 million per year. It is an important area for consumers.

12.45 pm

The Minister accepted that the UK has one of the best competition environments in the world, put in place by the previous Government, as I may have already mentioned. However, he also pointed out that it is one of the slowest, and I accept that. It is better to come slowly to the right decision than speedily to the wrong, but just as justice delayed is justice denied, a dysfunctional or anticompetitive market leaves consumers paying a price. For that reason, we support the Government in speeding up the process of market investigations and merger assessments. I share the Minister's sentiment.

The means by which the Minister is proposing to speed up the process also has our support. He proposes to introduce a statutory time limit in a number of areas. Market investigations will now have tighter timetables and a statutory time limit of 12 months in phase 1 and 18 months in phase 2. A timetable of 40 working days for phase 1 of the mergers regime will also be placed on a statutory footing. We agree that statutory time limits should help speed up the investigation assessment procedure and give greater clarity and predictability to industry.

Statutory timelines should enable the CMA to work backwards to a known deadline and organise its resources effectively and efficiently to achieve the given end. The key question is: what are the right timelines? It is for that question that we have tabled probing amendments. As the amendments are probing, they seek both to double and halve one particular timeline. I am not so capricious as to believe that the CMA or the Minister can do both at the same time, but I am keen to probe the reasoning behind the particular choice of timelines for the merger and the market investigation activities.

We hope that six months was chosen not because it is half a year or two quarters. The market investigation process can certainly be sped up.

Andrew Bingham (High Peak) (Con): I was puzzled by the amendments, but the hon. Lady has explained them. If we were minded to support an amendment, which one would she prefer? One is shorter and one is longer.

Chi Onwurah: I thank the hon. Gentleman for that helpful intervention—helpful inasmuch as it enables me to clarify again that the amendments are probing. We look to the Minister to make it so clear that he has chosen those time periods for the right reasons based on evidence rather than anecdote that I will have no alternative but to see his excellent logic.

The impact assessment said that in practice, market studies that have not been referred to the Competition Commission have taken between three and 21 months, an average of 10.4 months. Most market studies that have been referred have taken between four and 10 months. The assessment also said:

"Given that referrals to phase 2 are generally being made more quickly by the OFT…we do not envisage huge time savings with this option over and above a non-statutory route."

That left me pretty confused as to the evidence base for a six-month statutory timeline, extendable by six months for the study, and the 18-month timeline for the investigation. Does the Minister believe that the timelines could be halved if we doubled the resource? What international examples has he considered in coming to his conclusions? What will the remedies be if the time limits are not met? I hope the Minister will enlighten us in relation to not only these timelines but the others in the Bill.

We have been told that the main purpose is to reduce the time scales for investigations and decisions, an issue which has been identified as the greatest defect of the current system. Deadlines give certainty to all parties, but they must be accompanied by the appropriate resource, and the Minister has offered us no evidence for that or for the particular choice of timelines.

Norman Lamb: I am tempted to respond to the shadow Minister's questions simply with the comment made by my hon. Friend the Member for High Peak that we have chosen six months because that is midway between the Opposition's two suggestions. I could just sit down at this point, but perhaps I should take them more seriously and explain my thinking. I thank the hon. Lady for her suggested amendments.

The overarching vision behind the creation of the CMA is to streamline the UK's competition regime. Schedule 12 is central to that vision, in that it will speed up market investigation processes. It provides statutory time limits for all stages of market inquiries that do not currently have them, and will reduce the time limit for phase 2 market investigations. Those time limits are expected to reduce the end-to-end market process by up to a year in some cases.

The amendments deal specifically with the time period within which the CMA should complete the initial phase of its market study and publish its proposed decision whether to refer the market for a phase 2 investigation. The Bill states that the time limit should be six months. It is of course possible for the CMA to publish that decision before the six-month point, if it is ready to do so, and it should work to publish its decisions as soon as it can. The hon. Lady's amendments question whether that time limit should be a shorter one of three months or a longer one of up to 12 months.

One of the Government's key considerations in choosing the time limits introduced by the Bill was to balance the desire to speed up and streamline the regime with maintaining the robustness of the decision-making process, which is a strength of the UK's competition framework. We believe that it is reasonable to give the CMA six months to complete its initial market study, at which point it should publish its proposed decision whether to make a reference to phase 2.

To date, most market studies that have been referred to the Competition Commission have taken between four and 10 months, so an initial decision point after six months will speed things up, while still allowing good time for a full and proper consideration of the market. Three months would not allow for sufficient consideration of the issues, and I suspect that the hon. Lady would probably concede that. Extending the period to 12 months would go well beyond what is needed in such cases. Given that the current time period tends to be between four and 10 months, to suggest that we need to go beyond that, to 12 months, seems illogical. The objective must surely be to increase the speed of the slowest investigations as well as to be realistic, and therefore to find a time period for the initial phase that is within the current range of such periods.

The CMA will have a further six-month period in which it will be required to consult on its decision on whether to refer a market to phase 2 and to prepare its final market study report. Where a reference is the most appropriate course of action, the CMA should make the reference promptly after the close of the consultation. However, the market study may lead to outcomes other than or additional to making a reference. Those may take more time, for example, in instances where it wants to agree improvements with industry participants or it accepts undertakings in lieu of making a reference. These cases may need a longer period of consideration, which is why there is an additional six months before the CMA is required to make its final decision. We expect that the new phase 1 time limit will have a more significant impact on those cases that are not referred to phase 2.

Of the 35 market studies conducted by the OFT between 2004 and 2011 that were not referred on, 12 took more than 12 months to complete, and the average was 15 months. That is a long period of time and we would be shaving at least three months off these types of cases, which is a material benefit for all concerned. Based on the past experience of the OFT, and following the Department's consultations with the OFT—we have talked to the body that undertakes the work now—the Government believe that six months is an appropriate time period for the initial market study phase.

The UK's market investigation process is at the forefront of competition law internationally. It is one of two countries that can implement structural change or legally binding behavioural remedies as a result of an investigation. Israel is the other one and it has replicated the UK model. On the basis of my explanation and that we have worked with the OFT to come up with this proposal, I hope that the hon. Lady will be prepared to withdraw her amendment.

Chi Onwurah: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Norman Lamb: I beg to move amendment 26, in schedule 12, page 193, line 15, after 'if', insert

'the CMA has accepted an undertaking or group of undertakings under section 154 and'.

The Chair: With this it will be convenient to discuss Government amendments 27 and 28. *[Interruption.]*

Norman Lamb: I so appreciate the spirit of good will and, in the absence of cheering on my side, I am grateful to the hon. Member for Edinburgh South.

I will try to deal with these amendments in the three minutes that we have available before lunch. These amendments make three technical changes to schedule 12 to ensure that it is internally consistent and works in the way it was intended. Amendment 26 makes a minor and technical change to make clear that the undertakings referred to in paragraph 12 of schedule 12 are undertakings that have been accepted under section 154 of the Enterprise Act 2002, in lieu of a market investigation reference. The provisions in the Bill are not particularly clear on that, so the amendment provides greater clarity and certainty.

Amendment 27 makes a minor and technical change to the CMA's publication requirements. It will provide greater transparency for stakeholders and affected parties. Under current and new legislation the CMA is required to publish many of its decisions, so that interested parties have information about them. The amendment adds a provision to ensure that where the CMA has consulted on making a market investigation reference, and subsequently decides not to make that reference, it must publish that decision. The amendment will ensure consistency with other publication requirements.

[Norman Lamb]

Amendment 28 makes a minor change to preserve the existing situation for appeals on decisions on whether to launch a market study. Currently, a decision by the OFT to launch a market study is expected to be subject to appeal to the High Court on grounds of judicial review. Changes in the Bill on time limits mean that under the current drafting, parties may have more reason to believe that such decisions would be now subject to judicial review by the Competition Appeal Tribunal, not the High Court. The amendment preserves the High Court as the appeal destination for those types of decisions, as it was not intended that the Bill change that. I have finished with one minute to go, and I hope that the Committee will support the amendments.

Amendment 26 agreed to.

Amendments made: 27, in schedule 12, page 193, line 33, at end insert—

'( ) In subsection (1), after paragraph (a) insert—

"(aa) any decision not to make a reference under section 131 following a consultation in relation to the matter concerned under section 169;"'.

Amendment 28, in schedule 12, page 194, line 3, at end insert—

In section 179 (review of decisions under Part 4), in subsection (2), before paragraph (a) insert—

"(za) does not include a decision whether to carry out functions under section 5 in a case where the CMA is, or would have been, required to publish a market study notice (see section 130A(1));".'.—*(Norman Lamb.)*

Schedule 12, as amended, agreed to.

1 pm

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

Adjourned till this day at Four o'clock.