



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

ECONOMY, ENERGY AND TOURISM COMMITTEE

Wednesday 1 October 2014

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ECONOMY, ENERGY AND TOURISM COMMITTEE
22nd Meeting 2014, Session 4

CONVENER

*Murdo Fraser (Mid Scotland and Fife) (Con)

DEPUTY CONVENER

*Dennis Robertson (Aberdeenshire West) (SNP)

COMMITTEE MEMBERS

*Richard Baker (North East Scotland) (Lab)

*Marco Biagi (Edinburgh Central) (SNP)

*Chic Brodie (South Scotland) (SNP)

Alison Johnstone (Lothian) (Green)

*Mike MacKenzie (Highlands and Islands) (SNP)

*Joan McAlpine (South Scotland) (SNP)

*Margaret McDougall (West Scotland) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Alex Chisholm (Competition and Markets Authority)

David Currie (Competition and Markets Authority)

Patrick Harvie (Glasgow) (Green) (Committee Substitute)

Sheila Scobie (Competition and Markets Authority)

CLERK TO THE COMMITTEE

Douglas Wands

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Economy, Energy and Tourism Committee

Wednesday 1 October 2014

[The Convener opened the meeting at 10:50]

Interests

The Convener (Murdo Fraser): Good morning, ladies and gentlemen, and welcome to the 22nd meeting in 2014 of the Economy, Energy and Tourism Committee. I welcome members and our witnesses. I remind everyone to turn off, or at least turn to silent, all mobile phones and other electronic devices so that they do not interfere with the recording equipment.

We have received apologies from two members: Alison Johnstone and Jenny Marra. Sorry, that is complete nonsense—we have apologies only from Alison Johnstone. The extended recess has affected my concentration.

We are joined by Patrick Harvie, who is here as a substitute. I do not think that he has stated in the current session whether he has any interests that are relevant to the committee's work, so I invite him to do so now.

Temporary loss of sound.

Decision on Taking Business in Private

10:51

The Convener: Are members content to consider agenda item 3 in private later in the meeting?

Members *indicated agreement.*

The Convener: I suspend the meeting for a second, as we may have a problem with the microphones.

10:52

Meeting suspended.

11:01

On resuming—

Interests

The Convener: My apologies for that. I am sorry to all members and our witnesses for that slight interruption. I hope that we can now proceed without further ado.

I asked Patrick Harvie to state for the record whether he has any interests to declare. Because that was not picked up by the microphones, for the *Official Report*, I ask him to restate it, please.

Patrick Harvie (Glasgow) (Green): I have nothing to add to my entry in the register of members' interests. Members might want to be aware that I am a member of a couple of organisations that occasionally send witnesses to the committee, including the Poverty Alliance and Oxfam.

Competition and Markets Authority

11:02

The Convener: Item 2 is evidence from the Competition and Markets Authority. I welcome David Currie, Lord Currie of Marylebone, the chair of the CMA, who is joined by Alex Chisholm, the chief executive, and Sheila Scobie, the representative for Scotland. I thank you all for coming and apologise once again that you had to sit there patiently while we tried to resolve our technical difficulties.

The work of the authority is of great interest to our committee. We have done a number of pieces of work in recent times that directly overlap with some of your forward work programme, particularly in the areas of energy policy and banking. Given that the CMA is a new organisation, I start by asking Lord Currie—although he should feel free to bring in his colleagues to comment—to outline for us how it intends to take forward its workstreams generally, and specifically in relation to those two matters, which will be of interest to members.

David Currie (Competition and Markets Authority): Thank you very much, convener—we are pleased to be here. This is a formal hearing, but we have had a number of conversations in the past year with you, convener, and others in Scotland. It is great to have the opportunity to give formal evidence. We are a new agency that was formed from the Office of Fair Trading and the Competition Commission. We want to ensure that our work is even better than the work of those previous organisations, so we would welcome any views that the committee has on how we should do things, because we are still establishing the way in which we will proceed.

We are an agency of the whole of the United Kingdom, which means that we have to understand very much the concerns here in Scotland and other parts of the UK. This type of hearing is one opportunity for us to do that. It is only one of a number of ways in which we seek to establish our understanding of the concerns of Scottish consumers—of Scottish people.

We really want to make a difference to the operation of those markets that clearly are not delivering satisfactorily for consumers here in Scotland and in other parts of the United Kingdom. That is why, early on, as a result of the Office of Gas and Electricity Markets reference, we have the phase 2 investigation into the energy market. We inherited an investigation into the payday lending market, which I know is of concern to this committee. We are consulting on whether we

should be doing a phase 2 investigation into the banking sector. We will make that decision fairly shortly. Those are areas with which this committee has been concerned, and areas in which people in Scotland are concerned about the modes of operation.

I shall hand over to my chief executive to say a little more about the specifics of energy, banking and payday lending, and then we can proceed to questions.

Alex Chisholm (Competition and Markets Authority): Thank you and good morning to you all. It is great to be here.

I will add a bit of detail to what David Currie said about the market inquiries that we are doing. In consultations with people in our various visits to Scotland, we have talked about which of the key sectors are of concern to consumers here. Energy, banking and payday loans within the financial services sector are three of the sectors that have come up constantly, and we have given priority to those.

The CMA came into existence on 1 October last year and we took on our powers only on 1 April this year. However, even before we formally started in April we did a lot of work in the energy market, working closely with the OFT and Ofgem. We published a state-of-the-market assessment in March showing that the market was not performing very well for consumers. There was not enough competition and choice, and a noticeable degree of concentration in the Scottish market. The dynamics of the market did not seem to be delivering at all well for consumers. There was a lot of extreme dissatisfaction. About 40 per cent of people did not trust their energy supplier, which we thought was a very bad figure; that figure had also been growing over time. We were very pleased when Ofgem made a formal market investigation reference to us in June. We have been working very intensely on that. It is an 18-month inquiry, compared to 24-month inquiries previously, so we need to up our game and work faster.

The inquiry group has been very active. Just this week, it has been in Perth, where it talked to SSE. It has also visited the power station at Longannet. In addition, we have been in touch with Scottish Power, Spark Energy and a number of consumer groups. Energy has been a very important part of our work and one of our flagship projects.

The situation is different with banking in that we have not at this stage made a market investigation reference. However, soon after we started in April, we pulled together the existing work that we inherited from the OFT on the small and medium-sized enterprise market. Concerns have been raised with us by this committee and others, and

we saw and very much appreciated the committee's report on access to finance. Again, as with the energy market, Scotland was probably an outlier in the sense that very high concentration levels were noticeable in the market here, with many small businesses in particular feeling that, for most practical purposes, they had a choice of two firms. That was true to some extent in the retail market as well.

What we proposed in July was that there should be a full market investigation reference of the whole of retail banking—SMEs and personal current accounts—reflecting our concerns, which, again, were about competition and consumer interests not being well served. Before making a final reference, we have to consult. We have done so, and we received the responses a couple of weeks ago. We intend to bring that to a final decision in the next month or so.

Finally, David Currie also mentioned payday lending, which we know from our many dealings in Scotland has been a problematic sector here, particularly in the urban areas. The reference group has been actively conducting direct consumer research, particularly in Glasgow and Edinburgh, and has been talking to experts in Scotland such as Money Advice Scotland, Citizens Advice Scotland, trading standards bodies and others about how best to deal with the problems relating to the sector. The group feels that it is close to the point at which it can consult on final remedies. It plans to do that over the next few weeks, with a final report due around the end of the year.

That gives you an overview of where we are in relation to those sectors. We are happy to answer any questions that you might have.

The Convener: You have touched on a range of issues on which members will want to tease out some detail.

I hope that we will be able to run this session for an hour and give members a chance to ask all their questions. I ask for questions and answers that are as short and focused as possible. That will help us to get through the topics in the time that is available.

Lord Currie, you were talking about the committee's relationship with Scotland and the fact that the Competition and Markets Authority is a UK body. How do you see the authority engaging specifically with the Scottish interest and ensuring that the Scottish viewpoint is properly reflected in your work? You might want to ask Sheila Scobie to talk about that, too.

David Currie: That is an important aspect of our work. Sheila Scobie is responsible for our Scottish office and, in a sense, is a source of information into the organisation and a source of information

back about what we are doing, but that is only one part of it. As Alex Chisholm has indicated, we are ensuring that, in all the inquiries, we explicitly take account of the Scottish dimension in the work, hence the site visits and our coming to Scotland to talk to people here.

Of course, the board has to have an appreciation of Scottish concerns and interests. That is why the board met in Edinburgh in June and had a range of meetings with representative bodies. Doing that was incredibly valuable. All the board members said that it was useful, and it will be a regular feature of our board meetings.

We undertake a variety of forms of engagement, and we ensure that, in their work, members of the executive are explicitly thinking about the Scottish, Welsh and Northern Irish interests and are building that into the way in which the work is conducted.

Sheila Scobie (Competition and Markets Authority): I can say a few words about what I consider my role in Scotland to be. I was appointed in January very much with the view that CMA is a UK-wide representation and needed some form of representation here in Scotland. I see my role as being the face of Scotland in the CMA, helping my colleagues in London to understand what the economic and political dynamics are here and what is of concern to Scottish consumer groups, politicians and policy thinkers. I am also here to represent the CMA in Scotland and to provide opportunities for colleagues from the CMA with expertise and knowledge to be visible in Scotland at events, meetings and opportunities such as today's chance to talk to parliamentarians.

Dennis Robertson (Aberdeenshire West) (SNP): I want to return to the issue of the energy markets. Does your on-going inquiry into the energy markets have any impact on Westminster Government decisions with regard to issues such as electricity market reform? We do not want to pre-empt any outcomes from your report, but while you are going through the investigative aspect, does that prevent any movement, either from Government or the industries themselves?

11:15

Alex Chisholm: That is an excellent question. Oftentimes, we are asked whether, when we have a big inquiry on, it creates a pause in the market and whether firms, the rest of the Government and the regulators should hold back on initiatives that they had in mind. Our message to them is always, as it is in this case, that they should not hold back what they are trying to do. There is no pause in the market, so if someone is thinking about investing in a new power plant or coming up with a

new scheme that they think would be advantageous to consumers, or if the regulator is thinking about pursuing a necessary change in its approach, we do not want them to hold back because we are doing a big, wide inquiry. In a market as big and complex as energy, things are always happening, so it is unrealistic and unhelpful for us to expect people to stop.

It is important that the reference group that has been appointed pay attention to the continuing evolution of the market, and that is very much what it is bent on doing. It needs to take full account of the important European dimension to the existing policy framework, with the energy directives that are in place and the requirement for an internal energy market and, within that, the role of interconnectors. The electricity market reforms are essential to the Government's objective of delivering reliable, affordable and low-carbon energy for the period ahead. That is an important policy context that the reference group wants to take account of.

If, when the reference group examines the policy context or, indeed, the regulatory frameworks that have been established, it sees things that diminish the prospects for competition, I would expect it to make recommendations and observations to try to address them. However, as you rightly say, it is early days in the inquiry.

The reference group is independent. We are now into the second phase, which moves the inquiry outside my control as chief executive, the control of David Currie as chair, or, indeed, the control of Sheila Scobie, to an independently appointed reference group that is chaired, in this case, by Roger Witcomb. In July, the group published an issues statement of some of the key points that it considered worthy of further inquiry. That includes things such as vertical integration and the potential for market power in electricity generation, which would probably touch on some of the areas covered by electricity market reform.

Dennis Robertson: Is there enough confidence in the markets to proceed with any investment or are some of the markets—primarily within the renewable sectors—holding back because the inquiry is going on?

Alex Chisholm: There is an issue of confidence in the consumer market, where there is a degree of distrust, and, likely, in the supply side and in investment. The Government has been looking to establish EMR to provide confidence in the investment scenario. We read in the papers that the European Commission is close to finalising its decision on Hinkley Point, which will be important for understanding the framework for future investment in nuclear, not only in the United Kingdom but throughout Europe.

For all the players within that, some uncertainty must be associated with our inquiry. However, we have found and observed that people in the industry have a degree of confidence in the inquiry as an objective, independent and evidence-based process in which the views of industry players, consumer groups and everybody else will be carefully considered and in which there are ample opportunities to correct any errors of fact or analysis. Furthermore, anything that the reference group chooses to recommend or put in place by way of remedies is ultimately subject to full legal scrutiny.

Therefore, there are a number of safeguards to ensure that whatever the reference group comes up with will be proportionate—it is required to do that by law—and justified by the facts. Whenever we get the chance to speak with investor groups, we emphasise those points, and they seem to find that reassuring.

Dennis Robertson: How do you try to re-establish confidence among consumers and in the customer base that you are working towards an outcome that will be beneficial to them?

The Convener: I think that Lord Currie wants to respond to your previous question first.

David Currie: I just wanted to add the point that one of the factors in Ofgem's reference was that there was a lot of uncertainty in the energy market anyway. The inquiry is just one aspect and it is not obvious that it in any way adds to the uncertainty that is facing investors, and therefore it is not a dampener on investment prospects.

Dennis Robertson: I appreciate that, thank you.

Alex Chisholm: I will begin to try to answer your other question about consumer confidence. That is really a key issue in the inquiry. As I say, I am not a member of the inquiry group so I do not want to say too much about it.

I suspect that some things will be very relevant. From the consumers' point of view, it will be about understanding what they pay for—such as how their bills are calculated and how the information is presented—what their choices are and what options are open to them. It will also be about consumers having confidence in the mechanisms for switching between one supplier and another, in the sources of information about how to switch—including price comparison websites, which play an important part, and other intermediary channels—and in the underlying dynamic of the market. Questions have been raised about whether there really is fully effective competition among the so-called “big six” operators. That has undoubtedly contributed to consumer distrust. We hope that our inquiry will help to settle that matter

one way or the other. If action is justified, people will need to see that that action has been taken.

Those will all be contributory factors. There is probably no silver bullet in relation to consumer confidence. It has taken a while to degrade and it will take a while to rebuild, but rebuilding it will be necessary, especially in an essential utility such as energy.

Chic Brodie (South Scotland) (SNP): You have alluded to the impact that European directives allegedly have on competition. I want to ask about the wider international impacts. For example, the new transaction system agreement between the States and Europe is coming down the pike. There are dual tax arrangements in various industries and transfer pricing accommodations that one might suggest militate against the consumer interest. How wide is your remit with regard to international activities?

Alex Chisholm: I have to say that it is fairly narrow. You raise an interesting and important point that, in the global economy, there are likely to be considerable distortions in trade flows and investment associated with tax regimes. In fairness, there is probably an on-going debate about whether that process of competition between countries based on tax is welcome or harmful. Tax codes have not developed in a fully co-ordinated way and there are obviously considerable overlaps and tensions between them, which creates some scope for individual firms to end up paying very low levels of taxation.

The issue is an international one. It is for the G7 to co-ordinate action to reduce such distortions. It is not something over which the CMA has much influence or say, but you are right to draw attention to the impact that it can have on investment.

You have probably seen that the European Commission has been making noises recently about the Irish tax arrangements with Apple. The EC competition directorate is responsible for state aid, so those noises suggest to me that there must be some potential for distortion there. We will have to watch that carefully.

There is scope at the European level to see whether things are distorting trade in the internal market. However, to really grasp that nettle will require a lot of international co-ordination.

Chic Brodie: In your submission, you say:

“The CMA's mission is to make markets work well for consumers ... The CMA is tasked with delivering benefits to UK consumers of at least ten times its costs – well over half a billion pounds every year in consumers' pockets.”

How were those outcomes arrived at? Consumer needs and wants are different and clearly cost of ownership is different. How was the “ten times its

cost" figure arrived at, which the briefing states will mean

"well over half a billion pounds every year in consumers' pockets"?

David Currie: There is an established methodology, which has been applied to the work of the Office of Fair Trading and the Competition Commission in the past and is based on academic research. The figure is clearly an estimate, but we do not control the methodology; in other words, we are audited by others. The methodology attempts—as best one can—to estimate real benefits to real consumers. I will not try to articulate how it is done because inevitably it is a rather complex process. However, that is the benchmark that has been set for us to achieve.

Interestingly, the OFT, in its last year of operation, achieved that 10:1 ratio, which makes investing in the competition work that the authority is doing a pretty good investment. That may have been why the UK Government decided to increase our budget by something like 30 per cent, enhancing our work and the effectiveness of what we do.

Alex Chisholm: The UK has been a leader in the effort to try to develop robust methods of calculating the impact of interventions by competition authorities. The work that was done, which I think was led by the competition and consumer group at the University of East Anglia, has now been adopted by the Organisation for Economic Co-operation and Development as the international standard for such calculations. That should give people some comfort that it is a fairly robust and reliable method of calculating the impact.

The calculation is also based on so-called direct benefit. If we make a market intervention and, for example, put in place a price control or a transparency measure that we can see has some impact on prices thereafter, that benefit gets calculated. We have not yet found a good method for calculating indirect benefits from achieving a higher level of confidence in the investor community, the consumer community or the marketplace. When we bring in an individual compliance action, we measure the direct effect of that compliance action, not the knock-on effect in deterring other people. The 10:1 ratio is probably quite a conservative figure in terms of the total impact on the economy of competition authorities such as ours.

Patrick Harvie: Following on from the question about the nature of the authority's priorities—its purposes—Chic Brodie mentioned the CMA briefing, which says:

"The CMA's mission is to make markets work well for consumers, business and the economy."

From the legislation that created the authority—I confess that I have not read every dot and comma—it is fairly clear that the purpose of the CMA is to

"seek to promote competition, both within and outside the United Kingdom, for the benefit of consumers."

What happens when there is a conflict between the interests of consumers and the interests of gross domestic product growth or the interests of business in any particular sector, or is the phrase

"consumers, business and the economy"

an article of faith that those things are always the same?

David Currie: Our view is that, in general, they are the same. To be clear, our primary duty is to consumers—to deliver benefit to consumers now and in the future. We think that making markets work well is also good for business—for good businesses, not the ones that want to do dirty deeds. Good businesses thrive in open, competitive markets. Therefore, on the whole, what is good for consumers is also good for innovative, dynamic businesses. The empirical evidence is that effective competition in open markets is also, on the whole, good for growth—not short-term growth but longer-term growth. Therefore, we think that the three things fit together. Consumer interest is at the heart of what we do; businesses thrive in open markets if they are innovative; and that is all good for the overall growth of the economy.

Patrick Harvie: But if you were looking at a particular sector of the economy or a particular industry and there was clear evidence that consumer interests were not being protected, even though businesses and GDP growth were doing well, your legal duty would be to focus on the consumer interest.

11:30

David Currie: Yes, absolutely.

Patrick Harvie: Let me give an example. You mentioned high-interest loans and suggest in your submission that you are concerned that issues result from a lack of competition.

If there was an intervention and we had greater competition, but some consumers were still paying exploitative interest rates, that would clearly not be in the interests of those consumers even though the market might be more competitive. Businesses can sell rubbish products with big marketing budgets, clever gimmicks and so on—we need only look around the world to see that such things are possible. Having healthy competition does not guarantee that consumers' interests are being promoted.

Alex Chisholm: You make an excellent point. The high-interest loans market is a good one to look at from that perspective. Our interventions make most sense when they are viewed alongside the Financial Conduct Authority's responsibilities and interventions.

There is an issue with potentially unscrupulous firms getting into the market and exploiting consumers, which is probably best addressed by having a regulated licensing scheme—

Patrick Harvie: The issue is not just firms getting into the market, but firms that are already there.

Alex Chisholm: Absolutely—point made. The Financial Conduct Authority, which is responsible for regulating that market and licensing firms, has been very clear on that and is tightening up considerably the requirements for being in the market. As a consequence, quite a number of firms are exiting the market. That is one important element of regulation.

The second important element of regulation in that market, which is a Government initiative that the FCA is implementing, is to put in place a price cap for the maximum rate that can be charged. As you know, that cap will take effect from January next year.

We are really the third leg of the stool. We are saying that, even though there is a price cap, caps that are intended as ceilings can sometimes become floors, with that price becoming the going rate. We would like to see some competition even below the level of the cap, with people saying, "The terms that I am offering represent better value for consumers." Ultimately, a loan is a financial product, and the cost is very important.

The work of the CMA reference group—as I said, the second stage of an inquiry is done by an independent group—has focused on the fact that when consumers make choices in that market they seem to be driven very much by convenience of access, which is mainly through digital channels—just two or three clicks and you get a loan. However, although you then have the money, the cost of the loan is sometimes extraordinarily high. The reference group believes that it is important to promote the cost of the loan alongside its convenience as a relevant choice characteristic for consumers, and to give people better information on the cost more promptly so that they can consider what a loan will cost them.

The group also wants to improve the role of intermediaries, such as price comparison websites, in that regard, particularly in making clear whether, if someone is holding out a choice of alternative suppliers, they are really offering a true brokering service or just working on behalf of the credit providers, whereby when you apply for a

loan, your details are sold to the highest bidder. We have been very concerned about some of the misrepresentation that is going on.

Patrick Harvie: I am keen to explore the nature of the CMA and the various interests that it is there to represent, rather than the detail of that particular industry, which I am sure there will be other opportunities to explore.

If someone with my political leanings was to frame legislation to give the CMA a legal purpose, they might talk about protecting people's benefit or the common good rather than protecting consumers, which seems to imply that the impact of market activity is relevant to the CMA's responsibilities only in terms of the consumer relationship.

What role do you—or could you—have in a market in which social and environmental costs were being externalised and were being borne not by the businesses involved or the customers of those businesses, but by wider society? I am thinking about waste management, energy and transport—there are a whole host of areas. I could probably make a shorter list of examples in which that does not happen.

What role do you have when the costs and impacts of market activity are borne not by consumers as consumers but by people as citizens?

David Currie: In general, where there are those externalities, the best mechanisms for dealing with them are taxes and levies of various kinds rather than the instruments that are in our control. Obviously, we do not have those powers.

Having said that, if we were doing a market inquiry into a sector and felt that there were such external effects, the inquiry group could look at that and take account of it in its recommendations.

I go back to the previous question. It is important to emphasise that, although we are called the Competition and Markets Authority, we have in addition to our competition role a very important consumer protection role, which we play alongside trading standards in Scotland, trading standards more generally and Citizens Advice Scotland. The combination of consumer protection working together with our competition powers is powerful. We are not purely focused on the competition aspects—we are concerned about the impacts on individuals, particularly of firms behaving inappropriately.

Patrick Harvie: But you focus specifically on the impacts on individuals as consumers rather than on people in the wider sense.

David Currie: Yes.

Joan McAlpine (South Scotland) (SNP): I have a specific supplementary on the conflict that Patrick Harvie described. I was going to use the example of nuisance calling. As you are probably aware, a *Which?* magazine survey found that 85 per cent of consumers had received nuisance calls and that, as a result, almost half of the people surveyed did not like picking up their home phone. The Scottish Government has already outlined what it would have done if it had had powers in that area, which would have involved creating an effective enforcement regime with penalties and a code of practice. What are you proposing to do about nuisance calls?

Alex Chisholm: That is a matter for the Office of Communications, I think, which has responsibility for that area in the UK, as well as the Scottish Information Commissioner's office. That is the combination, and they are developing—

Joan McAlpine: Our proposal was for a much more integrated system of regulation, which would have meant that we could have put effective protection in place.

David Currie: Nuisance calls are very much an issue for Ofcom. In a sense, the integration of regulation already exists.

Joan McAlpine: But you are responsible for consumer protection and consumers are being affected by having their data sold on and so on.

David Currie: There is a concurrency arrangement in the regulated sectors. In the case of nuisance calls and that sort of thing, the primary consumer protection role would fall to Ofcom. It is the body that should be acting.

Joan McAlpine: That perhaps highlights some of the problems of the fragmented nature of regulation in the UK.

David Currie: I do not think so. We co-ordinate quite effectively with many different bodies. I have mentioned our relationship with trading standards Scotland and with trading standards more generally. The primary role is quite clear in the case of nuisance calls, and it is not for us but for Ofcom. That is not passing the buck—it is a serious issue.

Sheila Scobie: Trading standards Scotland, which is based in the Convention of Scottish Local Authorities, has looked at the issue of nuisance calls and is working with local authorities to consider whether interventions can take place locally. If you like, I can put you in contact with trading standards Scotland so that you can see what it is doing.

Mike MacKenzie (Highlands and Islands) (SNP): Good morning. I am delighted to hear that you are taking such a keen interest in Scotland and that you believe that the challenges for you

here are somewhat different from those in the rest of the UK. I would be interested in hearing what you think those differences are. What are the special challenges that you have found in Scotland as part of your remit?

David Currie: I will have a first go at that and then ask Alex Chisholm to continue. One important issue is the balance between urban and rural. That is an issue in England and Wales, but we are very conscious of the fact that Scotland has not only urban concentrations but very significant rural communities, which poses issues in a number of different markets.

Concentration is also an issue. We have already referred to the fact that the energy market here is more concentrated than it is in other parts of the United Kingdom, and that is relevant to our investigations.

Those are two particular issues that we are very conscious of, but we should not overemphasise the differences. What is important for us is that we are in touch with interests in Scotland as well as in Wales, Northern Ireland, the north of England and various parts of the United Kingdom. That is an important part of our remit.

Alex Chisholm: David Currie is absolutely right. Sometimes people misdiagnose differences between different parts of the UK according to the nations or their regions, but the differences are in fact more to do with high population density versus low population density. In Scotland, that is about urban versus rural areas.

That said, a guiding light that we give all our groups who carry out inquiries is that they should look for and pay attention to differences. In relation to the payday sector, for example, the groups have over the past year paid a lot of attention to potential differences between Scotland and other parts of the UK. That was one of the reasons why they conducted a lot of consumer market research here and interviewed all the main players on the supply side and the consumer side.

They found some differences in structure, particularly in the high street. For example, one of the larger high street lenders—Speedy Cash—does not operate in Scotland but is very active in England, while other main high street chains such as The Money Shop operate across the UK. The groups have to pay attention to whether the differences—there are always going to be differences—are enough to justify looking at Scotland as a separate market or as part of the UK market.

That is also a feature of the recent work on other sectors such as the private motor insurance sector. We have not talked about that yet, but when the groups looked for differences at a national level, they found that in some respects

the Northern Ireland market was quite distinct from the UK one, which probably reflects some differences in industry structure and links with the Republic of Ireland.

It is probably unwise to generalise too much about Scottish consumers and their differences compared with those in any other part of the UK. However, I will make one observation, which is that from our research and our contacts with consumer groups here we have noticed that quite a number of Scottish consumers have quite a high level of loyalty to Scottish brands, including those involved in energy and banking, which reduces the likelihood of their switching to an alternative provider from elsewhere in the UK.

High concentration levels on the supply side are to an extent being reinforced by consumer loyalty—or, to put it less positively, inertia—and staying with established brands through thick and thin. Even when the performance or service has not been as good as consumers might have wished, they still do not change. We have noticed that particular characteristic in some segments but, again, I would not try to generalise that across the economy.

Mike MacKenzie: Thank you.

I want to move on slightly. It is no secret that I represent the Highlands and Islands region of Scotland, an area that I can characterise only as suffering from multiple market failure. I hope that you will spend a bit more time in Scotland and come to the Highlands and Islands and see the effects for yourself.

I will run very quickly through some of the main effects. Postal and delivery charges are disproportionate, with services not available at all on some of the islands. With mobile broadband, there is no 3G to speak of, the 2G situation is worsening and the telephone signal is desperate. What I am describing are instances of clear market failure—please tell me if that is not at all of interest to you.

Fuel and food costs are also high. Mr Chisholm made an interesting point about brand loyalty, but the fact is that SSE is one of the few energy supply companies that offer a storage heater tariff. In off-gas-grid areas, people depend much more on storage heaters than they do in other parts of the country, but they are not able to change their supplier because SSE is pretty much the only company that offers an appropriate tariff. The case for intervention seems to me to be very clear. Fuel poverty manifests itself at over 50 per cent on Scotland's islands, but we cannot access smart meters because they depend on a 2G signal.

It seems to me that the Highlands and Islands suffer from a whole basket of market failures.

Does that come under your remit at all? If it does, can you do anything about it?

11:45

Alex Chisholm: I will try to describe what is and what is not within our remit and what we are doing about the areas that fall within it.

The regulation of energy tariffs, the universal telephony service and the coverage requirements for mobile signals are all the responsibilities of sectoral regulators—Ofgem for energy and Ofcom for the communications market. A lot of responsibility has been written into their rules to ensure that vulnerable consumers are not disadvantaged by the provision of the postal service, the telephony service and the electricity supply. A cross-subsidy is inherently built into their schemes, because the cost of providing those types of utilities is proportionately much higher in low population density areas than it is in high population density areas. That cross-subsidy in the fundamental schemes is for reasons of public policy and social cohesion, and it is obviously beneficial for people in more remote communities.

I will highlight two areas in which we have been active in trying to address the issues that Mike MacKenzie has raised, particularly for people in the Highlands and Islands. One of our two predecessor bodies—the OFT—carried out a very detailed study of remote communities, which it used as a platform for trying to bring about change in a number of areas. An issue that came through very strongly in that study was delivery costs, and partly as a consequence of that OFT initiative the Scottish Government developed a set of principles for retailers that has now in effect been copied and applied right across the United Kingdom by the Department for Business, Innovation and Skills to try to ensure that in so far as delivery charges apply a clear sense of responsibility and a fair deal are available from retailers for people who live in rural communities.

Over the past year and more, we have been very active with an enforcement action that we took in relation to the supply of road fuels in the Western Isles of Scotland. I think that we talked about that when David Currie and I last met you in Edinburgh. At that stage, we had not brought the case to a conclusion, but it has now been concluded.

First, we were able to break a number of the exclusive agreements that tied a lot of garages in to one supplier, which made it very hard for any alternative supplier to come into the market or for there to be any real price competition. Secondly, we managed to achieve by negotiation a set of legal commitments that mean that the dominant provider in that market—GB Oils—is now obliged

to make its depot facility for landing fuel available to alternative suppliers and for an assured term. We think that that will be a very positive move for the competitive dynamic in the market.

We understand that the cost of access to fuel is critical in island communities, which is why we gave that case real attention. We are very pleased with the result that we have been able to achieve, following a lot of local consultation over two rounds in the past few months.

Mike MacKenzie: Can I take it from your earlier comments that you operate only when you are not treading on another regulator's turf, or are you more generally concerned with market failures that other regulators are quite manifestly failing to deal with?

Alex Chisholm: The notion of the regime that we have—David Currie rightly referred to a concurrency arrangement—means that we have competition and consumer powers, as do the sectoral regulators. Like any other agency, we have to ensure that we make the best possible use of our resource. We are not very big; we have 600 staff, which might seem quite substantial, but we are smaller than Ofcom and Ofgem and a lot smaller than the Financial Conduct Authority. As our responsibilities go right across the economy, we must ensure that we put our limited resource where we think that we can achieve the best possible results, keeping in mind the 10:1 ratio that we discussed earlier.

In essence, if we feel that other regulators have the responsibility and mandate for something and are fulfilling that, there is no particular need for us to get involved. On the other hand, if, as has been suggested, we felt that they had failed to do something and it was clear that that was the case, we have the power to step in.

Mike MacKenzie: Right. That is interesting. You can tread on their turf.

You talked about payday lending. There are other regulators that regulate financial services. I am a wee bit struck—

The Convener: I am sorry, Mike, but we are a bit short of time. Can you ask one more question?

Mike MacKenzie: I am happy to finish there, convener.

The Convener: Fine. Thank you.

Dennis Robertson: I have a brief supplementary question. I was interested by the mention of Scottish brands and the loyalty to them by people who live in Scotland. Is it not slightly misleading that the energy and banking sectors—they are the two main ones—continue to use the Scottish brand for Scottish consumers, when their parent companies are not Scottish? Are we

looking at consumer protection or competition? Basically, banking and energy might promote the Scotland bit, but the companies are not Scottish.

David Currie: That is a much more general issue. The nationality of any particular international company is very hard to define.

Dennis Robertson: Are we being open and transparent?

The Convener: We can let that question stick to the wall for the time being.

Richard Baker (North East Scotland) (Lab): My question also touches on international issues, although I know that you have a very limited role in them. In response to Mr Brodie, you talked about European issues. It is clear that the OECD and others are doing a lot of work on unfair tax competition. Can you feed into that work at all? Do you simply observe it from a distance? Do you have any remit on that?

Alex Chisholm: If we were looking at a particular market and felt that unfair tax competition was really distorting it, we would like to share that with the OECD.

Richard Baker: On the domestic market—I think that Lord Currie referred to this earlier—and domestic taxation, if you felt that a market should be looked into and somebody was getting an advantage in it because of their taxation practices, you would bring that to the Government in the UK, as well.

David Currie: We do not have powers to deal with taxation, but we could bring such things to the attention of Government. We could write or talk about them publicly.

On our international work generally, we co-operate through the European competition network, which involves close co-operation among the competition authorities in the European Union. We also input into the international competition network, which is a network of around 130 countries. There is a lot of co-operation between the competition authorities internationally, partly to help developing countries to develop their competition powers and bring them up to international standards. We do similar collaboration with the competition part of the OECD. Therefore, there is a great deal of co-operation.

There is reference in our duty to looking after the interests of consumers both in the UK and internationally. The international dimension of our work is important.

Richard Baker: Having a fair global tax competition regime must be part of that.

David Currie: Yes, but I do not want to overemphasise our powers to influence that.

Richard Baker: Of course. I understand that.

Marco Biagi (Edinburgh Central) (SNP): Many of the examples that are referred to in the briefing and the materials that we have received have been about where a small number of companies have operated in a way that does not work terribly well, but largely they seem to come from the number of cases. When you are considering possible competitive distortions, do you also consider such factors as barriers to entry for new firms and the transparency of information? I can think of two markets that are quite healthy when it comes to the number of providers—mortgages and telecommunications—but in which the terms are not easily comparable and there might be market distortions. Is that something that you think about, and how much weight does that sort of issue have?

Alex Chisholm: That is very much something that we think about. You have hit on one of the core analytical areas for us. We do not have what we would regard as a slightly old-fashioned, structuralist approach—just noting how many players there are in the market, which would supposedly tell us whether there is a problem. We find that it depends on the dynamic.

I will expand on that a little bit. We might consider, for example, the global market for mobile devices and smartphones. If we had considered that market about four years ago, we would have seen that almost all the profits in it were made by just two firms, Apple and Samsung. There has been a lot of change. If we go back 15 years, we find that most of the profits then were made by Nokia. We might say that, at any point in time, one or two firms seem to be very strong, but things keep changing.

There is a huge amount of dynamism in that very valuable global market, but it would be difficult to say that one firm is dominant in it. It might appear so for a moment, but the situation changes. Purely considering market share at a single point in time will probably not help you very much. In other markets, where we see much less fluidity, development and dynamism, it is much more of a problem, with high fixed costs in large industrial markets that have been very unchanging for long periods. That is particularly the case in commodity areas. A two-firm or three-firm structure is often very bad for competition there.

We pay attention not just to the current distribution or concentration levels, but to the fundamentals—as you rightly say—around entry barriers, how many people can come into the market, what the consumer dynamic is and how much pressure there is from big retailers or directly from consumers in that market. That is absolutely one of the areas that we are thinking about most actively in our economic analysis.

You touched on a really interesting and good point around the existence of markets in which there are lots of players but where the competitive dynamic nevertheless does not seem very good. Payday lending is one market in which there are a lot of players. In the mortgage and insurance markets, there is scope for a poor competitive dynamic, notwithstanding a large number of players.

David Currie: If we carry out a market inquiry into banking—we have not yet decided on that—a key question that the inquiry will ask is whether there are barriers to entry. Are there ways in which new players can come in with new technology and techniques, or are there barriers that make it very difficult for them to get in? There are some interesting questions around that.

Margaret McDougall (West Scotland) (Lab): Your briefing paper mentions strategic goals and refers to

“Developing new resources to help businesses understand the law”

and so forth. Could you tell us a little more about that?

David Currie: We think that having greater awareness in boardrooms around the country and an understanding of competition law, notably on collusive behaviour, cartels and so on, and of the fact that there are things that are not legitimate, are illegal and can lead to prosecution—we have prosecuted in the past—is very important. We want to put resource into making people understand what the law is—what is permissible business behaviour and what is not.

Margaret McDougall: How will you do that? You cannot go around all the boardrooms.

David Currie: No, but we can find as many forums as possible, and we can find ways of communicating effectively with business. Clearly that is a challenge and we will not address it perfectly, but we want to put more resource into it because we think that it is an important aspect of our work.

12:00

Alex Chisholm: We are trying to increase our direct links with business bodies. This week, I have a meeting with the Institute of Directors. We are also working with professional advisers to businesses. Last week, I met members of the Chartered Institute of Internal Auditors. We have worked a lot with the Scottish Competition Law Forum and the Law Society of Scotland.

We find that a joint approach often works very well. Our criminal powers do not extend across the country, and for criminal prosecutions we need to work closely with the Crown Office and Procurator

Fiscal Service. Just two months ago, we and the Crown Office published a joint article in *The Journal of the Law Society of Scotland* about the new powers, how we co-operate and the legal changes that have been made.

We work very hard to ensure that firms get information sources directly from their representative groups and that the advisers to firms—lawyers, auditors or, in some cases, financial advisers—are well informed about competition in consumer law and understand the consequences of breaking it and the merits of complying with it.

Sheila Scobie: In the Scottish context, we have a number of events planned between now and the end of the year that are aimed specifically at helping business organisations, public sector organisations and procurement organisations to understand a bit more about our work. To support that, we have recently published a number of little summaries to help people understand in a fairly simple way what things they should look out for. We intend to circulate those summaries and get them into some of the business press. They will also explain how people can get in touch with us to tell us what is happening in their area.

Alex Chisholm: They are called 60-second summaries, because we know how busy people are.

Margaret McDougall: In response to Mike MacKenzie's question, you said that you have 600 staff. How many of them are based in Scotland?

Alex Chisholm: At the moment, we have two staff based in Scotland. As David Currie said, we were a merger of the Office of Fair Trading and the Competition Commission, both of which were headquartered in London. We had a responsibility to take on the existing staff and to take on one of the two offices. That decision was taken by BIS ministers before we got under way. They chose one of those two offices as our main base of operations. In our formative stage, we were concerned about bringing together those two bodies efficiently, to ensure that we could fulfil our statutory functions.

As David Currie said, within the first month of getting started we gave absolute priority to establishing a network of offices, which we did not inherit, across the UK; those offices are in Belfast in Northern Ireland, in Cardiff and here in Edinburgh. Our approach has not been to say that we get views about what is happening in Scotland, Wales or Northern Ireland only in the regional or national offices. We want all our 600 staff to ensure that in their projects, analysis and work they pay attention to the important differences that exist in how markets function throughout the UK. We have said not that it is one team's

responsibility, but that it is everybody's responsibility. We could not have been clearer or more consistent internally in emphasising that. Staff have responded extremely positively to that.

Margaret McDougall: Two staff for Scotland does not seem sufficient to cover all that you are talking about, such as getting out to businesses and providing all the information.

Sheila Scobie: I see the Scotland office's role as being a door to the rest of the organisation. Our role is to help colleagues in London make the contacts that they need for the pieces of work that they are doing.

Margaret McDougall: Do they have the necessary expertise regarding what is happening in Scotland? That is my concern.

Sheila Scobie: Our role in Scotland is to help them with the expertise and put them in contact with the consumer bodies and the business organisations. We were talking about banking. A team came up recently to talk to Scottish Financial Enterprise specifically about our banking work.

Face-to-face contact between experts and people with knowledge is as important as establishing a larger team, which may only be able to skate along the surface of the volume of work that we do. What is important is getting people up here and to be visible up here. Our role in the Scotland office is to provide the events and opportunities that enable that to happen.

Alex Chisholm: Our basic mode of work is to gather evidence and carry out analysis. We gather evidence across the UK, from written representations, which are very important, and from face-to-face meetings and site visits. Our market research in the energy, banking and payday lending sectors has had a real focus on Scotland.

The way in which we are structured institutionally, from the point of view of geographical location of staff, does not describe the amount of involvement that we have with Scotland as a market, which is very heavy and constant.

Chic Brodie: I am glad to hear that you will propagate your enterprise to businesses. I am sure that a couple of high-profile legal cases will help concentrate the minds of some who do not abide by the rules.

You talked about the consumer benefit, but consumers can benefit if there is more efficiency in Government. I know that you are very busy, but what thought have you given to looking at competition in the supply of medical or defence products, for example? Is that on your agenda? Will you see what impact that has? I hope that it

will be more than £0.5 billion. Will you look at how competition affects prices for Government?

Alex Chisholm: We get the opportunity to do that and we take it wherever we can. Sometimes that comes up in mergers.

I will give you a couple of examples. We did a merger case recently in relation to health technology products that are used by the national health service. We also have two on-going enforcement cases in relation to pharmaceuticals, which have a huge cost for the NHS in Scotland as well as in other parts of the UK. We also did a merger case in relation to some quarries here on the supply of asphalt and aggregates for roads, which is a massive cost to the public purse. We have done a market inquiry in relation to aggregates as a whole, which also had a strong Scottish dimension to it. Those are some examples of looking at supply markets—in those cases, healthcare and building materials—and costs that end up being borne by the public sector.

We are also looking at rolling out a scheme with the National Audit Office and Audit Scotland to give better advice on procurement and, in particular, the signs of collusive tendering, which is a hard-core criminal offence, from a cartel law perspective. We want to ensure that people design procurement in a way that is efficient and gives good incentives for all players, and we want them to be alive to the possibility of collusive tendering and to know that we can get involved in dealing with it.

One of our predecessor bodies, the OFT, brought a substantial cartel case that involved 102 firms in the construction industry that engaged in what is called cover pricing, in which people submit what are in effect phoney bids. That resulted in substantial fines, which I hope will meet the test that you set for us of high-profile legal cases to concentrate people's minds.

The Convener: Our time is up. On behalf of the committee, I thank you all for coming along and answering our questions. I hope that the questions have given you a flavour of some of the committee's interests, that we can continue the level of engagement that some of us have had with Sheila Scobie so far and that we can get you back here on future occasions to discuss how the various inquiries are proceeding.

David Currie: Thank you very much for having us. We have found it very useful and we will be delighted to come back.

The Convener: Thank you.

12:09

Meeting continued in private until 12:11.

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e-format first available
ISBN 978-1-78534-004-8

Revised e-format available
ISBN 978-1-78534-021-5