Interview with Jonathan Scott, Interim Chair, U.K. Competition and Markets Authority Board

Editor's Note: *Jonathan Scott was appointed as a Non-Executive Director of the United Kingdom Competition and Markets Authority Board in October 2016, and as Interim Chair on October 9, 2020. He has practiced competition law in London and Brussels for more than 30 years, establishing the Brussels office and leading the competition and regulatory practice at Herbert Smith Freehills for 12 years, from which he retired as Senior Partner in 2015. He was interviewed for the Antitrust Source by Joseph Krauss on March 30, 2021.*

THE ANTITRUST SOURCE: First off, I want to thank you for agreeing to participate in today's interview with *The Antitrust Source*. Obviously, in normal times we would have been able to do this in person at the Annual Antitrust Law Section Spring Meeting, if you had made it across to D.C. in the spring, but, due to the pandemic, we are doing this virtually today. We appreciate your willingness nevertheless to make yourself available, and we hope that you and your family and all the staff at the CMA are safe and healthy as we hopefully reach the end of the pandemic in the coming months.

Jonathan, I'd like to start with a little "CMA 1.01" I'll call it. I understand that the CMA Board has a governance and strategy role only; it does not get involved in individual investigations or decision-making on specific matters. I was hoping that you could speak to the role that the CMA Board plays in competition policy and enforcement and your role in that function, and how it might differ from other competition authorities that practitioners deal with.

JONATHAN SCOTT: I think the fundamental difference is that the role of the Board is very much a governance function—so as to make sure that we set the right strategy, make the right appointments, we fulfill our public duties in terms of protecting the public purse—but, as you say, we are not the decision-maker.

Now, that is subject to one exception: We are the decision-maker as to whether to open a market study or to make a market investigation reference. Both of those are very specific to the U.K. competition regime. They look at where markets are not functioning well but where there is not either an individual or a collective infraction. So that is the one area where we are the decision-maker, but that is the decision-maker to initiate as opposed to the decision-maker at the end.

We are the decision-maker at the end of the first phase—such as when one might consider a market study to be the first stage and our decision to make a subsequent market investigation reference to be the opening on a second stage, but again one of the differences with the U.K. system is that where we go into a second stage—or there is a market investigation, a market reference, or indeed into a merger case—we use an independent panel who are part of the CMA but are very clearly defined as independent decision-makers.

So, a slightly complex decision-making process, and one different to others. I suppose it is slightly unusual for me as the Chair to ultimately be answerable for all these things that are done in the name of the CMA, but the Board's ability to influence some of the outcomes is very, very limited indeed.

[B]eing ready on the day [of exit from the EU] has been an enormous challenge. It would have been a challenge at any time, but at the same time we were dealing with Covid-19.

ANTITRUST SOURCE: You now have been in your position as Interim Chair for over five months, I believe. What priorities have guided your leadership so far during this time?

JONATHAN SCOTT: There are, I suppose, almost two separate issues.

One was steering the organization through a period of very, very significant change, which is the exit from the European Union: the return of powers to the United Kingdom, in particular for a range of mergers over which we would not otherwise have had jurisdiction. Actually, being ready on the day for that has been an enormous challenge. It would have been a challenge at any time, but at the same time we were dealing with Covid-19.

In parallel, we have been given additional responsibilities by government. We were asked at the end of last year to produce a report on the state of competition, which we published in late December. We were told that we would be given responsibility for something called the Office of the Internal Market to ensure that markets work effectively within the United Kingdom and across the four devolved nations. Also, we have been tasked by government with continuing to progress the digital agenda. I think for any competition authority that represents a pretty hefty workload, all against a backdrop of nobody being in the office.

We have set out our priorities and our plans for 2021–2202 in our annual plan. Looking forward this includes protecting the vulnerable from breaches of competition and consumer protection laws. I think one of the things that we have become ever more conscious of during the various lockdowns is that vulnerable consumers don't fit in a nice easy box and there are various different categories of vulnerability—there may be financial vulnerability, or it might be age-related—but that is clearly an area where a number of markets are not functioning and where we really do have to help those who need the help most.

I think the other challenge for us at a very big-picture level is supporting the U.K. economy as it comes out of Covid, as it comes out of a major economic downturn, to promote innovation, productivity, and growth.

Another focus for us will be to take our place on the global competition stage. We're not strangers there, we have always cooperated and worked with the leading antitrust authorities around the world, but I think that we do have a new and probably more significant role going forward, and that means maintaining some relationships, building some new relationships. That will be a real priority for us.

I've mentioned already digital markets. We have been tasked by government on the 1st of April to set up what's called the Digital Markets Unit, or DMU. We have been promised legislation to enable more effective regulation to meet the challenge of Big Tech. Preparing for that, advising government on the form of the legislation, and various tasks in that direction are going to be very important.

I think for all of us, supporting the transition to the Green or carbon-free economy is going to be really important. It has probably been something we paid less attention to, but I think it's something that all of us owe to our children, and to our grandchildren. It is certainly to my mind an existential threat. Quite how that will play out I can't tell you precisely, but it is very much front of mind for us.

In terms of more immediate priorities, one is dealing with cases expeditiously. As you will be aware, we have asked government for new powers, but we're not just sitting back and waiting for them. We're trying to work out what we can do ourselves before any legislation comes through.

I talked about effective cooperation and information sharing with our partners overseas.

And just seizing the opportunities for reform. It is a very exciting time to be at this particular regulatory authority. I guess if I were going to have been given a choice as to when to be Interim Chair, I couldn't have chosen a much better moment. I hope that all of our staff feel the same excitement.

If we look a little bit further ahead, which will probably be off my watch, we will need to consider how we use those new-found freedoms, and when we use those new-found freedoms.

I think for any antitrust authority there is a need to be ever-vigilant at the moment in light of Covid. Those of us who have practiced for a long time know that economic downturns are a time when anticompetitive behavior can flourish and we need to be very vigilant about that, particularly vigilant in the United Kingdom given the exit from the European Union and the risk of other barriers emerging which may adversely affect our consumers and customers.

And then, as I said, confronting climate change.

Joe, that's probably a rather longer list than you would have chosen, so back to you.

ANTITRUST SOURCE: I think that's a good list because we'll cover a lot of what you said in some more specific questions as we go through the hour. But before we do that, a personal question. You have had a long career in the competition world, having spent the last four years as a Non-Executive Director at the CMA, preceded by many successful years in private practice as well. How has your background influenced the way you think about these challenges that you have faced in the last few months leading up to Brexit and the challenges that the Authority faces in the coming months and years?

JONATHAN SCOTT: It may be helpful if I just backtrack a little bit on my career.

I think, just to introduce this, the real change and challenge of crossing the divide, as of course you have done, is the realization that when you are in private practice it is a very interesting intellectual challenge—you work with high-powered economists, you think about how the law is and how it might develop— but the focus unremittingly on this side of the fence is on the consumer and trying to deliver good outcomes for the consumer. I have certainly found that a humbling experience as I have gone through it.

My own background was that I was a litigator by training. I've lived through the creation of the single market. I've lived through several downturns. I spent my career acting for big corporates. I think that some of them were complaining, but most of them were trying one way or another to manage their way through the antitrust world, whether it was in terms of getting their mergers over the line or facing challenge from the antitrust authorities.

That was my background. I'd also spent the last five years chairing one of the global law firms after the financial downturn, so not at the easiest of times. We also did a merger with Australia's leading law firm.

I suppose what that really taught me about was the skills needed to lead a people organization, to be able to stand back, to think about strategy, to think about the issues, and how you are positioning the organization. That, I think, was very important for me as I now hold various non-executive roles, because it's about setting the tone, setting the strategy, making yourself available to the leadership team, being a safe place for the leadership team, but not being the decision-maker.

For me the mantra is "to question, to challenge, and to support." Again as a non-executive, having been there, perhaps sometimes taking the heat out when inevitably the team who are dealing with something day-to-day feel very strongly, very personally about it, perhaps just trying to bring a bit of objectivity to the table, as I say, even if you're not the decision-maker. And again, being pragmatic in supporting the team, saying: "Look, you can't fight every battle. Sometimes you have to walk on the other side. Sometimes you have to be pragmatic and settle for less than 100 percent." I think those steers are very important.

I am extraordinarily lucky to be surrounded by a very experienced and very talented team, and that makes my job immeasurably easier.

I think for anybody holding the sort of non-executive role that I hold, the most important thing, as well as setting the tone from the top, is making the right appointments. I am extraordinarily lucky to be surrounded by a very experienced and very talented team, and that makes my job immeasurably easier.

As I say, I think you add value as a safe place for the leadership team, and I think that is very important.

But, as I said at the beginning, I think the really big learning for me is that having thought about competition law so much from a client perspective—and perhaps this is a reflection on me as somebody who liked doing the cases rather than reading the law or writing the articles—it is that shift to a relentless focus on what's right for the consumers.

There are three things I wasn't prepared for.

First was the difference being on this side. When I practiced, it was intellectually stimulating, but the practice was also quite pure. You know, you very much thought about what the law was, what the economics told you, what the model looked like.

Second—and I think this is something really important—throughout most of my career people had thought and taken for granted that competition is a good thing and it delivers better outcomes for consumers. But, I don't think, to use your U.S. phrase, the people on Main Street necessarily believe that competition delivers for them, so I think we can no longer assume that we have the legitimacy that we thought we had.

Third and finally: How do we make what we do relevant both in terms of the cases we take on but also how we describe what we do and the words that we use? Again, I find that both a humbling and a challenging experience.

ANTITRUST SOURCE: You mentioned two historical events that we've had in the last year, the global pandemic and Brexit, and Brexit has left many practitioners wondering what effect this will have on competition enforcement in the United Kingdom. Prior to Brexit I saw estimates that the CMA might increase its caseload by nearly 50 percent, in some estimates 80 percent. Have you experienced an increase such as that yet, and what measures has the CMA taken to prepare for any increased workload and new responsibilities after Brexit?

JONATHAN SCOTT: You are absolutely right that we have gained additional responsibilities or jurisdiction, however you choose to express it. We did a lot of very detailed planning, I guess three years ago now, looking at what would have happened over the previous two-to-three-years to give us a really good idea of what to expect.

We looked at the merger cases in Brussels. We worked out those which would have no longer fallen to Brussels and where we would have had jurisdiction and we looked at the sorts of issues they raised and then we looked at the resources that we would need for those sort of cases. The conclusion that we reached was an extra 30 to 50 cases—and I'm hesitating on that, but certainly five-to-seven that would go into the second phase.

It is too early to say, but I think, if I look at the moment at cases that we are anticipating, or have indeed even if we have not started our formal investigations at least sought comments on:

NVIDIA/Arm is one obviously very high-profile case that potentially raises very sensitive issues for the United Kingdom. Living in Cambridge, which happens to be the home of Arm, I am particularly aware of the sensitivities.

Veolia/Suez, which has raised unexpected issues, I guess, because the first step has been an acquisition of a minority shareholding, and under the United Kingdom's merger rules that in itself can trigger jurisdiction.

And *Bertelsmann/Simon & Schuster.*

I think that's an indication of the size and complexity of the cases that we will be dealing with, obviously with many more to come. And again, we worked that out quite carefully by looking at the cartel cases, behavioral cases, to see those which we thought would have fallen to us.

Government has been very supportive because, having gone through that process and having costed it out, we have been provided with additional resources and additional funds. Indeed, government has also made additional funds available to us for the Office of the Internal Market and the Digital Markets Unit.

There has been a lot of work going on very quietly in the background, so it wasn't a case of starting on the 1st of January. We had obviously through the fall been conducting discussions with some parties who were preparing to notify and who either have notified now or will be notifying shortly.

ANTITRUST SOURCE: You mentioned earlier the 2021 annual plan. In it the CMA identified that it plans to place particular focus on several sectors—funeral markets, home care providers, fertility clinics, pharmaceutical, and other healthcare-related markets. Why the focus on these markets in particular in the annual plan? Was it to go to the issue you raised earlier, in terms of being responsive to consumers and places where consumer harm could be very imminent, or were there other factors that led to the choice of those sectors?

JONATHAN SCOTT: I think, Joe, those referred to cases that we completed in the last 12 months rather than a forward-looking plan.

Again, a comment by way of explanation. We do, as well as our competition powers, also have consumer powers. That makes us, I think, historically unusual, though I think a number of jurisdictions have been thinking about whether that is actually something that they would benefit from, that and indeed our market investigation powers.

Funerals was a market investigation. In fact, we brought it to a close earlier than we probably would have chosen to because of the impact of the pandemic on market participants. But we've indicated that we will keep it under review and we may need to return to it. But it is a very good example of a market where competition does not function as well as we would like and there was very clear evidence of price rises consistently and significantly above the rate of inflation. You probably know this from your own experience, but actually if you are organizing a funeral, that is not a moment when you think a great deal about a purchase in the way in which one might think about other purchases.

So we have tried to keep a little bit of our capacity to do some of those cases. We think it's important in terms of our learning, in terms of our agenda.

In fact, we have just recently opened another market investigation into the provision of care for young people, either those who have lost their parents or have been taken into care. Again, there

are elements of that market which we are concerned are not working well and where we think—and indeed have been encouraged by government and others—that using our powers to throw a light on how that market is working or not working will of itself add enormous value.

ANTITRUST SOURCE: You mentioned a little bit in terms of recognizing the need for cooperation among fellow competition authorities, and it struck me that the recent *Stryker/Wright Medical* investigation provided an interesting look into an example of cooperation between the CMA and the U.S. FTC as one example.

Can you speak to the importance of aligning the CMA with activities at other competition authorities—aligning in terms of timing and perhaps potential remedy package considerations with other agencies—to achieve the best result for the United Kingdom in that situation?

JONATHAN SCOTT: We think it's absolutely critical, and we've indicated in the annual plan, as one of our areas of focus going forward.

I think *Stryker* was a really good example of where the parties also proactively wanted to make sure that the system worked, and worked effectively. Our procedures had started later but the parties actually made life easier for us, allowing us to fast-track our procedures by making concessions which they didn't have to do, therefore enabling us to participate in the remedies discussions and to help colleagues in the United States deliver a remedy which worked for us as well as for other competition authorities. That is a shining example of when parties want to work with us.

Now, you and I have probably both been on the other side of the table, where people have been thinking about *"how do we play the order of these notifications?"* because you think that if you get your clearances in *A* and *B* that will give you pull-through in *C* and *D*. I think that inevitably creates challenges.

As we look forward it won't be easy for us at least initially. Because we don't have a mandatory filing regime, that gives people more discretion as to when they come to us. And because, as I was describing earlier, we have this unusual element that if we go to a second stage investigation we use the independent panel, that may make cooperation and coordination slightly more clunky. We have given some thought to that. We think that we can see our way through that through the officials who support the panels, and through the panel chairs. There will be a certain amount of trial and error for us, but I think that if we invest the time we will be able to deliver that. As we all know, there is nothing like working on cases together and delivering outcomes together for building long-term relationships with regulators, so for us it is absolutely front and center of our priorities.

ANTITRUST SOURCE: You mentioned sometimes practitioners get into a strategy of who should go first and what agencies should be put out ahead of other agencies. From this case are there any learnings that you think practitioners or companies should take away from this example in terms of a more efficient review by multiple agencies that would benefit them, get their deals resolved more expeditiously than otherwise?

JONATHAN SCOTT: I think it's probably a wider point than international cooperation. Commercial clients have decisions that they make up-front that may well be driven by financial modeling as to the extent of the concessions they are going to make, and then there is a choice as to when you offer to make those concessions—are you going to play poker and hold them to the very end, or are you going to offer them earlier or possibly up-front but in a way that says, "Look, be very clear, we are being absolutely realistic; this is our line in the sand?"

I think if you really want to drive something through—but I would have said this whichever side of the table I was on—if you adopt that approach of being realistic and being very up-front and open, then I think you have a much better chance of driving through to a speedy conclusion. But that is a commercial choice, and for some it will be perceived as a sign of weakness to offer more than you think you should on day one.

Again, I think encouraging regulators to talk to one another, and to do so quickly, is the way in which to move the process forward.

ANTITRUST SOURCE: Staying with mergers, which is my personal favorite area, being the area that I work in the most, I have seen a couple of statistics which suggest that, first, CMA increased the number of mergers it reviewed in fiscal year 2020 as compared to the previous year. Also, the statistics look like—and I may be misinterpreting them—that transactions that reached a Phase 2 in fiscal year 2021 seemed to be less likely to receive clearance in Phase 2 than in previous years. One statistic I saw was in the previous fiscal year 61 percent of mergers reaching Phase 2 were cleared whereas in fiscal year 2021 only 23 percent received clearance once it went to phase 2.

Am I misreading those statistics or is there anything to take from those statistics? Are more transactions being scrutinized more by the CMA or just more problematic deals being presented to the CMA?

JONATHAN SCOTT: I think there's a chunky element of the latter. Joe, forgive me if I don't know the detail of the statistics. I don't think I would recognize quite those differences. We certainly do have up-ticks and down-ticks, and I think they are driven partly by the level of M&A activity, but I think it's also right to say that we have also seen more transactions in concentrated markets.

Now, interestingly, one of the things that the piece of research I was referring to, our report on the state of competition, identified that markets were becoming more concentrated. I think there's equivalent analysis being done in the States to suggest the same. So that would suggest that people are pushing further towards those limits.

I think what has been quite interesting for us as well is that there have been a number of occasions where we have gone to Phase 2 and where parties have walked off the field of play at that stage; they have decided not to go through the second-stage investigation—whether that means they've changed advisers, whether that means they've just taken a strategic view, or whether it means in some cases there was an element of, "Well, let's see if we can push that one through." So I do think there are all sorts of elements at play here.

ANTITRUST SOURCE: You mentioned earlier the digital markets study and the creation of the Digital Markets Unit. I wanted to ask a few questions about that development because the digital markets are of interest to many, many competition authorities.

First off, in 2019 the CMA published its first directive, the Digital Markets Strategy, and recently provided a refresh of this strategy in early February. Given that it was less than two years since the original publication, what drove the CMA to want to revisit that or refresh that strategy now, as opposed to continuing with the strategy that was considered in 2019?

JONATHAN SCOTT: I think probably we had delivered on very many of the things that we had said that we would do in 2019. I think we need to look at this a little bit in the context of a journey. We had Jason Furman's report, and I think that was published in early 2019, *Unlocking Digital Competition*, and our strategy was very much built on that and indeed on the work that we've done.

We were probably unusual as a competition authority in that we had already set up a dedicated digital unit, not to do digital cases but actually to make sure we had the skill set within the organization to really think about some of these issues—the people who have real expertise in algorithms, who have real expertise in data gathering, and in data management. We have certainly found that that has been helpful, not just in our case work, but in all sorts of other ways, for example thinking about how consumers react and how they behave.

In 2019, as you say, we published our strategy. Since then we have advised government and pushed forward towards setting up the Digital Markets Unit. That's why we again updated our strategy in 2021 so it sets out our aims and our key priorities across digital markets work and our overarching ambition. Just looking at the detail of the strategy, to develop the new procompetition regulatory framework for digital markets, including to establish the DMU, we are very much working to help government with framing the legislation.

We've also committed to using our existing powers to the fullest extent possible in digital markets. We've referred to some of the cases earlier that we've done, particularly in online sales, but we have this year opened the *Google* "*Privacy Sandbox*" case and we've opened another one against Apple, and I think that is indicative that our focus at the moment is around using our existing powers. The work of the group I referred to, the Data Technology and Analytics Unit, is playing a crucial role supporting our case teams.

For me, one of the really, really important things is working with other regulators. . . . [I]t means that there is hopefully less scope for companies that may be coming under regulatory scrutiny to play "divide and rule" between the regulators.

For me, one of the really, really important things is working with other regulators. We have invested heavily in working with the Office of Communications, or Ofcom, the Information Commissioner's Office, and we set up the Digital Regulation Cooperation Forum. That is to make sure that we deliver coherent regulation. I think that also means that we can respond more quickly to issues that can be raised with us. And I think, if I look at it on the other side, it means that there is hopefully less scope for companies that may be coming under regulatory scrutiny to play "divide and rule" between the regulators. I view that as a really important step forward. I think we're ahead of the game and I think others will probably seek to follow us down that line if they are able to do so.

And then, obviously, there is our international work.

But I think, as I say, if one stands back from all of this, these markets are moving so very fast that I would be concerned if we weren't updating our strategy and we weren't pushing forward with an evolving strategy to reflect the fact that market dynamics are changing. I think for regulators around the world the risk is that we are continually playing catch-up and that we need to try to be more on the front foot and to anticipate issues as well as respond to historic issues.

ANTITRUST SOURCE: Jonathan, you mentioned many of the steps that the CMA has taken, and it certainly suggests to an outsider that it seems that the CMA is ahead of many agencies around the world and seems to be positioning itself to be a global leader in this sector and in digital market competition policy. Is that correct, and do you feel that that's kind of a goal do that, and is the CMA prepared to move forward with investigations even if other prominent agencies don't agree with the CMA's position in digital markets?

JONATHAN SCOTT: The first point to make is that we have to be realistic. Just as I said we have invested time in working with our fellow regulators in the United Kingdom, so we have invested very heavily in working with our fellow competition regulators around the world. Again, it is unrealistic to think that you can address a number of these issues just in the United Kingdom, in Australia, in Japan—the States might be different with the major players all being headquartered there—so I think the need for cooperation between regulators cannot be underestimated.

So yes, there will be issues that will be peculiar to the U.K. market, that we may take on on our own. There may be other issues that we take on because we know that other regulators are strongly supportive but they may not have the capacity, and equally we may be supporting them on issues that they are pursuing. So I think there is a dose of realism there.

But I think we have sought to be at the forefront of the thinking around many of these issues. Certainly, I have been very pleased to see that our market study and other elements of our work, for example, were referred to very extensively in a recent congressional hearing and report. I think that is important for us at this particular moment, and I think it's important for us given the importance of this sector to the economy in the United Kingdom but obviously globally.

ANTITRUST SOURCE: Digital markets raise not only competition law issues but also data protection and privacy issues as well, and those three—data protection, privacy, and competition law—have become more connected over the past few years as a result. How will the DMU, data protection, and privacy considerations address this growing crossroad between those three different areas which are really coming together?

JONATHAN SCOTT: There will always be tensions, just as there are tensions between competition law and IP law. I think that what we have really striven for—and that's why I said I was so proud of what we've achieved with the Digital Regulation Cooperation Forum network—is the bringing together of the regulators so that we are talking to one another on an almost daily basis. We're encouraging secondments between our teams.

Now I'm not going to say there will not be issues when what we think is the right solution from a competition law perspective may give rise to privacy issues, but I think what we are seeking to do is to reduce that risk and to ensure that we understand where our regulatory colleagues are coming from but that they also understand where we are coming from. I think that is the best way to manage and reduce the very real risk you identified

I think that there is a widespread view internationally that at the moment there is a need [in digital markets] for not just the antitrust rules but actually additional regulation.

ANTITRUST SOURCE: How do you see the DMU evolving over time as competition policy for digital markets becomes clearer not only in the United Kingdom but around the globe? Do you see its function evolving into different places as that develops?

JONATHAN SCOTT: Gosh, I do find that difficult to answer, simply because if we were having this conversation five years ago, markets would be very different to the markets as they are today—and obviously the drive that we've had from lockdowns and Covid has changed the world in which we are looking at them.

I think the DMU will have a significant long-term role to play. I say that because if it is set up as we have suggested, with some *ex ante* regulation, that suggests that it will not be as easy just to assimilate into the rest of the organization and become part of "business as usual," so in some ways it will have more in common with some of our sectoral regulators. Now again, if we can—I say "we can," but this very definitely is not a U.K.-only issue and the United Kingdom will only be a player in this—but if the effect of the interventions by competition authorities around the world is that the large tech companies change their behavior significantly and materially, then that need for *ex ante* regulation may fall away.

But I think that there is a widespread view internationally that at the moment there is a need for not just the antitrust rules but actually additional regulation.

ANTITRUST SOURCE: One final question in the digital area. One topic *du jour* right now among many practitioners and academics is the concept of nascent competition and nascent competitors and acquiring them. I had to notice that in the recent *Facebook/Giphy* investigation and the announcement of that perhaps going to Phase 2 there was a mention about potential competition in display advertising in the United Kingdom, and it caught my eye. I don't want to ask you questions because I know that investigation is pending and at a critical time.

The reference to potential competition—I have to ask: Is it your view that the CMA will view this nascent competition theory of harm as a strong path forward in challenging digital mergers in the future?

JONATHAN SCOTT: I think not just in digital mergers but in tech mergers more generally. We have reissued our Merger Assessment Guidelines, and that is one of the areas where we have sought to give clarity on our approach both in recent cases and, therefore, to give guidance to our approach going forward. Nascent competition, dynamic competition, and very much focusing on the internal working papers of the parties to identify what they see as the competitive threat, not necessarily just now but moving forward, and looking at where investments may be made and the choices that are being made about those investments. Again, I think some of that is learning that probably came from the pharmaceutical sector, but we have tried to set out that in some detail, as I say, in our recently reissued Merger Assessment Guidelines.

ANTITRUST SOURCE: You touched on this earlier, but in terms of consumer protection issues and consumer protection priorities of the CMA, I just wonder if you could comment for a few minutes on how the CMA will balance resource allocation going forward between new responsibilities or new jurisdiction post exit from the European Union while also maintaining a strong consumer protection focus. How do you envision the CMA balancing those resources? Are more resources going to be needed in the future, or are current resources enough to balance those needs on both categories?

JONATHAN SCOTT: I'm sure no regulator would ever say that it has too much resource, but I think I need to be very clear that government has been supportive and generous. We have been given additional funding for the additional work post EU exit. We have also been given additional funding for the Office of the Internal Market and to set up the Digital Markets Unit.

Obviously, one of the challenges for us is that we are still waiting for the legislation. Government has indicated that it will bring forward. Again, I think similar to many places around the world, the pressure on the legislative timetable post-Covid and coming out of the pandemic, and in the United Kingdom added to that with the EU exit, has meant that we have to be modest in what we ask for.

We certainly wouldn't say that we won't be able to do these things because we've had to switch all our resource. Again, like many competition authorities—and indeed businesses the world over—the challenge of lockdown has certainly impacted our capacity. The last two or three months for many in the Northern Hemisphere have been particularly difficult. However, having said that, we have managed to deliver business as usual, although we've had to push a few deadlines back.

You never quite know how much discretionary capacity you are going to have. There are some things you have to do, such as our mergers portfolio, and you have to give the necessary resource to it, and we have other statutory duties in the same way, so our discretionary portfolio is limited.

We set up what we call the Covid-19 Task Force, and that was very successful in dealing with a number of issues, getting quite significant refunds for consumers across travel, weddings,

accommodation, nurseries—a number of unexpected places. That capacity I hope will now free itself up again.

And certainly we are aware that the work we do in the consumer space is valued enormously. One of the things that we've been doing—and we started this almost as we went into lockdown—is a process of engagement and working more closely with some of the consumer bodies—Citizens Advice, Which?, etc.— again so we have a better perspective of the issues as they face consumers day-to-day. That affects our consumer portfolio, but actually it also feeds for us into our competition portfolio as well.

ANTITRUST SOURCE: You mentioned something that feeds right into my next question. As government agencies had to react to lockdowns, they had to quickly adapt to that new normal of operating under those lockdowns around the world, some with only a few days' notice before going into it.

Do you see changes in process or policy that you adopted in reaction to the lockdowns and the pandemic that you think would be a good idea to keep in place once we come out on the other side? Are there things you did to adapt to the pandemic that actually had a significant benefit and you could see going forward keeping those changes in place?

JONATHAN SCOTT: I think there certainly are things that we will want to consider. When we hold hearings, for example, whether they need always to be in person, and indeed whether meetings that we have held.

I think we have also been giving a great deal of thought to our own internal organization. I'm incredibly proud of what we've achieved because we have actually delivered a pretty full agenda. We've clearly found it a bit tougher the last two or three months, but I'm not sure the outside world would realize that that was the case.

What we are doing is giving a lot of thought to what our working environment will look like on a going-forward basis. That has probably been more the focus of our efforts.

If I go back, it is less than ten years since the Office of Fair Trading and the Competition Commission were merged. I think that was not the easiest of processes—two very different organizations. We've made enormous progress in bringing them together. Moving to new offices at The Cabot gave that an enormous lift, and I was very proud of how we did that in terms of really spending time talking to people about what they wanted in the new offices, what sort of space, how they wanted it set up.

We will go through a similar process now as people return. I think in the autumn we hope to return to some sort of new normality. Now, what that is going to look like I can't tell you, and indeed it would be wrong of me to try to do so, because it will reflect that consultative process.

But I do think that we are also very clear that not having people together you lose benefits, you lose some efficiencies, lose the conversations on the stairs, the chance exchanges. And I think you also risk—and I'm sure this must be a real challenge for you in a law firm—how you on-board people. I mean yes, you can on-board them and you can give them a laptop and you can do all these other things and they can attend virtual meetings, but actually the culture of the place, the ethos of the place.

So there clearly is a role for physical meetings, physical offices, but how you get that balance right will be a real challenge for us. We will just have to try, and we probably won't get it all right to begin with.

ANTITRUST SOURCE: In terms of looking forward into the future, one day we will come out of this pandemic—hopefully soon—if you have two long-term goals that you hope the CMA will be able to achieve over the next five years, what do you think they would be?

JONATHAN SCOTT: I think I might have to add to the two only because we have to deliver on the additional responsibilities we've got post-Brexit.

We have been given the Office of the Internal Market and we've got to get the governance up and we've got to get that running. We can't find many precedents for it around the world, so we are going to have to do a bit of original thinking, and there are obviously things that we can take and borrow from others.

I think an absolute priority is the Digital Markets Unit and getting that up and operating effectively.

We have made proposals for legislative reform. As I've said to you, we are very realistic, so we have scaled those down, but there are some that we would really, really like and we think would make an enormous difference to our work —duty of expedition, in particular, being one of them; obviously, the digital market powers that I have referred to.

That's probably a pretty long list, but I do hope—and this is probably now me personally and I will be long gone—that in amongst all of this, finding ways to make sure that the competition world doesn't stand in the way in terms of the greening of the economy I think is a real challenge for all of us and one we must not shirk from. I make that last comment wearing my own hat rather than the CMA's hat, though I think the CMA would agree and support me.

ANTITRUST SOURCE: Fantastic. I didn't mean to limit you to two goals because I know you have a lot on your plate.

We really appreciate the time, Jonathan, that you've given to us today. Thank you for a very interesting discussion.

JONATHAN SCOTT: Not at all. It's my pleasure. ●