

HOUSE OF LORDS

European Union Committee

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5th Report of Session 2007–08

# **The Single Market: Wallflower or Dancing Partner?**

**Inquiry into the European  
Commission's Review of the Single  
Market**

**Volume II: Evidence**

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# Minutes of Evidence

TAKEN BEFORE THE SELECT COMMITTEE ON THE EUROPEAN UNION  
(SUB-COMMITTEE B)

MONDAY 18 JUNE 2007

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|         |                       |                        |
|---------|-----------------------|------------------------|
| Present | Dykes, L              | Mitchell, L            |
|         | Eccles of Moulton, B  | Powell of Bayswater, L |
|         | Freeman, L (Chairman) | St John of Bletso, L   |
|         | Haskel, L             | Whitty, L              |
|         | Lee of Trafford, L    |                        |

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## Examination of Witness

Witness: LORD WILLIAMSON OF HORTON, GCMG, CB, a Member of the House, examined.

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**Q1 Chairman:** Lord Williamson, thank you very much indeed for coming to help us with our inquiry. This is our first session effectively and the aim of the exercise is to try to produce a report at some time, let us say, in November after the Commission has come forward with its conclusions as to where the single market can be developed further and better. What we are seeking to do at this stage is to focus to some extent on the energy sector, the telecommunications sector and the financial services sector. We would welcome anything that you wish to say in answer to the first two questions. What guidance would you offer this Committee as to where we should be looking? To what extent have the goals of the single market changed since its inception? What has been the reason behind the change? Secondly, what have been the key drivers behind the internal market project to create a single market?

*Lord Williamson of Horton:* Thank you very much indeed for inviting me. I see the questions have a general heading at the top which is “The single market—past, present and future”. I thought that was quite a lot to respond to. I am rather better on the past than the present and the future but nonetheless I will do my best to help the sub-committee. On the first question about the change, if any, in the goals of the single market, I believe there have been quite significant changes but we should not draw the conclusion that what has been achieved is, as it were, dead wood. I am a great believer in the view that what has happened should continue to run at cruising speed. I am very keen on that. We do not have to necessarily intervene in everything because a few hundred million people are operating the single market on the basis that has been decided so far. I believe that there are changes in the goals of the single market and particularly in my view it has been added to, not just changed, with the passage of time. I think you are already running on those lines in what you have said. Why is that? First, it is because of the big

change in circumstances compared to the situation when it was launched. You can think of obvious changes like movement of labour, which is quite different from what it was, much bigger and sometimes more difficult; the attention to the environment and big changes also in such things as the scale of retailing. We did not have giant supermarkets in 1968 when we first had a Customs Union and we did not have such big ones when we came to the single European Act in the eighties. Secondly, I think there is much greater recognition of the potential effect on the core single market of action or lack of action elsewhere. I know you are on this point but it is for me a key point. For example, the extent of liberalisation in energy markets and the telecoms revolution with online purchasing and all these changes. These are the reasons why there are changes, not political decisions in a sense. It is just that the world has changed and we need to keep up with it.

**Q2 Lord Powell of Bayswater:** If you were in our place sitting here, what would you focus on? Obviously the inquiry cannot focus on the whole single market, past present and future. If you were looking at one of the key issues you think we ought to ferret out, particularly for the next phase, what would you identify?

*Lord Williamson of Horton:* I think in this case the second of the two documents by the Commission is quite helpful. It does identify a number of areas where it is important to look at the changes or the additions to the situation since the first decisions were taken. That does of course include the points which you seem to be establishing now: the areas like the public utilities, not just energy but the other public utilities such as electricity, gas, mail and so on, where progress is not always very fast and where the element you are coming on to of economic nationalism is well known to remain in some parts of

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the European Union. Therefore, the progress towards getting a genuinely open market is much more difficult in those areas. That is a very important point. A key further point is to look at areas where we have made progress but not enough, that we are running but not well enough. Obviously financial services are not complete. We congratulate ourselves that we have now done something on financial services but obviously not enough. Particularly in view of the importance for the United Kingdom, I think it would be good if this Committee could look at that. The third element is to look at areas where the nature of the original decisions may not fit the current circumstances. The form of regulation may be too tight now we have changed quite a lot to more open systems of mutual recognition and so on. The fourth element is that there are areas where the European Union can have a big influence outside its borders by being a global setter of standards and quality arrangements and so on. I think that is quite important because it is valuable for our economies if we can influence what is done elsewhere.

**Q3 Lord Powell of Bayswater:** Do you think there is anything to be gained from pursuing Mrs Merkel's proposal, which has gone quiet recently, of trying to negotiate common standards between Europe and the United States?

*Lord Williamson of Horton:* I am somewhat hesitant about whether that would lead to very much in the near future. I think it would be very difficult to do. If it was a perfect world, that would be lovely but we have to concentrate on where we are most likely to get results. I think that would prove a difficult task. If this sub-committee can achieve it, you will go down in future as one of the most famous sub-committees, but I doubt whether you will.

**Q4 Lord Haskel:** Who do you think have been the main beneficiaries of the single market and do you think this is likely to change?

*Lord Williamson of Horton:* Obviously consumers of goods and services are the first main beneficiary. On the principle which Adam Smith was very keen on, opening up into a competitive market, which is what has happened to a considerable degree, consumers are beneficiaries. More broadly, the economy as a whole is a beneficiary. I see the Commission quote 2.2 per cent additional GDP growth for the period up to 2006. I do not stand by that figure myself. It may vary a bit but it seems to me fairly obvious that there has been additional GDP growth as a result of opening up the markets in the way we have done it and therefore that spreads everywhere. Obviously there are some who are beneficiaries in a rather more simple sense—that is, holiday makers and people like that who are happy usually with the arrangements by comparison with the miserable time we used to spend

trying to cross frontiers, get our currencies and all the other things that we used to have to do. Will it change? It will change to the extent that the work which you and others are doing to concentrate on getting more open and fairer markets in areas such as energy, telecoms and so on means there will be new beneficiaries as a result of that. The basic, internal, single market has benefited those I have mentioned.

**Q5 Lord Haskel:** A corollary to the beneficiaries is those who have suffered. Do you think for instance that some of the newer members have suffered because some of their people come to Britain, Germany and France? Their skilled people are coming to these countries and doing very well, but now the new Member States are beginning to say that they are suffering because of the lack of skills. They are losing valuable people. Do you think that small companies are suffering because now the market is so big. It is being dominated by large companies. You yourself mentioned supermarkets and retail organisations that are now larger than ever. Do you think that there is anybody on the other side of the coin who has suffered?

*Lord Williamson of Horton:* If you make a big change, as we have made in the European Union, by moving from a system where national frontiers were very obstructive, as we know they were for a long time, and you open it up, of course there will be some people who will suffer in the short term because there is increased competition; there are difficulties arising from movement of labour. It does not operate as smoothly as theoretically it might. That is obviously the case. Also existing interests respond because they do not like some of the things that are happening. As it happens I was in France at the time of the Maastricht Referendum and I asked all my neighbours in France were they for or against. Some were for; some were against. My next door neighbour said he was against the Maastricht Treaty. I asked him why. He was a Frenchman. He said, "I am against the Maastricht Treaty because of Portuguese shoes. There are far too many Portuguese shoes." Vested interests are going to suffer. He had to give up his shoe business and set up a duck business. People have to adapt. There are difficulties because the change is quite fundamental but we are creating more wealth. It is difficult to handle the run in and the changes in the interim.

**Q6 Lord Haskel:** Do you think we need some mechanisms to help handle this change, to help people who are suffering, if you like?

*Lord Williamson of Horton:* We do not have very many mechanisms, although the national governments have some mechanisms of course. There are a number of occasions where there are various forms of aid or intervention. If you look at all this you can find

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quite a number which are intended to smooth off the transition. Those do exist. Whether they are fully efficient you can probably inquire into. The Common Market is not a roller coaster. It is sensitive to changes in public opinion and the difficulties of public opinion. It is possible to have temporary arrangements but they should be time limited, in my view. Otherwise we will not achieve what we are trying to do.

**Q7 Baroness Eccles of Moulton:** Have there been any more key barriers in the past? To what extent have the barriers changed?

*Lord Williamson of Horton:* Of course there are definitely a number of key barriers which existed in the past. Some of them still exist. They may not apply quite so directly to movement of goods and services but they still exist. The sorts of restrictions which I think were important and still are occasionally are, for example, those national restrictions on the establishment of businesses. That is true in the older Union and also in the new Member States for reasons I can understand. They have difficulty and they do maintain a number of restrictions. National quality standards are still maintained sometimes, whether legally or illegally. We know that is the case. There are currency variations which can make things difficult from time to time. Then there are the other elements of what I call national, commercial defence of which the most obvious is national aids. There always have been lots of national aids, concealed or not concealed. Certainly when I was working in the European Commission, which was a very long time ago, if you saw the minutes of the Commission usually the biggest single element in the minutes was a list of national aids against which the Commission was either taking action, launching action or trying to persuade the governments to change. There have been a lot and sometimes they have distorted markets without any doubt. The idea of national, commercial defence is still there. Are they going to be still there? They are going to be there I think in the areas which you are looking at, the newer areas for opening up such as energy, telecoms and so on. Commercial defence on a national basis will still be played out. Those are new barriers. I do not think they are necessarily changes. They just appear in another sector, not directly in trade in goods and services.

**Q8 Baroness Eccles of Moulton:** Would you think that the Commission's minutes would be featuring them as largely as they have been in the past?

*Lord Williamson of Horton:* If I make a guess, I do not think there will be so many entries but some of them may be more important because we are dealing with big, financial issues. There is a lot of money at stake in these areas.

**Q9 Lord Mitchell:** I would like to ask questions regarding delivering the single market. First of all, what are the institutional constraints on it? Does the Commission have the right tools to deliver and are the current remedies available to the Commission to enforce the single market adequate?

*Lord Williamson of Horton:* The Commission does have the competition policy. This is an area which falls within the Commission's own competence. Therefore, to the extent to which they use the competition policy strongly, they can reduce some of the difficulties which might arise in the delivery of the single market. If they are tough enough they can knock over some of the resistance to the full single market. Otherwise, what the Commission has is of course the power of proposal but it is a little more difficult to operate than in the past, first because it is more complex in 27 than it was in a smaller number of countries to get it through, just because of the diverse circumstances which you are dealing with. I still believe that in some ways the development of the new areas—I will not quote them all; I can add a few to those you have mentioned—they are slightly running ahead of the Commission. That is to say, the possibility for the Commission to achieve significant progress on opening up markets and free movement across countries is not quite sufficient to catch up with the new proposals on things like environment, outsourcing, all the things that are newer than they were when the system was set up.

**Q10 Lord Whitty:** At any given stage of the development of the internal market there are those who say we have not gone far enough and those who say we have gone too far. On the first, there are those who argue that the absence of tax harmonisation has been a significant problem. Have you any comments on that? Also, areas like the labour market. Despite the apparently free movement of labour to a large extent and the social chapter, there is not really a single labour market. Even though consumers have benefited, there is not a completely harmonised system of consumer protection either. Are any of those areas where you think we should pay some attention or do you think they are such political no nos that we should not touch them?

*Lord Williamson of Horton:* Starting with tax harmonisation, I am tempted to say I am not an academic. If I was an academic I could show why it be a jolly good idea to have tax harmonisation. I really do not think that tax harmonisation is going to be delivered unto you, if I may say so. It is unrealistic to think that a perfect model can be achieved there. That is the way it is because of the views of the Member States. It is still worth remembering that an element of tax competition does exist. That is sometimes forgotten. That is to say, if they get too far out of line even on things like excise duties, goods

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start to move for example from the Republic of Ireland to Northern Ireland or Northern Ireland to the Republic—I forget which at any one time—but obviously there is an element of tax competition. If you do not get roughly into line you are liable to lose business. That is worth keeping in mind. On the labour market, there are things in the labour market which are not terribly good. That is to say, we still have a lot of differences between the labour markets for all sorts of reasons such as whether they have a 35 hour week. I doubt whether they do in France, but there are laws about it and things of that kind which are completely different between the Member States. On the other hand, in my European lifetime which is not very long, I think the labour market has become quite a bit more mobile, both at the top and the bottom. That is to say, for professional classes and so on, there is more decision either of harmonisation or mutual recognition. Architects, doctors and so on seem to spin about the place all over now without very great difficulty and of course, with people who move at the bottom end on low wages, such as those coming in from Eastern Europe here, there is movement. Where there is not a great deal of movement is in the middle block so we do not have full labour market mobility. That is quite clear. People do not move very easily. They do not move as easily as in the United States for example. It is a gradual evolution on the labour market and if we handle the material properly and do not create new problems ourselves it will continue to open up.

**Q11 Lord Whitty:** At the opposite end, there were a few articles in the press a few months ago saying that economic nationalism was making a revival in Europe and in a number of Member States. Do you think that is true? Do you think it is a phenomenon we should take seriously?

*Lord Williamson of Horton:* I think it is a serious point. Economic nationalism and national champions and so on are definitely serious points. I would not believe for one moment that they had just gone away. I do not think so. Take a trip round France and talk to a few Frenchmen and you will find it has not quite gone away. I do think that it is less than it was and is fading. An example is the airlines. How on earth it came about I will not analyse but you will recall how important and almost immovable the national airlines were in the past. They felt they had their place and the rest had to get in line. I am not blaming them; that is the way they saw the world. I have never forgotten the fact that I did 108 flights from Brussels to Strasbourg and there was never more than one airline on that route when I was there. Every time I got on the plane they announced, “Thank you for choosing this airline.” Things have changed, if I may say so.

**Q12 Lord St John of Bletso:** On the issue of tax harmonisation, obviously tax issues are a national vested interest and one has to draw the distinction between tax coordination and tax harmonisation. To what degree do you believe that there will be a more coordinated effect and more impetus towards tax coordination? On the issue of the mobility of the labour force, we have seen a huge influx of Polish workers coming into the United Kingdom, particularly in the building sector. My interest is on the minimum wage because it is all jolly well having European directives but to what extent are these directives effective? There does appear to be a situation where there is huge polarisation between the wages that are paid in various countries and lack of effective policing of the minimum wage, particularly when it comes to immigrant labourers coming into the United Kingdom.

*Lord Williamson of Horton:* To take the tax coordination point first, I think there are areas where it would be in the interests of one or more Member States to have greater tax coordination on some things. The one I think of in particular is excise duty. The reason I mention that is that there are variations in excise duty which can of course be justified on social grounds—we do not want too many smokers and so on. Where the variations are very great, the incentive to fraud is equally great. An awful lot of money can be made on the difference between excise duty in one Member State or another on products such as cigarettes, as we all know. It may not be possible but some tax coordination in some of the areas where there are big differences—I quote excise duty specifically—would probably cut out quite a bit of fraud and might even increase the budget revenue of the European Union quite a bit because it is money lost. On the other point about the minimum wage and labour mobility, the question whether there is a minimum wage has been a regional or national decision. I have always been in favour of it myself. The minimum wage is in effect and it is difficult to implement where you have a big change with a large number of new workers moving in and so on. In so far as it is bypassed or generally speaking ignored, which does happen from time to time, that is a very bad thing because it does go against the operation of a system which is intended to be and indeed is fair, in my view. I do not see how you can improve that very much except on the ground. You cannot improve it in Whitehall but on the ground it probably could be improved to some degree.

**Q13 Lord Lee of Trafford:** On the question of the single currency, what is the significance of the single currency to the operation of the single market? Have we, the UK, done rather better outside the single currency than perhaps you might have anticipated?

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*Lord Williamson of Horton:* The first question is quite easy, I think. The single currency has of course done one thing. It has made life easier for travellers. Secondly, it has made life easier for a lot of businesses that are trading within the zone. It is quite easy to handle things in euros and that is the way it is. You can see how popular that is in the sense that it so happens that, although I am Convenor, I am going to be allowed one holiday this year. I am going to Croatia and it says, "Do not bother to bring anything except euros." There is a practical advantage there. It has definitely increased transparency. If you are operating within the eurozone, you can make a much better and quicker comparison of prices and costs and that is an advantage. I will not overdo it. Most of us are capable of running a calculating machine and finding the difference between pounds and euros, but nonetheless it is a slight advantage. On the other hand, it does remove some flexibility which used to exist because of the movement within the zone in the currencies of the Members within the zone—i.e., does one size fit all? As to whether it is a greater problem than it was at the beginning, I do not think so. The eurozone has got used to running itself very quickly. It has this advantage for some of the economies in the short term. Obviously they believe in the medium and longer term it is not going to be a great disadvantage. I do not think it should worry us too much. We seem to be operating pretty well at the moment. I am not unhappy about the way we are operating. For businesses crossing over from the eurozone to the sterling zone, I do not think it creates too big a problem.

**Q14 Lord Powell of Bayswater:** Some time ago there was a lot of pressure from the wealthier European countries to level up social burdens in order to undermine the competitiveness of the newer Member States. That was a barrier to the effectiveness of the single market. Do you feel that is still an important barrier?

*Lord Williamson of Horton:* I do not think you get great success by trying to level up or down between various Member States. In the end I do not think that makes very much difference. If you want in the short term to take certain measures which you think may help either existing interests in Member States such as our big retailers who are active in eastern Europe or the new Member States, maybe that might be possible but I do not honestly think you gain very much by trying to level off the market yourself. It will level itself off over a period of time with a few difficulties.

**Q15 Lord Powell of Bayswater:** It was one of the reasons why we originally kept ourselves out of the social chapter.

*Lord Williamson of Horton:* It was indeed, yes.

**Q16 Lord Powell of Bayswater:** You would not think it necessary to take a similar decision if you were looking at the market today?

*Lord Williamson of Horton:* Probably not but that decision was taken and then it was overturned of course later on.

**Q17 Lord Haskel:** What do you think has been the impact of the recent enlargement in the European Union on the single market?

*Lord Williamson of Horton:* I feel tempted to say that the first impact of enlargement is that the single market is bigger. I welcome that. That is very important because the growth potential of the eastern European countries is great. We tend to slightly underestimate, in my view, the growth potential of eastern Europeans. We always have a great habit of talking about China and the other tiger economies of south east Asia. In a period when those tiger economies were growing very fast, in money terms they grew much slower than the European Union. Eastern Europe has a very important growth potential. It is true that because they are new entrants their capacity to adapt to the various regulations, either because of their own internal procedures or because their economies in certain sectors cannot really adapt that quickly, we are not going to get an absolutely level playing field on day one, two or three. I am fairly well convinced that we will get it thereafter. There is clear significance in the type of progress that has been made in countries such as the Czech Republic and Hungary already. They are not a homogeneous group. Bulgaria and Romania are going to take quite a long time to have a system where we are operating on what everybody would consider a level playing field. I cannot see it happening that quickly. There will be dents in the single market but we just have to accept that, in bringing in countries with a completely different standard of living and a different way of doing things, it is going to take a bit of time.

**Q18 Lord Haskel:** Do you think it is going to be as effective as it has been, for instance, over the last 25 years in countries like Greece, Spain or Portugal?

*Lord Williamson of Horton:* We cannot judge very well the last two, Romania and Bulgaria. It is difficult to make a judgment about them because their standard of living is considerably lower. There are a lot of other problems like the huge agricultural sector in Bulgaria and so on. On the preceding group which includes countries such as the Czech Republic, Hungary, Poland, Slovenia and so on, the progress looks pretty fast. If I had a lot of money, which I do not, I would not mind investing in those countries today.

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**Q19 Baroness Eccles of Moulton:** If we can distinguish between a market and a non-market, how effective would the single market be in dealing with such matters that are going rapidly up the agenda like climate change?

*Lord Williamson of Horton:* It is a little optimistic to think that in itself it is an effective mechanism for dealing with problems like climate change. Indirectly, it can be helpful to reaching decisions we need to take in these other sectors. For example, the single market means that we are going to have considerable economies of scale which could be useful, even on the simplest things like providing the new technologies and benefiting from the new technologies which are being developed fast for environmental reasons. That is where it is good that we have the capacity to do something in that sector. It can also help in the exchange of good practice on issues such as solar energy. We do not seem to be desperately rocketing along on solar energy in this country. Even when I was in the European Commission ten years ago I visited two solar stations providing substantial amounts of energy, one in the Pyrenees and the other at Enna in Sicily. The one at Enna was providing all the power for Enna, a reasonable sized place, and putting it back onto the national grid. There were quite a lot of developments there. Those sorts of things where there is an interest in promoting a business approach to some of these issues could be helpful, but we have to do a bit more than that.

**Q20 Baroness Eccles of Moulton:** Within the framework of research, that could be something that did not exist without the EU.

*Lord Williamson of Horton:* It could be useful.

**Q21 Baroness Eccles of Moulton:** What about something that is highly politically sensitive to many people, an extremely valuable alternative to fossil fuels, which is obviously nuclear? Do you think it could assist in that direction?

*Lord Williamson of Horton:* That is a tricky point because the extent of the nuclear power production in the Member States varies hugely. Belgium and France have a very high level of power from nuclear energy and they are very interested in maintaining that. We are not going to be able to bring together on an EU basis either the volume or the approach to power from nuclear sources. It is going to stick within national hands for a good time.

**Q22 Lord St John of Bletso:** If I could go back to the question on the accession countries, I declare an interest as I spend a lot of time in Romania and Bulgaria. The concern I suppose is that many of the convergence criteria have been somewhat fudged. The question of compliance with all the chapters of the *Acquis Communautaire* is a bit on a never never

basis. What do you believe are the realistic expectations of these accession countries complying with the outstanding aspects of the *Acquis Communautaire* to bring them more in line with the level playing field of the single market which you mentioned?

*Lord Williamson of Horton:* To take Bulgaria and Romania as you mentioned those, I think it is inevitably going to be slow. If you have been there recently, you will know what the economy looks like in those countries. It does not look exactly like the Ruhr, for example. Therefore, it is going to be slow. On the other hand, these are countries where, although they are trading outside their boundaries, a lot of the economic activity is at a relatively low level and is within their own boundaries. Therefore, the impact of what happens in parts of Bulgaria for example on the rest of the European Union, even if the level playing field does not entirely exist, is probably not going to be very great. I do not quite see how you get round the problem. If you are aiming to move to a single market of the classic kind, which I think we should, you are forced to a situation where, if a country comes in which has a completely different economic structure and a different level of GDP and so on, you cannot really get round the problem except by the passage of time.

**Q23 Lord Haskel:** Coming back to Baroness Eccles's question about the single market being an effective mechanism, in the debate on Thursday you waxed very lyrical about the effectiveness of the EU's budget on research and all that which is being done. As you know, most of the research projects are multilateral. They involve several countries. Do you think that an effective mechanism for helping newly developed countries to raise their game is to involve them in these research projects on a multilateral basis, or do you think that the decisions on these should be left to who are the most competent scientists and technologists to deal with the projects?

*Lord Williamson of Horton:* I fully understand your question, except the word "lyrical" applied to my intervention last week in the debate in the House. Otherwise, I fully comprehend the point. It has been a basic principle in the operation of the very substantial research and development programmes of the European Union that they should be on a fully competitive basis, peer review and so on. That is the way it operates. I think it would be reasonable to stick with that as the basic principle but at the margins you could have some programmes in areas where we know, for example, one or two of the new Member States do have particular competences to try to bring them a little more fully into the programme. After all, we do have some of these projects which require cross-frontier cooperation and we could, if we felt

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like it, have a subclause which says that if it concerns some of the new Member States they would get some slight advantage or slight preference in some fields.

**Q24 Lord Whitty:** Could I pursue the question relating to the single market in relation to climate change, because it would seem to me the strongest area there would be a setting of standards and possible consumer information like vehicle emissions standards, like information on consumer electrical goods and eco-claims and green labels and so on. Whilst there has been a bit of progress on that, has it been the case that because those propositions have come up through the environment end rather than the internal market they have received less attention than ought to have been the case from a single market point of view?

*Lord Williamson of Horton:* I do have some sympathy with that point. Of course some of the elements, such as sticking a sticker on the front of our washing machines and so on when you buy these various things which I think they are going to do, are a single market point because if it is not done by the single market then there is going to be a bit of a muddle in the washing machine market. I think it is true that incorporating them into the overview of the single market and possibly making it easier for some of these types of proposals to run through, would probably be advantageous for the Union as a whole.

**Q25 Lord St John of Bletso:** If I could just go back to an answer you gave some time ago on those aspects of the single market which are not complete when you drew reference to the financial services market. We have had several inquiries into the financial services action plan. I would like to know from your side whether you feel we are needing more clarity on financial services but, more to the point, on a point which Lord Haskel has made on SMEs, to what degree do you believe there is assistance being given to small and medium sized enterprises as to the barriers and opportunities of doing business in the

single market because there is a perception, right or wrong, it is still a very protectionist market?

*Lord Williamson of Horton:* First of all, to take your second point first, I think there is such a perception from time to time and it is correct that it is sometimes more difficult for small and medium sized enterprises to handle such a big market, they are crossing frontiers, they have not got the same agents and so on and so forth. So they do have quite considerable difficulties but I do not think that is a direct result of the single market itself. The single market itself is an open market subject to a number of problems we have just discussed and I think it should be possible for small and medium sized enterprises to benefit from it. That is basically my approach. I am not sure whether I have covered your first point properly, perhaps I have not?

**Q26 Lord St John of Bletso:** It is really the outstanding aspects of the financial services market.

*Lord Williamson of Horton:* Yes. As I say, we are congratulating ourselves now but the Commission itself in the documents which are distributed to you, let us say *Single Market Citizens*, which is a sort of basic document I think for your Sub-Committee, does specifically say that there are weaknesses in some of the areas of the single market for financial and other services. I think it would be certainly wise to follow that up. I am sure you will, I am not sure I can give you every detail on that, I am perhaps a bit too far away from it, but I am sure that is the case and it seems to have been one of the points which they have identified, together with others, in this area.

**Q27 Chairman:** Lord Williamson, thank you very much indeed for coming to draw upon your earlier evidence and thank you for choosing to come and give evidence to this Committee. I am sure if there are matters to follow up we can do so and perhaps you would check the transcript.

*Lord Williamson of Horton:* Thank you very much. I have to go to the House of Commons European Scrutiny Committee this week, and I shall be able to tell you afterwards which is the nicer! Thank you very much indeed.

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#### Examination of Witness

Witness: DR MARK THATCHER, Reader in Public Administration and Policy, London School of Economics, examined.

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**Q28 Chairman:** Thank you very much indeed for coming this afternoon. It would be helpful for the record if you could say a little about yourself and your background.

*Dr Thatcher:* I have worked on comparative public policy and regulation. I started off with a study of British and French telecoms between the mid-1960s and the late-1990s, and I have worked on other network industries, so I have looked at securities

trading, electricity, postal services and airlines, and I have just finished a book which covers those five sectors across Britain, France, Germany and Italy between the 1960s and today. I have also done a bit of work on European Union policy-making and my current project is to look at networks of regulators across Europe, particularly on telecoms, financial services, and I have looked a little bit at energy. I am mostly a political scientist but I have also qualified as

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a barrister so a part of me is a lawyer.

**Q29 Chairman:** Thank you very much for those opening remarks. I think you have an indication of the questions we might like to ask you. Would you like to make an opening statement and then I think we will depart from our normal practice and I will run round the table. I think you came right at the end of the evidence given by Lord Williamson so you have a flavour of how we conduct business. But, please, your opening statement.

*Dr Thatcher:* Thank you. I have looked down the list of questions you sent me, they are very vast and interesting questions and lie absolutely at the heart of how the single market operates. What I thought I would do to start with is perhaps outline a very brief way of analysing how the single market operates. I think there are four key actors which drive the single market regulation and each of those actors has its own particular interests. There is the Commission first of all and the Commission wants to have extra powers but also has duties under the Treaty. Second, there are the national governments, and those national governments also have ambitions. They often find liberalisation is useful because it opens up the national markets and lowers prices and increases quality and choice. At the same time they often need to shift blame for difficult decisions, and Brussels is a good place to shift blame to. They face powerful national lobbies, so they may wish to be looking for reasons or excuses or ammunition against those powerful, entrenched interests. Thirdly, you have independent regulatory agencies at the national level. They are also looking for extra powers and allies as well as an expanded role. Finally, you have transnational companies which want to expand abroad and which want to supply cross-border services and want barriers to those cross-border services to be reduced. If you then turn to the nature of European legislation, one needs to understand it has a number of features which are very important for the way the single market operates. For a start, most European legislation is incredibly broad and it sets out a set of objectives with very little detail; a stark contrast to much national legislation. Secondly, it relies on Member States for transposition, in other words putting European law into domestic law and implementing and enforcement. Thirdly, there is no European model of how the national regulatory authorities, those bodies in Member States, should actually be set up. There is no European law which says you have to have an independent regulatory agency or which says you have to have three members or five members, or it has to be financed in this way or that way, so it is up to Member States as to how they actually organise their internal administration. Finally, the system is very much dependent on the European Commission monitoring transposition

and enforcement, and it is unhappy taking a series of measures against Member States. These features give rise to a third set of issues which are the problems, which is probably the area you are most interested in. First of all, one should say the Commission, contrary to some popular opinion, actually lacks resources for detailed monitoring. It is a small organisation, it is not a large one, and it is having to deal with a large number of Member States in very complex sectors and yet it has very limited resources. Secondly, the Directives are of such breadth that they allow a great deal of scope for—how shall I put it politely—interpretation. Thirdly, there is a lot of diversity of national interests and traditions, so there is a lot of variation in implementation, as one would expect. Finally, the remedies and capacity of the Commission to implement those remedies is rather limited. The remedies are very slow; by the time you get to the European Court of Justice, you are two or three years down the line, and the Commission, with its limited resources, has to make a choice as to what it is actually going to take action about and what it is not. Let me end this section with some comments about how the system operates in practice. Again, contrary to a lot of popular opinion, there is a lot of co-operation between the four sets of actors. The idea that the European Union is a battle between Member States and the Commission at least in this area is often wrong. Problems arise when you get incentives to cheat or not to implement properly and/or if you do not have the appropriate institutional mechanisms to get these four sets of actors to actually co-operate. So I would say that the biggest problems of the single market are about enforcement and implementation in practice.

**Q30 Chairman:** Thank you very much. May I ask a question specifically relating to your opening statement, bearing in mind those limitations, which areas do you think we should be looking at over the coming months? We have to report perhaps sometime in November following the Commission's Report about where the single market needs to be improved, where the internal market needs to be developed. What do you think we should be focusing on?

*Dr Thatcher:* Institutionally a couple of areas. I think you might begin by looking at the resources of the Commission to actually enforce in practice. Secondly, I think you might look at the way enforcement is co-ordinated. I saw in your list of questions you had questions about networks of regulators. There is a key question here as to whether or not enforcement should be left to the national level, which it has been in the past, whether it should be the national level co-ordinated with some kind of European networks of regulators, or whether you need more centralisation. In terms of sectors, I would

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have thought the financial sector is an important one for Britain. It is also one where you should be getting a lot of cross-border services with the internet and other technological developments. You would expect to be having things like insurance and investment offered across countries, you would expect to be able to compare services across countries and to be able to invest and buy products right across the Union using the internet; you do not any longer have to go to a national insurance office or a local vendor of, say, unit trusts. So I would have thought that would be a very interesting area to look at. You might also look at some of the other networks—telecoms or electricity—to explain why it is there are such differences from one country to another and perhaps to explore the extent to which countries still have national champions. I saw you had a question about national champions and in the recent year or so there have been some very interesting cases of Member States which have been able to protect their national champions—and takeovers of energy companies in Spain, issues about EDF in France, Telecom Italia which has been subject to a recent takeover bid. So there is a real issue about the extent to which Member States are able to protect and promote their existing national champions.

**Q31 Lord Haskel:** I hear what you say with great interest but if you read the papers produced by the rapporteur of the European Parliament, by the DTI and the Treasury here, by the Commission, they all talk about reducing regulation. They all talk about reducing all the things that you have mentioned, and I was wondering how you reconcile this.

*Dr Thatcher:* I find the deregulation debate somewhat puzzling. First of all, all markets are regulated, be they regulated by general contract law or by sector-specific legislation. Secondly, almost every sector has sector-specific legislation, otherwise it would not work. It might be in the form of standards or it could be in the form of other regulations concerning matters such as interconnection. The question is not, should we have more or less of it, the question is who should decide this regulation, how detailed it should be, who should be responsible for enforcing it, how is it going to structure competition. Particularly the kinds of sectors I look at, network industries, you will not get effective competition unless you have regulation. So I understand why politically it is interesting for people to say, "More or less regulation", but I do not think it is perhaps the most relevant question for a single market.

**Q32 Lord Dykes:** There is often a feeling in this country which sometimes sounds a bit smug and slightly pompous, that we are very virtuous and have far fewer restrictive practices in various sectors than in other countries. Is that exaggerated by the press

because they are putting over a certain line about economic policy formation, or is it substantially true? If so, could you highlight sectors where there might still be rigidities? For example, we think of the Commission deciding on 1 January this year to abolish national frontiers for banking transactions affecting companies as well as individuals. I am not sure how far it has gone effectively because maybe there are disunities and rigidities in what the banks are doing anyway, hoping they will not be noted too much and too quickly. Do you feel these things are areas where the Commission needs more resources to look closely at these now?

*Dr Thatcher:* Let me answer your first point about Britain. Britain is one of the most open economies in Europe in terms of overseas mergers and acquisitions. Whether it is always the most open in terms of effective competition, is another issue. You pick the banking sector, well, as you will know the banking sector is very much an oligopoly, so Britain may be doing well in terms of openness to overseas entrants, perhaps less well in terms of effective competition. If you were to look at some of the other areas where there are still very high profits being earned, that might lead one to suspect that competition is not as strong as one wished it to be—and again I can think of the energy sector and perhaps parts of telephony. Your second question, where should the Commission focus and should it have more resources in this area, I think that is absolutely right. If you want to have a more effective single market you need to have more resources for the Commission. Perhaps the other thing I would add to that is how can the Commission harness the resources of national regulators, because they are the ones who have the expertise on the ground, they are the ones who are also most prone to lobbying by national companies, and they are the ones of course who at the moment do most of the work in terms of implementing European legislation. So they are pretty crucial to the way the single market operates in practice.

**Q33 Lord Whitty:** I have two questions. One is a very general one which is, a lot of the single market is seen in terms of how a company based in one country can actually trade in others, a system of moving capital and labour and so on, but actually from the point of view of the individual consumer only a very small number of transactions are actually trans-border, apart from the obvious ones like tourism. Surprisingly, 20 years on from the single market, basically only 2 or 3 per cent of actual purchases are trans-border. Why do you think that is?

*Dr Thatcher:* I am not sure the single market is just about trans-border transactions by buyers, it is also about companies being able to enter overseas markets.

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**Q34 Lord Whitty:** I accept it is working from that point of view, but it is usually justified in terms of benefit to the consumers, which it may be in one sense because there is more competition, but actually the consumers do not have the leverage themselves, or do not exercise that leverage to the degree you would think now we have a single market.

*Dr Thatcher:* If you take the electricity market or the telecoms market, companies come in from overseas thanks to the single market and set up operations there and increase competition, then ordinary customers should benefit. Take the airlines as well, if low cost airlines can come in and break up national monopolies, that does help consumers. They may not see it that way, they may not realise, I do not know, EDF now controls London Electricity and has come in; they may not see easyJet or Ryanair flying from France to Italy as being a foreign company thanks to the single market, but that is what is actually happening in practice. It does not surprise me that cross-border transactions are so limited, but that is because the focus is misplaced, it should really be placed on the way that big overseas companies can come into domestic markets. The kinds of markets we are talking about require a lot of expertise and a lot of capital, which means it is more difficult for domestic companies to enter, and overseas companies are better placed to do so. Does that answer your question?

**Q35 Lord Whitty:** It partly answers my question but it is still the case that even if you know there are better terms or a better price from a company operating in Spain than from companies in Britain, it is extremely difficult to get in to buy a Spanish product. If you go to the website of the company, they refer you back to their UK outlets.

*Dr Thatcher:* Let me make a preliminary point. Customer inertia is immensely strong, regardless of whether it is in your own country or in another country, so there is already a problem about customers not always responding to prices. How many of us have changed our bank accounts in our life times? Well, virtually nobody does, and there are several domestic banks out there. There is a second point which is, and this is perhaps what lies behind your question, understanding overseas products and having the certainty that if you buy an insurance product from overseas as opposed to a company established in your own country, you can actually take effective action if something goes wrong, who will you contact, do you understand their terms and conditions. I think there are a number of answers to that. One of them is, these small transactions which are important for individuals are difficult for companies, they prefer to go for larger transactions. The kind of costs traditionally associated with selling your product across borders to domestic consumers

are very high. Secondly, there is a straightforward question of understanding remedies. If I buy an insurance product from a provider in Spain, can I actually deal with those people in terms of legal remedies and also in terms of effective remedies? If there is a problem in Britain, I can ring up, speak in English, it is probably a headquarters or a person who is answering me somewhere in Britain and there is an understanding. If I am going to ring up Spain, I do not have that kind of assurance. Again, that ought to be reducing with the internet but most of us remain attached to the ability to speak our own language and to pick up the phone and deal with the problem.

**Q36 Baroness Eccles of Moulton:** My question follows on from what has just been said and it is about the country of origin principle, because I just wondered following the description you were giving whether you would see the country of origin principle as something which is gradually going to have to wither away, because actually it is a deterrent to the sort of progress and development you have just described?

*Dr Thatcher:* The country of origin principle, you are right, may be a deterrent to the customer but it has been one way of preventing countries from putting up non-tariff barriers. The point is, for instance, if you have a protected market and you are a country which fears entry, you may be able to quote a set of rules which are designed for your domestic suppliers and keep out overseas suppliers. The country of origin principle was designed originally to try and deal with all those kinds of non-tariff barriers; the country of origin principle linked with mutual recognition. If this principle is torn up throughout all services, you may get a return of non-tariff barriers by countries which want to keep out imports. There is a very good question here, and legally there are lots of issues here, about when you want to have what is called home country control and when you want to have host country control. It is not always clear which one is going to be more effective for competition. It is likely to depend on the type of service and also the market structure from one market to another, from one product to another.

**Q37 Lord Lee of Trafford:** Dr Thatcher, while the policy of national champions may be superficially attractive in an increasingly global world, is there any evidence that in fact the economies of those countries concerned which do actually substantially operate a policy of national champions benefit?

*Dr Thatcher:* I am not an economist so it is difficult to say. There are two philosophies here. One philosophy is the British philosophy that you have the best in the world who come to you, you do not care about their nationality, you attract them to your place of business. That has worked extremely successfully for

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the City of London. There is then what might be called I suppose a state-led philosophy, which says the state should be helping to create national champions and that is best evidenced in France. It also has examples of success—EDF is the largest energy company in Europe and a very successful one. You might think of Airbus. You might also think of the United States which is one of the most closed markets in the world and a country which pursues very vigorously a national champions policy in many sectors. I would suspect it would depend from one sector to another, particularly the extent to which the service is mobile. The British approach to financial markets I suspect is more successful because finance is so mobile. The French approach to aeroplanes, aeroplane construction, energy, might be more appropriate in markets where cross-border mobility is more limited.

**Q38 Lord Haskel:** You have said to us that one way in which the single market can operate more effectively is to provide more facilities to the Commission. I think if we recommended that it would be rather difficult to persuade our colleagues. Do you not think there is a role that business itself can play? Rather than have more facilities for the Commission, do you think there are some ways in which we could persuade business to take a more proactive attitude towards delivering the single market? After all, we are living in an age now when businesses are trying to be more responsible, when they are concerned about things like climate change, when they are concerned about their impact on society, do you think that there is a way in which we could persuade businesses to be more pro-active in delivering the single market more effectively?

*Dr Thatcher:* Let me begin with a comment about Britain and the Commission. It is a very strange perception in Britain that somehow the Commission is an enemy. On the continent they see the biggest winners from the single market as being Britain.

**Q39 Lord Haskel:** That is true.

*Dr Thatcher:* If one were to look back to the mid-1980s the person who was driving the single market was of course Mrs Thatcher. So there is a strange view in Britain that on the one hand Britain wants to have a single market, wants to have more competition, and yet is loathe to give any more resources to the Commission. Be that as it may, let me turn to your question about businesses. If there were ways of making businesses direct interests to drive the single market, that would be helpful, but be careful because one way of doing that is to give businesses more power to take matters to court when they see barriers to entry. As you do that of course you have a more legalised system and juridification is in general the enemy of competition. So one has to be

very wary of getting businesses involved. We are talking about big businesses, small businesses do not have the capacity, so we are looking at very large companies which want to enter the overseas markets and are going to lobby and take matters to court. Given the choice between the Commission and large businesses doing the hard work of enforcement, you would probably want to have a bit of both. Each would have their disadvantages. I would be a little careful about trying to make sure all the burden rested on large firms to drive legal barriers to competition. The business of firms is to sell in markets, what you are talking about here is legal, regulatory barriers to competition. You are also looking at co-ordination across the single market and that is a policy, political and administrative matter. I am not sure how much can be delegated to companies.

**Q40 Lord Dykes:** Returning to Lord Whitty's interesting question and your comments about the rigidities and the fact that a very small number of people do shop around, forgive me because your research may have only covered the UK and obviously with the piece of water in between and the dominance of the English language there may be more rigidities and even less incentive to do the shopping around here. Do you detect that on the trans-border areas of the continental Member States there is much more of that crossing of borders and doing shopping and getting the advantage of a single price, of course expressed in euros of which we are not a member.

*Dr Thatcher:* My research has been comparative and I think comparison is important. I have looked at four countries in Europe. I think you are right on the shopping aspects, as in terms of goods, but much more important, as you know, in Europe is services and on that there has been much less cross-border shopping. The obvious areas would be things like insurance and actually there is very little cross-border shopping in this.

**Q41 Lord Dykes:** Even though the insurance companies themselves have merged into large trans-national entities like AXA?

*Dr Thatcher:* You have to distinguish between the suppliers becoming cross-border companies, and that is where most activity has taken place, and individual customers buying from abroad. You can buy a service in your country from a company which happens to be a cross-border company, but that does not I think count as the kind of cross-border purchases which were being referred to earlier.

**Q42 Lord Dykes:** Would there not be an incentive, say 10 km into Holland over the German border, for the AXA agent to say, "My colleagues over the way

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would be able to offer something at X rather than X-plus-3”?

*Dr Thatcher:* There may be but there just has not been that kind of mass cross-border purchasing.

**Q43 Baroness Eccles of Moulton:** I was very intrigued, Dr Thatcher, by what you said about the way the rest of Europe views the extent to which we have benefited although we beef on about the Commission. I wondered whether you would agree with the view that a lot of people in the UK take, and that is that when EU Directives are transposed into our law by governments, by civil servants, that somehow there is a bit of gold-plating to it and therefore the Directives arrive within our legislation rather heavier than they might do in other countries, that somehow we leap-frog over the Whitehall effect and blame it all on the Commission? If perhaps the plating was a little lighter then we would view the Commission in a slightly more favourable light?

*Dr Thatcher:* There is an issue of gold-plating but I think there is also a cultural element here about trying to blame the Commission for all kinds of things which it is not responsible for. So there is an issue of gold-plating but I think there is a more important issue about how legislation is implemented in practice. That is not really about gold-plating, it is about the way it is interpreted. These are very broad Directives and if one thinks of, to give you an example in telecoms, Telecom Italia was recently the target of a possible takeover bid from AT&T, a Mexican company. The Italian Government then announced it was going to investigate whether or not Telecom Italia should be broken up into a network company and a service company, taking Britain as an example. The result was that AT&T withdrew and Telefonica came in. That is not about gold-plating, that is really about how you use your powers within a European framework in a particular way. To give another example, if a country administratively says, “It will take us several months before we will give you your certificate”, that has an effect on your capacity to enter. Or if it says, “We are going to have a particular structure of charges for interconnection to a network”, or if it says, “Actually we have very limited airport capacity”, these are all things which are about how you actually interpret European law and I think they are by far the most important and the most difficult to get at in terms of the single market but I think they are the ones which companies come up against most of all. So if British policy-makers are concerned about the single market, they should focus on that end and perhaps see the Commission more as an ally rather than an enemy. That is politically, I am aware, a sensitive thing to say.

**Q44 Baroness Eccles of Moulton:** That would need a big cultural shift.

*Dr Thatcher:* Yes.

**Chairman:** Three brief questions and brief answers because we are running out of time.

**Q45 Lord St John of Bletso:** Perhaps this is somewhat wide of the remit but it goes down to management. We are seeing a quantum shift in leadership in France which could have a profound impact for inward investment into the region from abroad. We have been grappling with the Galileo project which by all accounts has been poorly managed, poorly delivered, out of time, and who knows where it is going to go from here. Bearing in mind there is a quantum shift in leadership, what impact do you believe this is going to have in the effectiveness of the single market?

*Dr Thatcher:* It is very difficult to tell because of course the Right in yesterday’s elections did not win a vast majority. Also, Mr Sarkozy has said that he is in favour of protecting French firms. You can never tell in French politics the difference between rhetoric and reality, who knows what will happen in practice, but it is more fundamental than that. A lot of what you are talking about are tight and informal networks between companies, administrators and politicians in France through the *grands corps* and through informal networks they have built up by having served in ministerial *cabinets*. It is not clear, however committed a French President might be, that he can break those kind of informal linkages, and those linkages are very different in Britain. We do not have those kind of tight linkages between the Civil Service, business and politics, on the contrary those three have tended to be separated one from the other.

**Q46 Lord Dykes:** A little *ex cathedra* to say the least and forgive me for this, but can one really complete a genuine single market without having a single currency?

*Dr Thatcher:* A single currency may help but I am not sure it is a necessary or sufficient condition. I think historically single currencies have tended to follow single markets and have then helped integration but with new technology there is no reason in every sector that you need to have the same currency. In some sectors there is a great deliverability—one thinks of the financial sectors—regardless of currency because currencies are easy to translate one into the other and because big companies can hedge against currency changes. A single currency helps price transparency but I am not sure it is sufficient in itself. One can think of many examples where particular parts of a country remain cut off from other parts of the country because of barriers. Perhaps more important are standards. I would suspect they are a much greater barrier to a single market together with these administrative traditions and ways of implementing.

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**Q47 Lord Lee of Trafford:** This is a supplementary to Lady Eccles' question. How hostile is the popular European press to the European Commission and all that comes out of Europe as compared with the near-universal hostility that, in my judgment, substantially influences popular opinion in this country?

*Dr Thatcher:* Traditionally, Europe has been seen as a good thing in a country like Italy or France. That has changed recently because there has been a feeling that Europe does not look after the social side of things, that it is just about profit-making and business and that it threatens very cherished welfare and employment protection legislation. That is a very rough answer but I think there is a lot less hostility.

I would also say that the political elite and educated opinion is very strongly pro-European in continental Europe; in Britain opinion is much more divided.

**Q48 Chairman:** Thank you very much indeed for coming. I speak on behalf of all my colleagues, you have expanded and extended our thinking about how we should approach this by talking about the institutions. There may be some questions which our clerk is going to write to you about and suggest you might be good enough to give us some further thoughts on.

*Dr Thatcher:* Of course.

**Chairman:** Thank you very much indeed.

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MONDAY 25 JUNE 2007

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| Present | Eccles of Moulton, B<br>Freeman, L (Chairman)<br>Haskel, L | Mitchell, L<br>St John of Bletso, L<br>Whitty, L |
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**Memorandum by the Financial Services Authority**

*A. Introduction*

1. This memorandum is submitted by the Financial Services Authority in the context of the Committee's Inquiry into the European Commission (EC)'s review of the single market. We look forward to elaborating on it in oral evidence on 25 June.
2. The memorandum:
  - provides brief background on the FSA, including its scope and overall approach to regulation;
  - outlines the FSA's approach to implementing EU legislation;
  - provides background on the Financial Services Action Plan (FSAP), and on our approach so far to the Markets in Financial Instruments Directive (MiFID); and
  - answers the specific financial services questions the Committee has asked in its call for evidence.

*B. Background on the FSA; our scope and overall approach to regulation*

3. The Financial Services and Markets Act 2000 (FSMA) gives us four statutory objectives: to maintain market confidence; to provide the appropriate degree of consumer protection; to promote public understanding of the financial system; and to reduce financial crime. In carrying out our general responsibilities we must also have regard to seven statutory principles, including the international competitiveness of the UK, proportionality, and facilitating innovation and competition.
4. We have translated these four statutory objectives into three strategic aims which guide our day-to-day work:
  - helping retail consumers achieve a fair deal;
  - promoting efficient, orderly and fair markets, both retail and wholesale; and
  - improving our business capability and effectiveness.

*C. The FSA approach to EU Legislation*

5. Negotiation of European legislation and, ultimately, its implementation in the UK are responsibilities of HM Government. The vehicle for implementing many of the provisions in Directives affecting financial services is FSA rules. For this reason we work very closely with the relevant Government Departments (mainly the Treasury) in the relevant EU fora.
6. Our approach to implementing directives is one of "intelligent copy-out"; we do not add to directive requirements unless there is a proven market failure and the proposal is justified by cost-benefit analysis. Furthermore, we subject existing requirements which go beyond those in a directive to the same disciplines.

*D. Background on the FSAP and the FSA's approach to MiFID*

7. The FSAP legislative programme has come to an end. It was published by the Commission in May 1999 and endorsed by the Lisbon European Council in March 2000. Its purpose was to produce a set of measures creating a legal and regulatory environment to support the integration of EU financial markets by 2005. It consists of 42 measures, including 24 EC Directives to be transposed into the law of each Member State, and Regulations, which apply directly in all Member States.

8. The FSAP has three specific objectives:

- to create a single EU wholesale market;
- to achieve open and secure retail markets; and
- to create state-of-the-art prudential rules and structures of supervision.

These objectives are designed to promote Europe's wider economy by removing barriers and increasing competition among financial services firms, thereby making markets more efficient and reducing the cost of raising capital to industry generally.

9. In accordance with our general approach to EU legislation, in implementing MiFID in the UK, we have sought to use "intelligent copy-out" of the Directive text. This should avoid placing unintended additional obligations on firms. After careful consideration and cost-benefit analysis, and as provided for under the implementing Directive, we are proposing to retain a small number of existing requirements of importance to our national market in the UK; these have been agreed with the European Commission. But we are not seeking to "gold plate" the provisions in MiFID by introducing new rules which are "super equivalent".

10. The success of the single market will depend in part on the agreement of proportionate and effective arrangements for the supervision of EU-wide groups and their activities—so called "home/host" issues. Such arrangements are necessary to minimise costs arising out of duplication where firms operate in several jurisdictions. European directives tend to be reasonably clear about where supervisory responsibilities lie and the FSA has been in the forefront of advocating greater streamlining of arrangements for EU-wide insurance groups by centralising responsibility in the "home" country where the parent is authorised. There is a need, however, to make further progress in the area of day-to-day collaboration among supervisors; that is how tasks can most efficiently be allocated to ensure that supervision is both effective and efficient. We believe that the details of such arrangements need to be agreed among the supervisors concerned on a case-by-case basis, taking account of factors such as the impact of a branch or subsidiary in the market in which it operates.

11. A recent area of contention has been the allocation of home and host obligations under MiFID. Compared to the preceding directive in this area, the Investment Services Directive, MiFID has greatly increased the level of certainty, removing all responsibility from the regulator in the country of the customer, and making the home state responsible for the operation of systems and controls in branches in other Member States. One area where some uncertainty remains, however, concerns responsibility for monitoring and enforcing compliance of certain MiFID conduct of business requirements where a service is provided by a branch to a customer in another EU country. Our aim is, in the interests of firms and consumers, to ensure clarity and transparency on where responsibilities lie. Discussions are continuing on this issue and whatever the outcome, there will necessarily have to be a high level of regulatory co-operation and collaboration.

12. More generally, increasing the level of effective cooperation between national regulators, within the EU and globally, is a key priority for the FSA. A particular focus of our effort in recent years has been directed to supporting three committees of national regulators in the financial services sector—the so-called "Lamfalussy Committees"—the Committee of European Securities Regulators (CESR), the Committee of European Banking Supervisors (CEBS), and the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS).

13. These committees advise on proposed legislation and on developing supervisory convergence. To date they have focused largely on the FSAP and the related legislative measures. However, the increasing activities of internationally active firms and the greater range of responsibilities given to the home regulator under FSAP require national regulators greatly to increase the level of de facto day-to-day co-operation. All three Committees have work plans in this area. These include setting up "colleges" of supervisors for individual firms and groups, and allocating supervisory tasks to the regulators best placed to carry them out. The Committees are also planning to enhance their collaboration on policy issues, including developing guidelines on good practice and increasing the level of joint working, for example on impact assessments.

14. One important means of promoting regulatory convergence throughout Europe is providing training for regulators and establishing a forum for them to exchange views on practical supervisory issues. A platform for this is being created under the joint auspices of the Lamfalussy Committees. The FSA strongly supports this initiative and has been in the forefront of developments here.

E. *What has been the impact of the implementation of the Financial Services Action Plan as a whole; and in particular the Markets in Financial Instruments Directive?*

#### The FSAP

15. Greater harmonisation is a necessary condition for removing national barriers to competition. Replacing national regulatory standards with predominantly EC ones has been costly, with firms having to make a significant number of systems changes.

16. Only when the barriers to the single market are finally removed will it be possible to assess the benefits of the FSAP to Europe's wider economy. The Commission is committed to undertaking a thorough assessment of the FSAP. The Commission's White Paper on future financial services policy 2005–10 contained the following commitment:

“Ex-post evaluation of the FSAP and of all new legislative measures is a top priority for the Commission in the coming five years. By 2009, the Commission will endeavour to have completed a full economic and legal assessment of all FSAP measures. A study will be launched in the course of 2007–08. Evaluations of the key measures will take place around four years after the implementation deadline of each measure.”

“If—over time—careful assessment and analysis reveal that specific legal texts have not worked, they will be modified or repealed in the framework of the legislative procedure.”

17. The Commission has embarked on a two-part evaluation of the FSAP. The first, on which it has consulted, was to evaluate the process of negotiating and adopting the 42 FSAP measures. The second, which the Commission is now taking forward, is an economic analysis of the FSAP, to see what effect the measures have had across a range of European markets. The Commission is likely to appoint economic consultants to undertake this analysis in the near future.

18. Since firms can take advantage of the MiFID freedoms only from November 2007 (and are also currently engaged in implementing the Capital Requirements and Transparency Directives), it is too early to assess the full costs of the programme across all 27 Member States, let alone the benefits to the economies of Europe attributable to the FSAP. This is particularly the case since very few other Member States have a requirement to undertake a CBA or an impact assessment as part of the implementation process. Those reports which have attempted to assess the impact of the FSAP inevitably, therefore, present a picture in which not all the costs across the EU are estimated, and where the data on costs dwarf those available for the benefits.

#### MiFID

19. In a range of consultation papers issued over the last two years, we have included detailed cost-benefit analysis on all the substantive rule changes we proposed in relation to MiFID, including where those measures are prescribed by the Directive. In addition, in November 2006 we published the results of a separate strand of work, setting out our assessment of the overall costs and benefits for the financial services industry of implementing MiFID in the UK, *The overall impact of MiFID*.

20. The paper indicated that, under certain assumptions, MiFID could generate some £200 million per year in quantifiable ongoing benefits, which will be attributable mainly to reductions in compliance and transaction costs. MiFID could also generate another £240 million benefit in “second round” effects (a reduction in the cost of equity and consequent effect on GDP) that flow from deeper and more liquid capital markets, benefiting the economy as a whole. The quantified one-off costs of implementing MiFID could be between £870 million and £1 billion, with ongoing costs of £88 million to £117 million a year. These are aggregate figures: it is likely that the distribution of costs and benefits will vary among firms depending on exactly how MiFID affects their business. We are encouraging firms to focus on the opportunities that MiFID presents over the longer term.

21. Ultimately, the impact of MiFID needs to be judged in an EU-wide context; benefits for less developed financial markets are likely to be more significant in relative terms than for fully developed markets like the UK.

F. *Do you support the Commission's Code of Conduct on Clearing and Settlement?*

22. We support the Commission's decision to pursue an industry code of conduct as a means of improving the effectiveness and efficiency of clearing and settlement, particularly on a cross-border basis. Indeed, we joined with the Treasury and the Bank of England in actively promoting such an outcome, in preference to a Directive.

23. The Giovannini reports prepared for the Commission in 2001 and 2003 concluded that cross-border clearing and settlement arrangements are complex and fragmented, and give rise to inefficiency and higher costs. The Commission subsequently began a process of examining ways of improving the operation of clearing and settlement infrastructure at the EU level, in consultation with Member States and market stakeholders. In relation to legislation, the Treasury, Bank of England and the FSA noted in the joint response we made to Commission's 2004 communication on clearing and settlement that: "The case for a Directive needs to be clearly made. It is important to be very clear about the problems for which a Directive would be the best solution." The UK authorities also stressed that any Commission initiatives in this area must be based on a thorough analysis of the costs and benefits of any policy proposals.

24. Commissioner McCreevy announced in July 2006 that the Commission would be initiating a code of conduct in preference to a Directive. He noted that the structure of trading, clearing and settlement in the EU would continue to evolve as integration accelerates, and that a regulatory measure at this stage could slow down or even block the restructuring process that is already underway.

25. The code, as agreed with market participants, covers measures on: greater transparency of prices (to have been implemented by the end of 2006); enhanced access between different providers, and principles for interoperability (for implementation by the end of June 2007); and greater unbundling of the provision of specific services (for implementation by the beginning of 2008). Looking to the future, we believe that it is important that the code is appropriately monitored, so that the benefits which could flow from it are secured in practice.

20 June 2007

### Memorandum by Ofcom

#### OFCOM'S INTEREST IN THIS ISSUE

Ofcom is the communications regulator for the United Kingdom. We are the appointed National Regulatory Authority (NRA) for the purpose of implementing the current EU Regulatory Framework for communications. We are also the UK's spectrum management authority (interacting with other authorities and the European Commission on cross-border spectrum issues). Therefore Ofcom is exposed to the "sharp end" of the operation of existing rules in these sectors designed to promote the development of the Single Market in communications services.<sup>1</sup>

#### THE SINGLE MARKET IN COMMUNICATIONS SERVICES: AN OVERVIEW

The markets that Ofcom has regulatory responsibility for sit within the overall "ICT" (Information and Communications Technology) sector which is regarded as strategically highly significant for Europe. In particular ICT is seen as a high-growth sector and one in which Europe can realistically expect to retain a strong comparative advantage. Telecommunications is regarded as both important in its own right and also an important input market to the wider ICT sector—the availability of high quality telecoms networks improves attractiveness of regions for inward investment, stimulates ICT diffusion and hence contributes to productivity improvements.

For these reasons, the ICT sector as a whole and telecoms in particular have been the focus of considerable attention at EU as well as national level over the last thirty years. At present, the European Commission articulates its ICT policy under the heading "i2010", a work programme which is linked to the achievement of the Lisbon goals on improving EU's productivity and competitiveness vis-à-vis the rest of the world.

Throughout most of the 20th century, the operation of telecoms networks and services was a monopoly reserved to state-owned enterprises, and the challenge in recent years has been to bring these monopolies to an end and introduce competition. An EU dimension to policy started first in the telecommunications equipment market (with efforts to secure a single market in telecommunications terminal equipment in the late 1980s) and subsequently extended to telecommunications networks and services in the early 1990s.

Spectrum management has traditionally been dominated by public sector use of spectrum for a variety of purposes including defence and national security, which again fall into the sphere of national competence. A Community dimension to spectrum policy has therefore emerged only gradually, but the EU has sought to extend its influence progressively in this area, in particular, by seeking to create harmonised standards and uses of spectrum bands to facilitate pan-European services. The most notable and successful example of this

<sup>1</sup> We are also the competent authority which implements and enforces the TV Without Frontiers Directive, which covers cross-border broadcasting. As the amending Audiovisual Media Services Directive has recently been the subject of a separate inquiry of this committee, we have not commented on it in detail in this paper.

approach was the agreement of a common standard for 2nd generation mobile telephony, GSM. However, historically the Member States have remained responsible for management of spectrum in their own territories and for co-ordination between themselves on cross-border interference issues.

An important point to note is the effect on policy now being exerted by the phenomenon known as “convergence”. The digitisation of underlying technologies in telecoms, broadcasting and IT is rendering existing distinctions between these categories increasingly meaningless. In recent years, European legislation has sought to recognise this by removing artificial regulatory distinctions and moving to a more coherent overall regulatory posture. It is fair to say this remains a work in progress.

Two other important changes are also now affecting policy. First, the advent of the internet has made cross-border trading a far more significant element of the communications market. It is possible to imagine a world in which content and services can be created anywhere and consumed anywhere. This is a major impetus to the creation of a single market in services.

Second, radio spectrum is becoming a more important and valuable input for both telecommunications and broadcasting. There is enormous scope to deliver new services using the radio spectrum, for instance High Definition Television, mobile television and wireless broadband. This in turn is placing more of a premium on finding ways to use spectrum efficiently and to find accurate ways to value spectrum in accordance with the actual needs of society.

#### THE DEVELOPMENT OF THE TELECOMMUNICATIONS FRAMEWORK

As noted above, the process of liberalisation of European telecoms markets dates back to the early 1990s. The European Commission introduced measures abolishing “special and exclusive rights” (ie national monopolies) and gradually opening up some telecoms market segments (for example, business data services) to competition. However, full competition was not mandated until 1997. The UK was in a sense a pathfinder for this process, introducing limited competition in 1984 and full competition in 1991.

The 1997 package had the following elements:

- It mandated the removal of remaining restrictions on competition in telecoms markets.
- It introduced a template for licensing of telecommunications services, including a list of conditions which could be included in licences.
- It included obligations on network providers to permit third parties to access their network, but only where the network provider was found to have “Significant Market Power” (SMP).
- It set out rules governing the scope of universal service obligations, and on whom they could be imposed.
- It included consumer protection measures, including obligations on service providers to publish prices.

Almost as soon as the ink was dry on the 1997 regulatory package the Commission began a major policy review (the “1999 Review”) which involved an in-depth analysis of the effects of “convergence”. This review fed into the current EU Communications Framework, the negotiation of which was concluded in 2003.

The new Framework sought to both recognise convergence and put right what it regarded as significant defects already apparent in the 1997 package.

“Convergence” was recognised by adopting a new “technologically neutral” approach to the definition of networks and services, so that a broadcast transmission network, for instance, was now classified in regulatory terms as an Electronic Communications Network, the same as a telecommunications network.

The defects of the existing Framework which the new Framework sought to rectify were:

- Problems around the time taken to issue licences and the imposition of “unfair” licence fees: This was addressed by removing individual licensing of networks and requiring all networks to be covered by a “General Authorisation”.
- Problems of inconsistent economic regulation: As noted above, a key element of the 1997 package was that network operators with Significant Market Power could be required to open their networks to third party service providers. There were concerns that this provision was being incorrectly applied: ie, it was failing to be rigorously applied to incumbents, and conversely in some cases was being too liberally applied to new entrant mobile and cable companies. This was addressed by linking SMP explicitly to the concept of dominance as defined in EU competition law, and requiring Member States to conduct a series of reviews of “Relevant Markets” listed by the Commission in an accompanying Recommendation. The Commission took a power to scrutinise these market reviews

and to veto market definitions and findings of Significant Market Power which it considered were incorrect. The new Framework also stated that this control regime of sector-specific regulation was a transitional measure, and that the end goal was an effectively-competitive market subject only to the rule of competition law.

- Continued problems with universal service obligations: It was felt that the cost of universal service was not being properly assessed and the burden of paying for USO was being unfairly loaded in some Member States onto new entrants. The Commission's response was to introduce a tightly-defined process for identifying costs of USO and establishing funding mechanisms to recover the costs. (The Commission also rejected calls to extend USO beyond fixed voice telephony and narrowband internet access to include mobile and broadband services).
- Problems in the management and licensing of radio spectrum: Because spectrum was now recognised as a key input to mobile telecommunications services, the way in which it was managed in individual Member States was coming under increasing scrutiny. The 2003 package introduced conditions governing the terms on which wireless licences could be issued by individual Member States, seeking to prevent unreasonable restriction of licensing and to limit the range of conditions which could be included in licences. In addition, a Decision of March 2002 created a regulatory framework for radio spectrum policy in the EU. This included the establishment of a procedure where the Commission could develop technical implementation measures relating to harmonised use of spectrum in the EU, which would be submitted to a committee of national spectrum experts (the Radio Spectrum Committee) for scrutiny.

#### ASSESSMENT OF PROGRESS UNDER THE CURRENT PACKAGE

Measured by market outcomes, EU policy appears to have achieved significant success. Prices for traditional residential and business telecommunications services have tumbled across Europe. For instance an average 10-minute call in the EU cost 133 eurocents in 2001 and just 73 eurocents by 2005. (The UK figure was 44 eurocents in 2005). New markets like mobile and broadband have grown rapidly. European penetration rates for mobile telephony compare favourably with anywhere in the world. For instance, in the UK, penetration is considered to be above 114%, though of course this is partly accounted for by some people having more than one mobile account. Broadband, seen by many as a market of key strategic importance, is also an area where Europe performs very well in comparison with other countries and territories. Six of the top 10 countries in the OECD ranked by broadband penetration are in the EU, including the UK.

Of course, these headline outcomes cannot be attributed solely to the success of the regulatory framework. But there is evidence that a policy of promoting open markets and effective competition is having a clear effect. We already see considerable inter-penetration of EU markets by operators, with the incumbent telcos of Spain, France and Germany all have a significant presence in the UK and conversely BT and Vodafone both having extensive business footprints across the EU.

There is also some evidence to suggest that the markets which perform best are those which do have the strongest pro-competitive structures. The European Competitive Telecommunications Association, in conjunction with the economics consultancy SPC Networks, produces a "Regulatory Scorecard"<sup>2</sup> which ranks regulatory activity across the EU across a broad range of criteria. This has then been correlated with the market outcomes in terms of prices and availability in each market. It shows a very strong (albeit circumstantial) link between strong regulatory processes and market outcomes. The UK stood at the top of the scorecard in last year's ranking.

#### COMMISSION CONCERNS

The Commission is now conducting a review which will lead to new legislative proposals in autumn. It might be asked why the Commission is conducting this review and bringing forward legislation at what is clearly an early stage in the life of the current Framework. The answer is that a review was explicitly required under the Framework after it had been in place for two years. Nonetheless, it is clear that the Commission is using this opportunity to develop some fairly radical reform proposals which may go considerably further than the existing Framework.

The Commission is still concerned that the current Framework is not delivering sufficiently consistent economic regulation. There are significant disparities within the EU. In broadband, for instance, Greece's penetration rate is just 3% compared with 20% in the UK.<sup>3</sup> There are also some substantial pricing differences between services within the EU.

<sup>2</sup> <http://www.ectaportal.com/en/basic651.html>

<sup>3</sup> Measured in terms of broadband per 100 households. *Source: Commission 12th Implementation Report staff working document volume 1*

Also, the competitiveness of markets, as measured by the number of market players and the amount of market share retained by the incumbent telecoms operator, varies significantly. For instance, in the retail broadband market in the UK, BT has a 25% market share and the market is diverse, with over 400 ISPs in total, whereas in some other Member States the incumbent retains a much higher share of the retail broadband market.<sup>4</sup>

The Commission has said that it believes these different outcomes stem from a lack of consistency—and perhaps consistent quality—in individual NRAs' economic regulation of their incumbents.

The Commission has also raised concerns about the progress towards a “genuine” single market in telecoms in the EU. On this, some care is needed to interpret the concern. The market which has developed in the EU since 1997 is one of a series of interconnected, but essentially national telecoms markets. It is not, and probably never will be, homogeneous in character because the “facts on the ground” differ. For instance, there will be differences in the number and physical capabilities of the networks constructed in each Member State. Necessarily, this means that regulatory priorities will also vary. For instance, in Western Europe, fixed networks are normally rolled out to more than 90% of the population. On the other hand, in the Eastern European accession states, this figure may be as low as 35%, and the growth in connections is therefore being driven by wireless technologies. Similarly, a number of Member States have an extensively rolled out cable TV network which can also offer broadband and telephony. In both cases, these factors may reduce the importance of mandatory access to the incumbent telecoms operator's fixed network.

There are areas however, where greater harmonisation would appear to provide scope for increased economic benefits. At the large corporate end of the market, there are many companies who wish to purchase telecoms networks and services to connect multiple office locations across Europe. Companies like BT who wish to serve this market segment argue that the absence of consistent regulatory rules, in particular as regards rights of access to incumbents' networks, is restricting their ability to offer services to such customers seamlessly and efficiently.

Developments in technology are also altering the relationship between infrastructure and services. Telecoms operators are rebuilding their networks on the basis of Internet Protocol (IP) technology. There are a number of reasons for this, not least cost reduction, but an important consequence of the change is that there is much greater scope to offer services at a physical distance from the consumer. This means that new offerings such as Voice over IP (VoIP) could now, in theory, be offered from anywhere in the EU to anywhere else, without their being any need for the service provider to have a physical presence in the country where the service is being used. This offers the possibility of a genuinely new, pan-European telecoms service market developing.

#### COMMISSION PROPOSALS FOR TACKLING THE “CONSISTENCY” PROBLEM

We believe that the Commission's response to the “inconsistency” problem will include measures in the following areas:

- Tightening the rules on regulators' political independence. The existence of independent regulators is recognised to be key to the promotion of effective competition. The current Framework requires that regulators are independent from market actors, but does not specify the nature of the relationship with government. Concerns have been expressed that, unless there is a suitable degree of separation between the regulator and the government, there can still be scope for unwarranted interference in the activities of the regulator, perhaps particularly where the state retains a significant ownership position in the incumbent provider as it does in a number of Member States.
- A Commission veto over “regulatory remedies”: We have noted that the Commission can already veto NRAs' market reviews on the basis of the market analysis or the finding of Significant Market Power. The Commission now proposes to extend that veto to also cover the design of specific regulatory remedies resulting from a finding of SMP. This is not a new proposal: it was in fact in the original Commission draft of the 2003 package but was rejected by Member States.
- A possible “European Communications Agency”: This has been erroneously described as a “European super-regulator”, implying an Agency with the kind of decision-making powers currently reserved to either the Commission or NRAs. In fact what appears to be envisioned would be a body with an advisory role only, in effect reporting to the Commission.

<sup>4</sup> Source: *Commission's 12th implementation report*—  
[http://ec.europa.eu/information\\_society/policy/ecomm/implementation\\_enforcement/annualreports/12threport/index\\_en.htm](http://ec.europa.eu/information_society/policy/ecomm/implementation_enforcement/annualreports/12threport/index_en.htm)

### “FUNCTIONAL SEPARATION”

The Commission is also proposing that regulators should have their toolkit of powers extended to include a power to impose so-called “Functional Separation” where incumbent telcos have been found to have Significant Market Power. The Commission’s proposals are closely modelled on the changes to BT’s internal structure—including the creation of a new access business, “Openreach”—agreed by BT and Ofcom in 2005. (It should perhaps be explained that Ofcom pursued these changes under the Enterprise Act rather than the EU regulatory framework).

The principle underpinning Functional Separation is that the natural monopoly parts of the incumbent business should be placed in an organisationally separate entity subject to its own governance arrangements. This then reduces both the incentive and ability of the incumbent to discriminate in favour of its own downstream business. On the Ofcom model, it does not require either legal or full ownership separation and the Commission proposal also stops short of requiring these.

### SPECTRUM MANAGEMENT

The other area where the Commission is proposing radical changes to the Framework is in relation to spectrum management. There are essentially two limbs to the Commission’s interest here.

First, the Commission believes that there is considerable scope to increase the economic value of spectrum by liberalising the way in which spectrum is allocated—in particular by removing service and technology restrictions and permitting secondary trading. This aligns closely with the UK approach.

Second, the Commission wants to identify mechanisms to permit greater co-ordination of approaches to spectrum at EU level. It appears to have in mind a strengthened role for the Commission in authorising and co-ordinating pan-European allocations of spectrum for new services, possibly assisted by the European Communications Agency, mentioned above.

### OFCOM’S INITIAL VIEWS ON THE FRAMEWORK REVIEW

Ofcom’s view is that the current Framework has been a considerable success and is already playing a part in driving competition and liberalisation of communications markets. Nonetheless, we also recognise the importance in a fast-moving market environment of ensuring that the Framework is genuinely fit for purpose.

We recognise the need for greater consistency of application of economic regulation to telecoms networks and services. Ofcom is a member of the European Regulators’ Group, a “college” of national regulators formed under the current Framework to advise the Commission on the application of the Framework and on harmonisation of regulation. The ERG is developing into an effective forum for the exchange of best practice on economic regulation, raising the overall quality of regulation within the EU.

The ERG has recognised the importance of greater alignment of regulatory approach in the markets segments which are strategically important to companies seeking to enter a particular national market, and has committed to produce common positions on regulation in these candidate markets, which include wholesale broadband access.

The Commission clearly believes that these developments of the ERG’s role, whilst welcome, will not go far enough and hence is proposing a greater role for itself in supervising regulators’ remedies. We are not convinced that this is the logical response to the “inconsistency” problem. There is no obvious reason why the Commission should be more competent in the design of remedies than NRAs, for whom this is, after all, their core task. Equally, it will remain important that remedies are properly tailored to particular national circumstances. In our view it would remain preferable to continue to develop the role of the ERG as a forum for best practice, evaluation and peer review of NRA remedies. If remedies are in effect determined through the exercise of a Commission veto, this runs the risk of a “one size fits all” approach and may reduce scope for regulatory experimentation and innovation.

Pan-European services do present a new challenge. Ofcom agrees that mechanisms may need to be found to provide coherent cross-border regulation to such services, perhaps including scope for a single EU-wide authorisation for some services. Where it continues to make more sense to authorise services at national level, there may still need to be greater alignment of regulatory conditions. For instance, the ERG is currently working on producing a unified common position on the regulatory treatment of VoIP. But it could be most efficient in certain circumstances for the Commission to use its existing powers to issue binding Decisions to promulgate such regulatory conditions for pan-European services.

Where Member States retain a stake in their incumbent operator, the complicated triangular relationship between government, NRA and incumbent can undoubtedly diminish confidence that the regulation regime will be applied even-handedly, even where there is no actual evidence of political interference. For that reason, we agree with the Commission that the Review offers an opportunity to put beyond doubt the independent status of NRAs both from incumbents and national governments.

We do of course welcome the proposal to extend regulators' toolkit of remedies to include the Functional Separation already in place here in the UK.

We also strongly support the Commission's intentions to introduce greater liberalisation of spectrum management. We are unclear at present what proposals the Commission has in mind to improve co-ordination. Here the devil will be in the detail, as co-ordination needs to both respect national competence in relation to usage such as defence, and also interleave sensibly with the wider international co-ordination of spectrum achieved through the International Telecommunications Union (ITU) at regional and global level.

Finally, we note that the case for a European Communications Agency needs to be assessed on the basis of what tasks such an Agency could usefully perform. If the role of such an Agency will be merely to advise the Commission on the application of new Commission powers in relation to consistent telecoms regulation or spectrum co-ordination, our view is that an Agency would add little value over and above the existing advisory structures, the ERG on the one hand and the RSC on the other.

*July 2007*

### **Memorandum by Ofgem**

#### **INTRODUCTION**

1. Ofgem is the regulator of the gas and electricity industries in Britain. Our principal objective is to protect the interests of present and future gas and electricity consumers. We do this by promoting competition, wherever appropriate, and regulating the monopoly companies which run the gas and electricity networks. Other priorities include helping to secure Britain's energy supplies and promoting more sustainable energy supplies by, for example, helping to reduce carbon emissions to tackle climate change. Our work on sustainability includes helping the gas and electricity sectors to achieve environmental improvements at the lowest possible costs to customers. We also work to make sure that the interests of vulnerable and fuel poor customers are protected by the energy markets.

2. Ofgem believes that well-functioning and genuinely competitive EU energy markets, delivered through strong and independent regulation at national and EU level, would bring significant benefits to EU and UK consumers, and we therefore support the Committee's important and timely inquiry. This memorandum sets out our answers to the questions in the call for evidence. In doing so it includes information that Sir John Mogg offered to give the Committee during the course of his oral evidence. We have not answered those questions that we think are beyond the scope of our remit and expertise.

#### **THE CURRENT STATE OF THE SINGLE MARKET**

3. Since 1 July 2007, all EU energy markets have technically been open to competition. However, significant barriers remain to energy suppliers being able to compete effectively to offer new, cheaper energy products to customers across the EU. We fully support the Commission's authoritative Sector Inquiry, published on 10 January 2007, which highlighted a range of significant problems that were preventing effective competition emerging. These included: market concentration, collusion between incumbents to share markets, vertical integration, lack of access to infrastructure and lack of or delayed investment as the most serious barriers to competition in the internal energy market and a lack of transparency preventing new entrants assessing the scope for profitable entry. The limited scope of existing EU rules to a subset of cross-border issues, as well as their uneven and insufficient implementation by Member States, also creates a "regulatory gap" which acts as a serious impediment to investment and cross-border trade.

4. Consequently, we believe that further legislative measures by the European Commission are necessary for the completion of the single market in energy. Ofgem, as part of the Council of European Energy Regulators (CEER) and the European Regulators' Group for Electricity and Gas (ERGEG) have been working very closely with the Commission on the development of the so-called "3rd package" of EU energy liberalisation legislation. We expect to see legislative proposals in late September. A comprehensive EU and national level regulatory framework is required, built around the principle of strong, independent regulation as fundamental

to the creation of a stable climate for investment by energy companies in infrastructure and well-functioning markets. We believe the core elements of such a framework are:

- increased powers and independence of national regulators, from government as well as commercial interests;
- the promotion of strong and independent regulation at EU-level through the creation of an EU regulatory function, with specific, defined powers;
- unbundling of transmission and transportation from energy production and supply, preferably full ownership unbundling; and
- much greater transparency.

5. It is clear that a part of this improved EU regulatory framework should be improved co-ordination between National Regulatory Authorities (NRAs). We will continue to promote and take all practical measures through our membership of CEER and ERGEG. Since regulators are statutory bodies, however, legislative change is also required to ensure, for example, the ability to share confidential information in cross-border market investigations.

6. The inadequate implementation of the existing energy Directives, despite infraction proceedings launched by the Commission, also highlights the difficulty in enforcing single market legislation. In energy markets, however, the core tools of strong, independent regulation ie the required “remedies” are ex-ante oversight of the monopoly networks and rigorous ex-post application of competition powers. The forthcoming legislative proposals should ensure the former is possible for integrated EU grids; and Commissioner Kroes has shown herself to be highly determined to use her powers in the latter, including in the follow up to the Sector Inquiry: the Commission is currently running 13 competition cases in the energy sector.

7. Market monitoring is a further, related issue. Market monitoring is one of the core functions of Ofgem both as a competition authority responsible under the Competition Act 1998 for enforcing competition law and as a sector regulator with powers under the Utilities Act in the gas and electricity sectors. The substance of UK competition law is the same as Articles 81 and 82 of the EC Treaty except for geographical scope. However, this is not the case in all Member States. Again, it is certainly the case that co-operation could be improved, both between energy regulators, between competition authorities, and between energy regulators and competition authorities.

8. Finally, it is certainly a concern to see growing political opposition to the single market in some quarters. Ofgem and the European Regulators are clear that a well-functioning single energy market is the cornerstone of achieving competitiveness, sustainability and security, and therefore any protectionist measures at national level will undermine the achievement of these shared goals. We welcome the strong position taken by Commissioner Kroes against such developments where they have arisen.

## THE ENERGY SECTOR

9. There has not been sufficient unbundling of gas and electricity in all Member States. The Final Report of the Commission's Sector Inquiry rightly noted vertical integration between supply and generation and infrastructure businesses as a major impediment to single energy markets. Network operators have a central role in competitive wholesale gas and electricity markets. Market participants, as network users, are their customers. In their operational and investment decisions, therefore, they must act—and be perceived to act— independently of commercial interests and in a strictly non-discriminatory manner. The potential for undue discrimination will always exist where a vertically-integrated company undertakes both competitive and monopolistic businesses. A network business can favour the competitive company in its own group over other competitor businesses. Such a perverse incentive will always exist when the competitive and monopoly business has the same shareholders irrespective of what other measures (for example, transparency or ring fencing) are in place. Whilst the current “legal unbundling” regime introduced in the 2003 Directives was motivated by such considerations, its rules were too vague and their implementation in Member States too weak. Ownership unbundling is the most transparent process to ensure non-discriminatory operation and development of the networks, and we would support new EU legislation requiring this for all EU transmission networks.

10. The European energy regulators are unanimous in their commitment to single EU markets in electricity and gas as the cornerstone of achieving the EU's energy objectives of “security, sustainability and competitiveness”. We welcome, therefore, the recent political commitments to this goal by the Energy and European Councils, and the strong line currently being taken by the Commission. The fact remains, however, that the current system has not yet delivered, and Member States do now need to be held to their promises, with good intentions matched by the political will to deliver.

11. The Commission's commitments on climate change also have implications for the single market. Ofgem recognises that climate change is one of the greatest global challenges. We strongly support the EU Emissions Trading Scheme as the best way to reduce carbon emissions at the lowest cost to customers and industry, and we have recently submitted our views to the Commission on how this should be developed in phase III building on experience to date to improve the long term incentives for companies, including gas and electricity companies to innovate and invest in low carbon technologies. Equally, a well-functioning internal market will be an important part of the creation of a liquid EU, and ultimately global carbon market which will help to reduce the costs of tackling climate change. EU (and national) political targets and initiatives to address climate change must be implemented in such a way that they support the development of effective markets and the stable regulatory environment necessary for investment, and do not lead to unintended market distortions.

12. Ofgem supports the Commission's proposals to build up and strengthen the powers of the European Regulators Group, ERGEG, which Sir John Mogg currently chairs and in which Ofgem plays a lead role. As the Commission have identified, the EU's networks require massive investment in the coming years: to join up national networks and create an integrated grid, to facilitate the single market, to connect increasingly diverse supplies eg renewables, liquefied natural gas (LNG) etc., and to improve security of supply by diversifying risk. This requires a comprehensive EU-level regulatory framework to ensure the stable and predictable climate necessary for this scale of investment. Strong and independent regulation must be guaranteed in two key ways: by raising the powers and independence, from commercial and political interests, of national regulators; and by establishing an EU regulatory function that provides for independent, EU-level regulatory decisions in certain, defined cross-border areas, as well as improved co-ordination between national regulators. In order to achieve this within the EU's legal and institutional framework it may be necessary to replace ERGEG, which is an advisory body to the Commission, with an independent EU regulatory agency. However, it is vital this is built upon and comprises the National Regulatory Authorities, who should remain primarily responsible for regulatory oversight within their own markets/jurisdictions. Hence we believe the necessary EU-level, independent regulatory oversight should be achieved by enhancing the current structures, but not by creating a single EU energy regulator.

13. Ofgem would be happy to provide any additional information that the Committee may require in the course of its inquiry.

10 July 2007

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### Examination of Witnesses

Witnesses: Ms VERENA ROSS, Director of Strategy and Risk, Financial Services Authority, SIR JOHN MOGG, Chairman, Ofgem and MR ALEX BLOWERS, International Director, Ofcom, examined.

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**Q49 Chairman:** Good afternoon. Thank you very much for coming. The first part of evidence-taking will be general issues with questions being put by all of us to all three of you concerning the current state of the single market. We then propose to ask individually specific questions to each of the three of you. If pressure of time means that you have to depart after you have given evidence, please do so. Unless there are any questions from our witnesses, I will ask the first question which is based on the fact that we are conducting an inquiry, which we hope to conclude some time in November, into what needs to be done to expand and improve the operation of the single market, and we have chosen three specific areas represented by your good selves to look at in particular, but we may change our minds and add other issues in our final report. We are going to Brussels to take evidence before the recess and then when we return in October we are going to talk to some commissioners about the work that has been going on and we intend to report after the Commission has come up with its proposals for improvements of the single market. With that background, the key question is what has been

achieved so far within the fields that you wish to comment upon and what are the remaining significant barriers to achieving the single market? In other words, what should the Committee be looking at and pursuing?

*Ms Ross:* In the financial services field quite a lot has been achieved when it comes to the European single market. We have seen the carrying through of the Financial Services Action Plan over the last five or six years as it was agreed in Lisbon in 2000. That has certainly involved a lot of measures—all together 42 of them—which has meant that there has been a lot of activity which has been trying to harmonise legislation within the European Union. The purpose of the Financial Services Action Plan is in three areas. One is to create a single wholesale market, to improve the retail market, across Europe and also to achieve a state-of-the-art prudential regime. What we have seen is quite a lot of activity, particularly in the first area where a lot has been achieved with all the measures, although it will have to be seen, given some of them are still going through the national implementation stage, what it will actually amount to when they have all been implemented and what the

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effects are on the relevant industries and consumers. The last point on a state-of-the-art prudential regime is that quite a lot has been achieved in the banking area and there is now an attempt to start doing similar things in the insurance area with Solvency 2. The middle point on the retail markets is probably one of the more difficult ones. Again, that has been tackled in some of the activities under the Financial Services Action Plan but it has to be seen exactly how much impact those current ones will have. The Commission itself has issued a Green Paper on Retail Financial Services which is going to look particularly at what the current market failures through the single European market in this area are and what more should be done.

*Sir John Mogg:* The timing of this inquiry is absolutely perfect from the point of view of energy. We are at a pivotal moment. There are some good things but quite a lot of bad things to specifically answer the question. On the good side we have the emergence in embryonic form of a co-operative co-ordinating role for energy regulators with varying degrees of independent powers emerging in the last few years. We have a recognition of the profound integration between three aspects of the energy policies, namely sustainability, competitiveness and the future of security of supply. We have major changes in co-operative and non-binding legislation and finally, but here a note of criticism emerges, we had a second package of legislation around the turn of the century which has not been implemented. The Commission issued 17 infraction proceedings about a year ago which primarily dealt with a subset of cross-border issues rather than the totality of the energy market, which is weak at national level; for example, legal unbundling, which we will probably talk about later, rather inefficient, little at EU level and generally an overall picture of concern with legislation. That is why a third package of measures will be necessary. As to what the problems are, I think I speak with real authority here because the Commission has done our work for us in a very impressive 200-page competition report extensively consulted upon in a sector review under the new modernised European competition powers. It concluded: "No energy market integration at European level; a lack of transparency; a serious market concentration at national level; collusion between incumbents in the share markets and excessive vertical integration with implications in terms of third-party access to the infrastructures which are so crucial in energy". This had a very detrimental effect on attracting investment which was much needed at the particular time. The catalogue which I have done rather formally—I recommend the summary rather than reading 200 pages—will give you why we should be doing something about this. The regulators have also identified both self-critically what is wrong with

regulation which is not independent, not effective at national level, generally speaking—I hope there are exceptions and I represent them—and also at European level there was none, so there were serious regulatory gaps in terms of assessing how to achieve a linking of infrastructures between Member States. There was an overall lack of security, both a sense of security of the regime into which investments could be made, and security in terms of security of supplies from rather dubious suppliers. I think you will see that there are serious concerns although the Commission in its reports does highlight the fact that progress has been made. The reality is that progress has been made but that there is an enormous distance to travel.

*Mr Blowers:* Many of the headline points I would like to make echo particularly what Sir John has just said. In the communications sector we have had a lot of effort and focus on promoting liberalisation and competition for a sustained period of time. We have had notionally full competition in telecommunications since 1997 and there is broad intellectual recognition throughout Europe that liberalisation and competition are intimately connected with success in terms of delivering innovation, lower prices, choice and quality of telecommunication networks. I say "intellectually" because emotionally there may be some differences in the way that people think about how that applies in practice. Your timing is similarly good from our point of view in that the Commission is now launching into a review of the current EU regulatory framework for telecommunications and will be bringing forward legislative proposals for at least some amendments of the current package later this year, probably slightly behind the energy package. The key question is the report card for Europe is probably round about a seven-out-of-ten, and is there a way to improve that significantly from where we are? I would characterise that as being a different problem to that being experienced in energy. I do not think the problems are as fundamental but some of the components are probably quite similar and therefore some of the potential solutions may be quite similar. When we look at overall performance we see that, for instance, Europe is now leading the pack in the world in the adoption of broadband. There are one or two countries who have even more impressive broadband penetration—Korea is one—but if you look at the current OECD top ten for broadband, you will find that six out of ten of the leading countries, including the UK, are from Europe. We have also seen prices consistently come down in Europe for the last five years for a whole basket of telecommunication services. We have seen very high levels of interpenetration of markets, including reciprocal inward investment by the biggest players in Europe and indeed by significant players

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from outside of Europe. All those things are to the good but there are some problems that the Commission has identified. We can talk about these in more detail, but in headline terms there are problems with consistency of regulation. National regulators such as Ofcom approach the same problems but with different regulatory solutions. Some of those are now clearly already visibly second best. How can we close that consistency gap and make the regulation overall in the system more effective? There are also issues about the advent of new cross-border services. The regulatory structure and the market structure that have evolved are very much about a network of national markets. The next phase of competition in this market may take the form, at least in part, in genuinely pan European services. The Commission is asking the question whether the current framework is really equipped to deal with those kinds of pan European services and that to my mind is a very good question. I think the Commission will want to explore some of the same issues that we have heard about in other sectors: "Are regulators independent? Do they have the right powers? Are they independent both from market actors but also from governments? Do we need to strengthen the regulatory toolkit? Do we need to think about the institutional balance of forces between the regulators, the national governments, the European institutions and particularly the European Commission?" Those are the issues which will probably come to the fore when the Commission brings forward its reform package.

**Q50 Chairman:** In respect of the competence of the Commission, the capacity of the Commission and the interests of the relevant commissioner for these areas which you have just given evidence on, to what extent will the relevant commissioners—because in some cases there are more than one—take up the cudgel with energy to propose rectifications to an imperfect single market?

*Ms Ross:* It has to be said that the Commission in the financial services area has been so preoccupied with drafting more and more new legislation that it has not had enough time to then look beyond that and see what has actually happened with that legislation. Has it been implemented properly in the various Member States, how is it working on the ground and is it delivering the benefits which they are looking for? Commissioner McCreevy has written that on his worksheet and has very clearly said that it is not just about drafting new legislation but it is about taking that next step and has very clearly said that in going forward he will carefully look at new legislative measures where it is clear that there is a market failure and that new legislation would resolve that market failure. This is very much in the spirit which we here in the UK work in terms of evidence-based policy

making, if there is a problem where the cost of legislation would be greater than the benefits, then we should not go forward with further rules or legislation in that area. There is recognition at the Commission at the financial services level that they need to now move on and that they need to look at the effectiveness of the legislation they have created. They have in one or two instances actually moved away from proposing new directives, for example, in the clearing and settlement area which you have identified in your questions earlier which, from the FSA's perspective, is the right thing to do. It will now come down to seeing what they do on the ground in terms of checking how Member States have implemented and whether they will then be willing to enforce against those which are either being slow or not effective in implementation and carrying through. The other thing which will be important is the whole issue of moving on to looking at competition vehicles to deal with some of the issues that are there rather than writing new legislation which increases the cost of regulation further, but looking at other measures which help to reduce some of the barriers which are clearly still there in certain areas.

*Sir John Mogg:* Some of the concerns that Mr McCreevy has about financial services in the past has some affinity with energy policy—a hesitancy to move towards new legislation and a wish to see present legislation implemented. The first answer to your question in terms of the relevant commissioners is strongly yes. Energy is seen as one of the five "big ticket" issues for the President of the Commission. There is a positive scramble of commissioners to be actively involved with the Energy Commissioner, Mr Piebalgs, but also the Competition Commissioner, Ms Kroes, the Environment Commissioner, Mr Dimas, and other commissioners. These include Mr Verheugen, who chairs a high level group from the industry perspective (of which I am a member). We do not suffer from benign neglect! As to competence, I am happy to be able to say on the record that I believe there is a significant competence. The Commissioner wisely chose to establish a moratorium of 12 months before any new legislation was being proposed. There was however a clear pressure for legislation to demonstrate the Union's political commitment. This was resisted by the Commission, partly to allow the sector review that I mentioned earlier to run to its full term and partly to allow the pressure from the launch of the infringements procedure I mentioned earlier. It was also in part to allow full understanding of the issues which are very complicated. They certainly match the complexity of the interrelationships of policies that I experienced in other internal market issues. As to the prospects, this is the interesting issue. I think the prospects are good in the sense of preparation. The present legislative programme, as we speak, being elaborated will emerge late

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September, probably around the time of your reporting. We shall see whether all the concerns—I think we will come back to this when you ask us more specific questions on the regulatory framework—but I think they will be well researched. The key issue is whether individual Member States will accept the shift of power that is implicit from national to European level, especially in relation to the European internal market. Will they accept the erosion of some of the fundamental principles held at national level (including the unbundling issue) but also in relation to regulation and the power of the regulator to decide those issues? As to delivery, one of the key issues is the vital area of the security of supply and sustainable development together with the competitiveness in the revised Lisbon agenda. These demand urgency but, of course, the laboriously slow process of what we would call primary legislation through the Community institutions is against that. Some of the issues, particularly the creation of a regulatory approach at European level, also pose very serious constitutional and institutional issues relating to the balance of power. The will is there. I am not sure if the political will is there and I am not sure whether the institutional ability to meet those problems within a reasonable time will be there. The next six months will give some answers to that.

*Mr Blowers:* No-one who has had any dealings with the Information Society Commissioner, Mrs Reding, could be in any doubt about the personal vigour, energy and commitment that she brings to her part of the “acquis”. When we look at the successes that she has had in the last two or three years with the Audiovisual Media Services Directive, which everybody assumed would be a long, painful and protracted process, but was actually introduced and agreed surprisingly quickly; the Roaming Regulation, which we have previously discussed in this Committee, was again a very complicated issue. As you know, we have serious doubts about the detail of what was proposed in some areas, but again we have to give Mrs Reding credit for having spotted that this was a first order problem that needed a swift and decisive solution—which is what happened. The least of our problems is a lack of energy or commitment from the Commission in this area, at least from our Commissioner. We have a slightly different problem in a sense, which is the “so what” problem that for many people involved in the debate the sense is that the telecommunications market is already deregulated, it is liberalised, competition is emerging, why do we need to now go back to the well and have a further round of legislative discussion? Surely the existing framework, which only dates back to 2003, should be given time to work and to prove its worth? At the start of the review process we were pretty much on that page ourselves that it was a bit too early to be engaging in a fundamental rethink of the rules. Our market moves

very fast and I think the scope for new pan European services which are enabled now by changes in the underlying technology—and that change is happening very fast—do necessitate a rethink. We need to at least comfort ourselves that we have the power, the remit and responsibilities to deal with those new emerging problems. From that point of view I think there will be an appetite to at least run the rule over the existing system to make sure that it is functioning properly.

**Q51 Lord St John of Bletso:** If I could touch on the whole issue of the scope for legal unbundling, Commissioner McCreevy has drawn reference to the fact that there is no less than 1,634 directives. We have heard about the problems of consistency of regulations. My question pertains to what is the scope for greater co-operation between the national regulatory authorities and the whole quest for the scope of legal unbundling?

*Ms Ross:* From our perspective it is absolutely essential, particularly in this area where some of the legislative bases have been created that now it is about good regulatory co-operation across Europe. We are very involved in making sure that that is given a very high priority because really it is only when you deal with other national regulators and you talk amongst each other about how you actually do the day-to-day regulation that you find out that actually even though you have the same legal basis, you do things so differently that the effect of what is being done through the legislation is a completely different one. What we do at the moment in the three different so-called Lamfalussy Committees, which are basically at the level below the legislative Ministry of Finance negotiations, is to work both on better day-to-day *de facto* co-operation between regulators, particularly when it comes to delivery of regulation for internationally active groups, where we need to make sure that we do not just duplicate regulation for each country, but that we build on each other and rely on each other through mutual recognition, but also in developing guidelines underneath the directives about how detailed practical regulation works in each case. We are also doing quite a lot with the other national regulators across the European Union to work on training initiatives and other things which are trying to bring the practices of the different national regulators closer together to make sure that we are not just looking at the same black on white legislation but what then happens and how we implement and deal with that is more commonly aligned.

*Sir John Mogg:* The Commission's Interim Report on the Internal Market which I thought advisable to read before I saw your Lordships, did get a few of the areas right. This was one of them—you need to have different instruments to tackle a different range of problems. In the specific case of energy we have seen

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quite a few new developments which responds in that way. We have seen the emergence of the Council of European Energy Regulators (CEER) in the late 1990s, interestingly from the Iberian peninsula. There has been the transmogrification of the CEER into ERGEG (it is purely coincidental that my name is in the middle of that process). This was established by Commission decision and is now at a stage of developing towards some potentially legislative-based approach. We can see that each of these stages brings something to the party. Co-ordination, very much as in CESR, you meet people for the first time, you talk about it, you understand, you collaborate and possibly even do some business. For energy I think less is done, at least since I was involved with CESR, but it is developing and that is essential. The move next to a legislative-based form at European level, which is the major absence, is a central issue. I will follow my Lord Chair as to whether I should pursue that, but I will leave the use of an EU regulatory agency on the table. There are many other areas that we are developing in collaboration guidelines which can be converted into legislation by the Commission. All of these different factors contribute towards a more effective, more informed, regulatory approach at European level, but—and it is a big but—how effective this will be as the market becomes more integrated; how effective the powers that currently exist or do not exist at national level are made compatible with the powers that could be established at European level; and how effectively the interests of the European dimension will override the interests at national level are issues which as the GB energy regulator are particularly concerned about. We must not see any intrusion at EU into national level activity when no such intrusion is necessary. However, for an integrated market there is a great deal of work to do—in relation to the interconnections between countries and the necessary improvements where there are congestion management.

*Mr Blowers:* From our perspective it is very much the same story that consistency is best achieved by exchange of best practice between regulators. To illustrate by example, in the telecoms sector we have this thing called local loop unbundling—the rules that allow you to place your apparatus in the local exchange of the incumbent provider and effectively take over the line to the customer. It is the most powerful form of regulated access. It gives the company wholesaling that service more scope to deliver. It is a very powerful thing. When we did it for the first time in the UK we made a complete mess of it; it was an abject failure. When we in Ofcom decided to revisit local loop unbundling we looked at the way the French had done it very successfully. The idea of UK regulators learning best practice from the French is something that many people have struggled with, including probably some people within Ofcom, but

the fact is that Arcep, our equivalent regulator in France, did a superb job of acting as pathfinder in that area and we learnt from their experience and from some other European regulators. I think that exchange of best practice, if you can have the humility to actually engage with it in the correct way, is an incredibly powerful technique. Whether it will go far enough and fast enough to meet the Commission's requirements is another matter, but I do think that a college of regulators acting in a collegiate way is a very powerful body.

**Chairman:** Lord Haskel may have a general question but I am going to ask him to lead by focusing some questions on energy and then I will ask Lords Whitty and Mitchell to focus on telecommunications and Lord St John of Bletso on financial services.

**Q52 Lord Haskel:** I would like to put a general question, first of all. The interim paper which Sir John Mogg referred to, if it is the same paper that I am thinking of, is the one about the new vision for the European Union. I just wonder whether we ought to pursue that a little further. The vision for the single market was thought up some 20 odd years ago for the free movement of goods, people, capital, etc, and over the years we have tried to achieve that through legislation and through regulation and to a greater or lesser degree, depending on the industry, quite a lot has been achieved. Do you think that we have gone as far as we can with that vision? Do we need a new way of looking at the single market? The European Commission tries to look at it from the point of view of the consumer citizen. Do you think the idea of the single market through the four freedoms has already been discounted by most people in business and industry? We now have to get on and have a new vision and a new way of doing it if we are going to move forward.

*Sir John Mogg:* That is a fascinating set of questions. Give me 40 minutes and I will give you a complete answer, but I will confine myself to a few. First, I would immediately pick up one area. The one freedom that you did not quote is a reason to continue our pursuit of the Internal Market. That is freedom of services where the disastrous experience that the Commission had in terms of initial French intransigence over the Services Directive led to an unravelling of an overambitious services proposal into the present, rather neutral proposal. Services, unlike goods, are still the Cinderella of the Single Market. There is complete freedom of capital. In relation to goods, you have cross border exchanges accounting for some 68%, (my figures may be out of date). But with services there is a considerable drop. The basic necessity of the internal market programme as first conceived in the mid 1980s, and then broadly delivered in 1992. In that area one could argue that you still need legislation sometimes. My own view is

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that future legislation will tend to take the form of regulations rather than directives, particularly in the well-developed areas including those of my two colleagues, although they may not like me to comment. I think there are other areas and energy falls very properly into that. Not that legislation is the only route, and that is why I think the Interim Report was somewhat a breath of fresh air to include self-regulation. There can be co-regulation with consultation and impact assessments. In the UK this is very old hat, but for some continental countries it is really quite a recent development. If I may now turn to energy, we need new legislation. It is quite clear that we cannot achieve even moving to first base at European level. If I spell more for the record than for anything else, we need legislation to give independence to regulators at national level and to bring regulation at a European level with appropriate independence too. We need legislation to breathe life into the powers of regulators at national and at European level. We need unbundling. Here we have come to the heart of the current debate. We already have legal unbundling at EU level which really has been demonstrably ineffective. We must have an effective unbundling. We regulators argue that ownership unbundling is the most effective but the Independent System Operator approach could be also. The point is that it must be genuine and independent. We need Transmission System Operators who will increasingly be key in integrating the EU Market. It is they who plan networks, they link networks and they invest in networks. We have to find a way of making that happen, both forcing the pace and ensuring that their approach meets European interests. We need market transparency and the transparency with regulators. That is coming very slowly and I think in this ERGEG has been very important, but we need to force the pace of "primary" legislation as a booster is necessary. We also need powers to make the rules more quickly and in the more technical sense. We will not get that because of the EU institutional difficulties. Most of all, to reinforce a point made very early on in relation to financial services, we need continued pressure from the competition side. We are nowhere near the point when we could see a falling away of regulation and shifting into general competition powers, but we need competition to deliver the structure of the industry and to eliminate some of the abuses in the European market. So we need both regulatory powers and competition powers. The internal market in energy desperately needs third generation legislation. But not only that.

*Ms Ross:* I share a lot of what Sir John Mogg has just said. In financial services we are probably slightly further down the route because of the massive legislative programme which has happened. In our minds, certainly from a UK perspective, we do not see the need for significant further legislative measures.

There are a couple of further measures which are currently underway which we see a benefit in: one is the solvency legislation to bring the prudential standards for insurance companies up to a higher standard which we think is quite important; the other one is the UCITS Directive which needs updating to make sure that that works across the European Union. In general terms, our view is that new and additional legislation is probably not necessarily the best route to go forward. What is more important is that proper implementation takes place, as I said earlier, but also that competition law is properly made use of. When you look at what the vision of the single market was, in financial services in particular, there is a big divide between the wholesale market and the retail markets. In the wholesale market generally one can say that many of the players are very internationally-minded, they actually make use of these single market directives and actually provide services cross-border and they find there are significant benefits from a greater integrated market. In these areas the regulation is already reasonably aligned across Europe. In the retail markets that is a lot more difficult, partly because of the natural difference in terms of retail consumers naturally tending to want to take financial services from their national market, whether it is buying a mortgage or going to a bank and wanting to open a bank account, the natural inclination is to stick with the national providers whose names you know, you know where to complain, and who the regulator is who is responsible and so on. In those markets clearly the challenges are much harder, but because of that different approach it is also going to be much harder to justify significant legislation in those areas, because the benefits which can arise from greater harmonisation on the legislative field are probably more questionable because the question is whether the retail consumers will ever be quite as internationally-minded in their approach to consuming financial services as the wholesale markets are.

*Mr Blowers:* That is absolutely right from our perspective as well. There are probably some natural limitations to the single market as a completely seamless retail market. If we look at an area like e-commerce, for instance, where there is a directive in place which sets a very rigorous standard of openness on national markets, we still find that people quite often choose to purchase e-commerce from either their own country or own linguistic group when given a free choice with no other factors limiting that choice. There are probably still some restrictions to the way in which consumers will behave. One of the important changes in our sector has been the focus on openness in Europe as a precondition for competitiveness in the world. In order to achieve the kind of adhesion with new services that we need in Europe, to prevent those services simply off-shoring—I am talking here

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particularly about Internet delivered services—which could be delivered from anywhere in the world. If you want to have an adhesion in Europe for those services you need an open, transparent and competitive market landscape. It is unavoidable that we have that if we want to be in that part of the value chain. That has affected the way that we think about single market challenges. It is not just about creating complete consistency; it has to be consistency of the right kind. It has to be a baseline regulatory activity which is conducive to people doing business.

**Chairman:** Let us move on to some specifics and, Lord Haskel, if you would like to begin with energy and other colleagues may come in. We will try and allocate roughly about ten minutes to each of the specific areas.

**Q53 Lord Haskel:** We have already dealt with the first point about support for a comprehensive regulatory framework. Sir John mentioned about the need for unbundling. You spoke about ways of making it happen. Would you like to tell us about the ways of making it happen?

*Sir John Mogg:* We need legislation that is agreed, implemented and enforced. Politically the preferred route for most regulators is ownership unbundling where it is quite clear that if the transmission system operator is separate from the people who use the infrastructure, then none of the disadvantages—that is restriction of access, favourable management of the process towards the affiliates in the company of ownership split, the investment orientation that tends to favour the affiliates inside the group—none of those issues comes to the fore. There are almost doctrinal debates at present with not only Germany many smaller countries and one or two of the bigger ones, claiming that ownership unbundling infringes some inalienable fundamental right and is pernicious. The alternative that has been developed is something called Independent System Operator (ISO). Without going into great complexity, this approach can be deep or shallow, the idea is to differentiate between those who run the transmission system and those people who use that infrastructure. There could be further separation down into distribution but in the UK, Germany and in other countries that is not a necessary requirement in our view. The Competition Commissioner is adamant from the exploration she has done in her Sector Review that you must have ownership unbundling. The Parliament also favours ownership unbundling, but it is to be negotiated. The big issue here is to secure the benefits of genuine competition without market abuse. In terms of third party access we need to have something that works. That brings me rather conveniently to the second point. The more you get away from ownership unbundling, the more greater regulatory supervision is needed. In GB we have both ownership unbundling, covering the vast majority—

99%—of our transmission system together with the two Scottish independent system operators agreed at the time of privatisation. There must be deep intrusion by the regulator for such ISO arrangements to make sure that the rules are followed. That means that if the Community goes towards Independent System Operators then, *prima facie*, you must have a strong regulatory presence at the European level. I do not believe that link has yet been made by some of our EU partners (including Germany), but to my mind you cannot have a wishy-washy system of supervision in relation to that aspect or to any other aspects too. Unbundling, is key in making competition work clearly and effectively. A deeper regulatory oversight is needed the further you move away from ownership unbundling that it demands strong regulatory intervention.

**Q54 Lord Haskel:** One of the other concerns about energy is security of supply. Is unbundling a significant aid or is it a disadvantage as far as security of supply is concerned?

*Sir John Mogg:* There is an argument that it could be a disadvantage for smaller countries which are wholly dependent on a single major supplier. Forcing their compliance to become still smaller in terms of their organisational arrangements to achieve a full ownership unbundling could result. In the case of larger countries, security of supply is a political concern about potential instability (for example, the dreadful experience in the Ukraine a couple of years ago) which could threaten an interruption of supply, or provoke anxiety over longer periods. That is an angle where solidarity of the Union—which I saw the Prime Minister referring to in the other House just a few moments ago,—could strengthen our power of negotiation. There is that aspect but also the real answer to security of supply is to secure a solid energy mix of different forms of suppliers thereby reducing your dependency on other countries. Ownership unbundling will only make clear how effective our companies' operations are—it should not adversely affect the security of supply issue.

**Q55 Lord Haskel:** This is yet more complicated by the need for carbon reduction and renewables. There are targets for this. Do you think that these need to be supported by legislation and further regulation to be successful or will the market take care of this?

*Sir John Mogg:* I will give you an Ofgem position, if I may. I will not speak from the point of view of my colleagues who negotiated these things. We have always taken the view that the market will normally organise things fairly well but there are market failures. There are times when the market is rather slow to pick up and it is quite clear that in the renewable area this has been the case, which is why the Government several years ago introduced various

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schemes, including the Renewables Obligation Scheme. At a European level it is useful to know what governments are doing because countries are doing very different things to support their usually indigenous supply lines, be it wind, bio-fuels or whatever, so it is useful to have such information. There is also a benefit in terms of making sure that some of the competition rules are applied because energy is key input costs and affects the relative strengths of different industries inside the Union. The point of view we are trying to get across to both Government and in the Union is that what you are looking for is the most cost-effective route towards achieving the desired objective. Like the NAO Ofgem has pointed to the very high costs of this market mechanism (ROCs) and the resultant, high input costs. In the case of the EU ETS scheme, Ofgem are very supportive, as is the Government, in terms of bringing the benefit of the way the market mechanism allows for various disparities and encourages the drive towards lower carbon. In the case of the energy portfolio the Union increasingly needs to look at sustainability. Ofgem has had statutory guidance for several years now which we use to the maximum extent of our guidance. In the Union it is my guess that there will be further developments to ensure that sustainable development is not used as an excuse to subsidise. Potentially the Union could, through the Competition Commission or through some other mechanism, secure some real benefits from such analysis. Finally, regulators can help achieve a comprehensive understanding of the way the rules should be applied by issuing formal guidelines. We can also explore best practice throughout the Union or potentially as the basis for future legislation.

**Chairman:** Turning to telecommunications, Lord Whitty?

**Q56 Lord Whitty:** This probably applies wide of telecommunications but it seems to us to be an issue in general that the liberalisation of the markets has created very competitive national markets, but it has not really created a European market, although the same companies operate in different ways in each of the national markets. As far as the consumer is concerned, generally speaking, they operate within their national market. Is there anything that the regulatory regime can do to change that situation so that genuinely the choice to the consumer or small business would be to look across borders as well as the rather successful efforts to create more liberal national ones?

**Mr Blowers:** There will always be some limitations on the movement in this direction and this is simply because telecommunications networks are in a time and place and inevitably there will always be a market for connections in the place where you live or work and that will be dictated by who has infrastructure in

that particular location. When we look at possible pan European applications I think we could really focus on two areas: one is services which are delivered over networks which are increasingly—and I am very conscious that this has been a very jargon-heavy session already but I am going to introduce yet more jargon—now delivered over IP protocol networks, so Internet type standards rather than the old standards of the telecoms companies. As all networks go to IP protocol, we call it “the death of distance” because distance from the place where the service is created or offered becomes increasingly unimportant. On one model, for instance, video-on-demand services could be offered to UK consumers from anywhere in Europe. They could actually be offered from anywhere in the world over an Internet based network. In that area you do have the prospect and the possibility of genuinely pan European services. That is why, as I said earlier, I think the Commission is right to be investigating that area. What would we need to do to move to that kind of model? There is some work already being done on this in relation to voice over IP. Skype, if I can mention a particular company, already has an offering in the market, as do a number of other providers, where you can effectively make voice telephony calls over a broadband connection. These services could be offered quite seamlessly across national borders but when voice over IP first became a feature of the market two or three years ago, there was no coherent European regulatory response to that. There were a number of national regulators thinking about how they would deal with the problems of voiceover IP and in a non-trivial way; for instance, they had to think through what the rules should be with regard to 999 access from voice over IP services. This is an area where there could be some quite fruitful activity to look at greater consistency and coherence in relation to these pan European services. The second area which is also potentially fruitful in this regard is spectrum based services. There are some forms of radio spectrum based services, for instance, mobile satellite services, which probably can only sensibly be authorised at a pan European level because they are pan European in nature. They are served off a satellite which has as its footprint the entirety of Western and Northern Europe. These kinds of services can usefully be looked at as requiring a new regulatory approach and that is one of the things that we are going to be working on in this review.

**Q57 Lord Whitty:** In that particular example what, in your view, is the pan European mechanism for authorising such services? It presumably does not exist at the moment?

**Mr Blowers:** The proposal at the moment is that we will have an EU-based authorisation system. There will be a single authorisation and that authorisation will allow somebody to use mobile satellite services

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throughout the EU. That is probably the way forward on a service like that. Whether it should be the Commission that is the authorising authority or a new agency, the indications are that you have picked up this proposal that there might be an agency in the telecoms area as well and this is one of the functions that it has been suggested that a new agency could conduct is authorising these kinds of pan European services.

**Q58 Lord Mitchell:** As you know, we have just completed an investigation into mobile phone roaming and the taste certainly that I had, having gone through it all, was here was an industry which was always three steps ahead of regulation or competition and continues to be so. If you go onto the High Street competition is lethal, but when it came to roaming where clearly nobody had paid much attention to it, the mobile phone operators were getting away with murder. Then we get to the new area which I think you mentioned about data which is clearly just mushrooming, but this is an area which is not controlled by the new regulations. It just comes to whether there should be this European regulator who is, instead of three steps behind, perhaps three steps in front of all these technological changes which are occurring so quickly?

*Mr Blowers:* There are pluses and minuses to any centralising approach. First of all, if the majority of the problems that we continue to face are about access, which is certainly I would say upwards of 90% of what Ofcom is concerned with in the telecoms area, it really relates to connections or access to customers and, reciprocally, customers' access to services. Most of that will continue to be dictated by those facts on the ground and who are the providers actually offering physical access to the consumers. That requires a regulator who is sensitive and attuned to the facts on the ground in that particular national market. There is a case though for saying in just the way we have described for these pan European services which we now see developing that there may well be a case for some new solutions and that could involve a number of actors playing a role in relation to creating that kind of coherence. The question mark that we have over an agency, and I want to be quite clear about this because the debate has been slightly misinformed in the way that some of the information has got out there, is this would not be a European "super regulator". That is not on the table because a European super regulator would require a treaty change and there is no appetite to make a treaty change to create a European super regulator. It would be an agency performing certain technocratic functions which could include issuing authorisations. It might have some other advisory functions but in terms of that swift and decisive legislative or regulatory response that you are calling for, if it is a European level problem it is probably the

Commission who are best placed to deal with that, and if it is a national problem it is probably a national regulator, such as Ofcom, who is best placed to deal with it.

**Q59 Lord Whitty:** You are dealing in a market which has been characterised by rapidly changing technology which sometimes leads to greater competition and at other times leads to somebody getting ahead of the game and dominating the market, but what would you say, given that we have got some liberalisation in the industry, was the biggest force? Would that be the regulatory intervention that has driven the liberalisation or the threat of competitive intervention, or is it simply the nature of the rapidly changing technology itself that has made telecommunications appear a relatively liberalised market? To tag on another question to that, is there still in some European countries the residue of a national incumbent in the perhaps more traditional parts of the telecom market which has not been completely tackled?

*Mr Blowers:* Those are all very good questions. There is no doubt at all in my mind, and I do not say this just as a regulator, that regulation has been a critical success factor in driving not just competition but also innovation in new services such as broadband. We have a couple of laboratory experiments. It is very unusual in public policy that you have the scope to do a laboratory experiment, but New Zealand did a laboratory experiment in this area. They tried to liberalise their telecoms market in the 1980s without any sector regulator and without the kind of detailed sector-specific regulation that is the meat and drink of Ofcom and other EU telecoms regulators, and it simply did not work. Trying to force through very detailed rules, for instance, on the pricing of access to networks using general competition powers simply did not work. The New Zealand Government were very frank about this. They have spent the last five years reversing that direction of policy and moving to an EU style system, as it happens. I think regulation has been critical and really for that reason you need it to break open markets, there is no question about that. What technology is doing, however, is loosening the grip of incumbents on the entirety of the value chain in the area of the market that they are providing. What I mean by that is in the old days you had a single network and anything that you wanted to be offered over that network was kind of the property of the incumbent telco. Now that they are connecting to the Internet and the Internet is the primary means by which much of this service delivery is taking place, it is much more difficult for network operators to control the entirety of that. One of the tricks in regulation now is not to regulate incumbents as if they do control the entirety of the market chain, because actually they are no longer in that position of absolute power of

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everything that you are exposed to via their network. I think that is quite a profound change. In terms of the overall pattern of liberalisation across Europe, as I said at the outset, I think the position is not as parlous as it might be in some other strategic sectors, energy perhaps being an example of that. There has been more intellectual engagement with the idea that the best markets are the open markets and that actually trying to defend a national champion in this area is doomed to fail. Having said that, there are still concerns about state ownership of incumbents in some Member States and there are concerns that the relationship between that state ownership, the role of the industry department and the role of the regulator are insufficiently transparent and insufficiently separated. We would agree with that. You do not necessarily have to accept that it affects the facts on the grounds to believe that that lack of separation and lack of transparency affects the overall credibility of the system. We have been arguing for some time for an Ofcom style of political independence to be a prerequisite for other regulators in Europe as well.

**Q60 Lord St John of Bletso:** You have mentioned about the successes of broadband roll-out across the European Union. How effective has the single market been in addressing the digital divide?

*Mr Blowers:* It is important to recognise that there will always be a likely gap or shortfall in the delivery of advanced services. We face the traditional problem in telecoms that it was not economic to serve everybody. Some consumers were simply too remote to be served economically; some consumers actually could not reach the baseline level of service as it was unaffordable to them. We have always had a system of intervention designed to protect both those groups of consumers: consumers in remote areas and consumers who would find services unaffordable. The debate going forward would be about whether that universal service approach needs to be extended into these new services. Does it need to be extended, for instance, into broadband? This has proven very controversial and I think one of the reasons for that is that there has been a sense if you intervene too early in that market actually you present yourself with a very large bill and you have a relatively small taxation base, if I can put it that way, to recover the cost of supply from. Putting it very simply, if only 20% of people have broadband connections and you are trying to push that out to a hundred per cent, there is a big gap there to try and fill. One of the things that the UK has consistently argued for is the right in the fullness of time, and if the circumstances dictate that it would be sensible, to at least allow such a universal service role. At the moment that is ruled out by the European framework. The European framework is very clear that you cannot impose broadband universal service obligations. The UK Government and Ofcom have

said that we believe that, certainly as part of this review of the framework, is an issue which should be looked at. Not because there is a case for doing this today, but if, as we always say, we want this legislation to last for ten years, who knows where we will be in ten years' time? That would be the way that I would say we have thought about that issue.

**Chairman:** We need to move on to the last specific area of financial services. After dealing with the financial services issue, I will invite my colleagues to ask any final questions and perhaps if there are any final points our witnesses would like to make, we will give you an opportunity.

**Q61 Lord St John of Bletso:** You spoke in your introductory remarks about the three specific objectives of the Financial Services Action Plan. What in your view has been the impact of the implementation of the Financial Services Action Plan on the financial sector and to what degree is it contributing to the integration of the EU financial services market?

*Ms Ross:* The honest answer today is probably that it is too early to tell, which I appreciate is not a very good answer, but given that not all of the legislation has been fully implemented, let alone been operating for a few years, it is very hard to tell what the overall impact has been. The Commission itself has started some fundamental work to look at what the impact might have been in two phases (which we have described briefly in our memorandum) by first consulting on how the implementation has worked, so how legislative measures have actually been adopted and has that created additional burdens and what the effect is, and they are going to move on in the second phase to a much more economic measurement of can you actually measure the costs and benefits and therefore is there an overall positive impact of the FSAP measures? It is probably too early to say that at the moment. In the UK, on all the rules which we have made in the regulations under the FSAP legislation we have consulted on extensively, including impact assessment and cost/benefit analysis. We have also published in November 2006 an overall view of what the impact of the Markets in Financial Instruments Directive (MiFID) might have been. That is very much at this stage guesswork because the problem is that it is always, at least upfront, easier to identify the costs while it is very difficult to actually quantify the benefits exactly.

**Q62 Lord St John of Bletso:** You mentioned earlier on as well about the need for more effective co-operation between the national regulators. Can you be more specific on the efficacy of the Lamfalussy committees?

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*Ms Ross:* To our mind the committees have largely worked very well, although it has to be said that many of them have been occupied extensively with trying to provide advice to the legislative levels above, to the ministries of finance and the Commission, in terms of helping to make this legislation become effective by adding additional guidelines and rules underneath the high level principles in the directives, which has occupied certainly CESR's time. On the insurance side, it has largely been preparing the ground for the legislation the Commission is likely to propose in the next few weeks in terms of the draft legislation. So to our mind the committees had really done a pretty good job in dealing with the issues that had been put to them under quite severe time pressures and demands on what they were supposed to do, imagining that there are 27 Member States around the table trying to get everyone to agree on what a particular line in a directive means and how it should be implemented is not an easy task. What is important, however, and where there clearly can be improvements, is in how this is now taken forward once a lot of the legislative burden falls away in terms of actually making sure that these committees deliver the regulatory co-ordination and co-operation which they have not had as much time to spend on. This is really the next step to deliver because, as in other fields, there is clearly some unease about whether the committees are currently delivering effectively in these areas and whether therefore there is a need to move to a single regulator for the EU in the financial services which we believe is not necessary because we think the Lamfalussy committees can be made to work.

*Sir John Mogg:* Having been involved at the early stages, my impression is that these committees have worked rather well in doing part of the job. The reason the Lamfalussy investigation was set up was to deal with the EU legislative arrangements. We have, as I mentioned, a lumbering legislative process. Directives can take three years, if you are lucky, with at least 18 months implementation time, so you are talking in years four in financial services and probably more in energy. In energy it is the pace of legislation and the extent of the detail of the legislation, both of which can be more readily tackled by the CESR/ERGEG type of regulation. There is an active discussion in the Union about the use of agencies at the moment when your Committee is looking at this aspect. There are broadly two sorts of agencies: an executive agency where the Commission outsources it, and the regulatory agency. In energy the Commission is now developing a framework for a regulatory agency potentially giving powers that could reflect those of national authorities, Unfortunately, and I cannot say this less brutally, but what I can only describe as the ayatollahs of the legal constitutional powers in the Commission in Brussels, have major concerns about potential change to the balance of power between the Institutions

(Parliament, Council and Commission). Those legal arguments are very destructive to the need to create an effective mechanism at European level this is a very important aspect for all three sectors. We would be happy to produce a short paper on agencies including why for energy it is so important to stop the institutional balance of power creating an obstacle between effectiveness, powers of regulators to deliver what the legislator wants and the disappearance of democratic control which the Parliament usually brings to account. The debate often masks the true concerns—to guard the institutional balance and the powers of individual players. The result is minimal change. It was why the Lamfalussy process was introduced to try and get around such rigidity. Agency arrangements are of real importance. And it may well be a key aspect your Lordships could explore on your visit to Brussels.

**Q63 Lord St John of Bletso:** How effective has the Financial Services Action Plan been in improving competitiveness in the European Union financial services sector?

*Ms Ross:* It is quite hard to say this at the moment, for the reasons I stated earlier. I think what you can see is some increased competitiveness, certainly in some of the wholesale sectors. If you look, for example, at the market for exchange traded equities or derivatives or something like that, where certainly in the equities market what you are seeing happening is that new little companies with the new technology that is now available can set up to do trading outside of the London Stock Exchange, Euronext or Deutsche Börse and that is something which is certainly much more catered for in the new legislation which is coming through and you see already that kind of bubbling up, that competition spirit, and there is also more cross-border competition on some of the wholesale markets, whether it is bond markets or whatever. I think you see some examples of it. It is too early to tell how that will develop over time and also whether that will extend in any significant way to the more retail based markets.

**Q64 Lord Whitty:** This question arises both in part response to the recent remarks and also in the discussion we had earlier about whether a USB kind of concept is appropriate at the European level. The independence of the regulator, whether it be the national regulator or the EU regulator, is an important part of all this, but there will be other pressures institutionally within the Member States and at the European level to alter the perspective of the regulator or possibly differentially to impose wider requirements on the national regulator. To take the USB example, in all of your areas there are arguments about whether the economic regulation primarily should be geared to a more inclusive operation, whether you are talking energy or a traditional USB in

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the new telecoms area, or whether you are talking about things like access to credit and basic bank accounts. 27 different Member States all have different social policies in relation to this. If it is all banded up to the European level then are you not bound to get caught up in the institutional infighting which can cause delay, which Sir John was just referring to. Is there a way in which those political pressures can be dealt with more easily at the European level, or do you think there are always going to be somewhat differential pressures within the individual jurisdiction? I know that is a slightly rambling question.

*Mr Blowers:* One of the other key features of the current regulatory package in our 2003 package was a significant tightening of the nuts on the regime around universal service. The reason for that was that there were serious concerns that universal service was not being properly costed, not being properly quantified in terms of the benefits that it would deliver in different Member States, and critically that the costs were being imposed around the entirety of the industry in a way that was disproportionate and unfair. What we ended up with was a system which exercised quite tight control over how universal service obligations can be defined, how they are then costed to determine whether there is a net cost that has to be met from some kind of industry funding and then how an industry fund to meet that net cost should be set up and operated. All of that is defined at European level essentially because the conclusion was that Member States could not entirely be trusted to get those things right themselves. Rightly or wrongly, that is the structure that we ended up with. The concern that we would have about that is not that that structure is wrong, but the nature of the things that can be caught by it now. For example, it defines Internet access in relation to a functioning connection to the Internet of

something like 27 Kilobits per second which, for those of you who are technologically minded, you will know is some way off where the market would be today. Clearly that aspect of it needs to be updated but there is something to be said for a degree of control and oversight of the universal service and other social policy interventions precisely because at national level they can sometimes be used quite crudely. In the US, universal service is much fought over and is a classic example of "pork barrel" politics in action. We would have the same concern about the operation of the system potentially in Europe.

*Ms Ross:* In the financial services field I suspect it is quite similar. The issue in financial services is to my mind very much that on the retail side retail consumers, whether it is consumer credit or mortgages or something like that, is something where the closeness of the regulator and the whole system that goes with it, whether it is compensation or complaints-handling, is extremely important. I think, on the other hand, if you were going to go down the route of addressing all of those things at a European level, then there might be more ability to look more broadly, but I think that is so far down the road because of the legislative implications and the kind of fundamental issues of property rights and other things which are then implied that it actually gets quite tricky.

**Chairman:** We are just about to come up to a vote, so this is a convenient moment, unless anyone has a pressing question to ask, to close. First of all, may I thank you but, secondly, we will send you the transcript hopefully within a week. Perhaps you would be kind enough to correct the transcript if necessary but also if there are other points which we have missed or which you wish to draw to our attention, we would be very happy to have a written submission. I think this session in particular has been extraordinarily helpful to us, you have refocused us on where we need to get to.

### Supplementary memorandum by the Financial Services Authority

#### A. INTRODUCTION

1. Following our oral evidence on 25 June, the FSA thought it might be useful for the Committee to receive a supplementary note on the role of the Lamfalussy Committees in developing Europe's system of financial services regulation.
2. The financial services industry is being reshaped by five global forces. These are:
  - more intense international competition,
  - advances in technology and communications,
  - growing sophistication of investment products,
  - demographic change, and
  - the breakdown of traditional, sectoral product and provider categories (bancassurance, end of Glass Steagall etc).

3. These forces are changing the risk profile of firms. Regulators worldwide have been adapting by increasing the levels of regulatory communication and co-operation and by enhancing the role of international standard setting regulatory organisations (such as the Basel Committee, the International Organisation of Securities Commissions and the International Association of Insurance Supervisors).

4. The response to these forces has taken a further step in Europe because of the considerable level of integration in the wholesale market and because the Community's single market legislation implies and requires high levels of co-operation and co-ordination. (The ECB estimates that 46 systemically important institutions operating cross-border account for more than 65% of EU banking assets.) Within Europe the regulator of the group, the regulator of the subsidiary, of the branch, and the regulator in the country where the recipient of a service is based each has areas of exclusive responsibility and control, and areas where responsibilities overlap.

5. The result is that there are some areas where the home regulator delivers some important consumer protections for the host regulator, for example, in the areas of capital and depositor and investor compensation schemes, some areas where responsibility is shared, eg liquidity; and some where the responsibility is mainly the host's, for example disclosure. Enhanced regulatory co-operation is needed to ensure that regulators with their varying responsibilities are properly informed about relevant risks, that duplication of regulatory activities is avoided, and that the oversight of internationally active firms is improved.

6. Within the framework of Community legislation, there is no ideal institutional structure which can meet the requirements of providing efficiency and effectiveness for firms and consumers in a proportional manner, maintaining financial stability for Member States, whilst also delivering political accountability to the wider public interest at the national and EU levels.

7. There has been extensive debate across Europe as to whether a system of enhanced co-operation by national regulators should be replaced by some kind of single financial services regulator. The question was last rigorously analysed and debated in 2000 by the "Committee of Wise Men on the Regulation of European Securities Markets", chaired by Baron Lamfalussy.

8. The final report of that Committee appeared in February 2001. Its recommendations, which have been developed in the years since, are that the best outcome will be achieved not by some form of single European regulator but instead by creating an effective network of national regulators, who work collaboratively together. The Lamfalussy Committees are the key institutional means for achieving this.<sup>5</sup>

9. The Commission Decisions establishing the three Lamfalussy Committees (CEBS, CEIOPS and CESR) does not give them identical mandates. But in broad terms they have two main roles. They are:

- To provide the Commission with advice on legislation to deadlines set by the Commission.
- To promote standards of good practice, supervisory co-operation (including the establishment of colleges of supervisors) and convergence. (We take convergence to mean: a measured, proportionate and regulator-moderated process using non-legally binding guidance to achieve broadly congruent regulatory outcomes in terms of consumer/investor protection and/or financial stability where it is cost effective to seek these. It is not a maximum harmonising one size fits all approach.)

10. Since they were set up the three Lamfalussy Committees have been kept busy. The majority of their time has been focused on providing advice and guidance on new legislative measures (see the attached Annex for details). This work has tended to limit severely the time and resource for formulating guidance and promoting enhanced co-operation and supervisory convergence, and some criticism has been levelled at the Committees as a result.

11. In our view, the Level 3 Committees have made good progress in the time available to them in the area of supervisory convergence, and remain the best approach for the foreseeable future. As noted above, the major constraint on their work to date has been the requirement to provide large amounts of formal advice to the Commission on legislation. We believe that the basic Lamfalussy structure remains valid, though the ability of the committees to secure further tangible progress on supervisory convergence will depend to a large extent on the willingness of the membership to operate within the structures in the ways originally intended. It is, for example, imperative that member states are diligent in implementing directives, in terms of the spirit as well as the letter. We believe that a tough peer review within the context of the committees would help to ensure this but it will require honest scrutiny and a willingness to offer and accept criticism. Similarly, there should be an expectation that member states will, in general, implement the non-binding "Level 3" guidance unless

<sup>5</sup> The Committee of European Securities Regulators (CESR) was established by a Commission Decision in June 2001; the Committee of Banking Supervisors (CEBS), and the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) were both established by Commission Decisions in November 2003. In November 2003 the scope of CESR was extended to cover UCITS.

there are compelling reasons not to do so. We believe that a “comply or explain” regime, in which non-implementing states are expected to provide reasons for non implementation would impart a valuable degree of discipline to this process.

12. It is worth noting, in passing, that the task facing financial services regulators is significantly different from that confronting most utilities regulators. The key difference is that vertical integration between the operator of the infrastructure, such as pipelines or cables, and the provider of gas or electricity can make it difficult to remove obstacles to effective competition. In the area of financial services, by contrast, there are fewer natural monopolies, clearing and settlement being one key exception. There is therefore greater scope for harnessing market forces, particularly in wholesale markets. Finally, the responsibilities of financial services regulators and the focus of their activities are on prudential and conduct of business issues, not on prices and economic rent. Indeed, we are not aware of any financial services regulators in the EU who might be described as economic regulators.

## Annex

1. The following paragraphs present some of the highlights of the work of the Level 3 Committees to date.

### CEBS

2. CEBS has provided formal advice to the Commission in response to its Calls for Advice on a number of areas of work, predominately in relation to the Capital Requirements Directive (CRD, itself not a Lamfalussy directive, as such), but also on deposit guarantee schemes, cross-border consolidation and E-Money. It is continuing its CRD work on responding to Calls for Advice on national discretions, own funds, the limits to large exposures, the prudential treatment of commodities business and firms, the equivalence of third countries supervision and the supervision of liquidity risk.

3. The Committee has published a number of Level 3 guidelines that assist supervisory convergence in relation to the implementation of the CRD, most notably on supervisory co-operation for cross border groups (home-host), model validation, and the application of the supervisory review process under Pillar 2. A recent performance assessment carried out by the Committee showed that many industry respondents felt that such convergence initiatives would have a positive impact on their area of activity.

4. CEBS has been fostering cooperation and information exchange through a number of initiatives, for example a pilot project on operational networking which focuses on practical supervisory convergence and involves a limited sample of 10 cross-border banking groups.

5. The CEBS Convergence Task Force is in the process of wrapping up the various projects (training and secondments, Impact Assessment, peer review and mediation) established to address the recommendations on supervisory arrangements made by the Financial Services Committee (FSC) in its report on financial supervision (the so-called Francq report). The recommendations include encouraging the development of a common supervisory culture.

### CEIOPS

6. CEIOPS has, of necessity, given top priority to responding to Commission calls for advice related to the development of Solvency II. It was not envisaged in the construction of the Lamfalussy process that a Level 3 committee would be providing technical advice on the formulation of the Level 1 directive text, but CEIOPS' input has been critical in allowing the Commission to develop its proposals. In addition to responding to three waves of calls for advice from the Commission, covering 23 separate subject areas, CEIOPS subsequently elaborated on some of the more complex themes at the Commission's request. It is now set to continue its Solvency II work by looking into areas where level 2 and 3 material is likely to be needed.

7. CEIOPS contributed information on the impact of Solvency II on supervisory authorities to the Commission's overall impact assessment on Solvency II. It has also been running Quantitative Impact Studies (QIS) on the developing solvency proposals, testing their practicability. After an initial exercise to develop the QIS reporting system, QIS2 focused on the design of the solvency requirement. QIS3, launched in April 2007, is designed to help calibrate the solvency requirements and QIS4 is already being planned.

8. CEIOPS work on Solvency II has not been to the exclusion of initiatives in other areas. The Committee has developed Protocols facilitating supervisory co-operation, co-ordination and exchange of information on the supervision of occupational pensions and on insurance intermediaries. It is also reviewing the existing arrangements in the Siena Protocol covering home-host issues relating to the supervision of insurers. On the supervision of insurance groups, CEIOPS has worked on the role of the lead supervisor and produced

Guidelines for Co-ordination Committees. Virtually all European insurance groups now have an identified lead supervisor, and an MOU has been agreed with the Swiss supervisory authority to facilitate co-operation in the supervision of Swiss groups. CEIOPS has agreed a mediation mechanism, equivalent to that developed by CEBS and CESR, and its Convergence Committee will shortly be addressing peer review. Attention has also been given to training and secondments, and CEIOPS has participated fully in 3L3 projects.

## CESR

9. CESR has provided formal advice to the Commission in a number of areas including:

- the Transparency Directive, the Market Abuse Directive, the Prospectus Directive and the Markets in Financial Instruments Directive;
- equivalence of the generally accepted accounting principles (GAAP) of third countries; and
- definitions concerning the eligible assets for UCITS.

10. CESR's Review Panel is examining the application of the measures in the Financial Services Action Plan. It has completed a survey on the implementation of the European Commission's Recommendation on UCITS, a review of CESR Standard Number 1 on financial information and a comprehensive mapping of members' supervisory powers under the Prospectus Directive and Market Abuse Directive.

11. CESR has developed a number of operational groups working on the practical application and day-to-day supervision of the International Financial Reporting Standards (IFRS) and the Market Abuse Directive, namely CESR-Fin and CESR-Pol.

12. Through CESR-Fin CESR has been closely involved in the adoption of IFRS for all EU listed groups. CESR-Fin has monitored the development and introduction of the EU standards and has made recommendations on the transition to IFRS.

13. On the Market Abuse Directive CESR-Pol has developed draft guidance on what constitutes inside information; when it is legitimate to delay the disclosure of inside information; when are client orders inside information and insider lists in multiple jurisdictions.

14. CESR's achievements (through its Level 3 expert groups) include the following:

- CESR-Tech expert group is on track in developing a Transaction Reporting Mechanism under MiFID—this will harmonise reporting requirements in the EU.
- Econet expert group (CESR group of economists) has developed an impact assessment methodology and guidelines for use by all three committees in policy making.
- Investment Management expert group has issued guidelines to facilitate cross-border notification of UCITS.
- Mediation Task Force has finalised a mediation mechanism to resolve disputes between members.
- MiFID expert group has delivered Level 3 guidelines and advice on record keeping, inducements, passporting, transaction reporting, best execution, market data consolidation.

## THE THREE LEVEL 3 COMMITTEE (3L3)

15. The three Level 3 Committees have established a Strategic Policy Task Force, called 3L3, which represents all three Lamfalussy committees. It is developing a medium term work programme covering issues which are common to each of the Level 3 Committees, which work together to address them in a consistent manner. These issues include: home/host, delegation of supervisory tasks, internal governance and conglomerates. The three Committees are also collaborating in the creation of a platform to provide cross-sectoral training to regulators across the EU.

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| Present | Dykes, L<br>Eccles of Moulton, B<br>Freeman, L (Chairman)<br>Fyfe of Fairfield, L | Geddes, L<br>Haskel, L<br>Lee of Trafford, L |
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### **Memorandum by the Federation of Small Businesses**

The Federation of Small Businesses (FSB) welcomes the opportunity to respond to this call for evidence. The FSB is the UK's leading non-party political lobbying group for UK small businesses existing to promote and protect the interests of all who own and/or manage their own businesses. With over 205,000 members, the FSB is also the largest organisation representing small and medium sized businesses in the UK.

#### **A. THE CURRENT STATE OF THE SINGLE MARKET**

##### *Barriers remaining within the single market*

The internal market remains incomplete. With 99.8% of EU businesses are SMEs, of which 89% operate in the service sector; the continuing presence of trade barriers in this sector represents a massive impediment to the completion of the internal market.

The transposition across the EU of the Services Directive should, in theory, remove these barriers and boost economic activity. However, the FSB is concerned about the lacklustre approach in some Member States to its implementation. The success of the Directive will depend on accessibility for small businesses to reliable and timely information on market conditions in other Member States. This presupposes the need for a uniform network of single-points-of-contact.

The FSB represents UK small businesses on the government's implementation steering group. Whilst the UK and Austria are at the forefront in implementation, other Member States have either not started this process or have divergent views on how the directive should be implemented. As a consequence, businesses in other Member States may find it easy to access the UK market, whilst our own businesses still face artificial barriers to providing services across the EU. In this and other areas, the European Commission and Council could play a more active role in ensuring that Member States correctly implement single market rules.

##### *The greatest barrier to SME involvement in the single market*

The greatest barrier small businesses face entering the internal market is access to reliable information and advice. The example of the Services Directives demonstrates the importance of easy access to information. This is critical given the time constraints that entrepreneurs already encounter in running a business. Businesses with low staff numbers must dedicate all of their time to their main line of activity; unlike larger organisations, they cannot afford to devote significant resources to investigating internal market opportunities or schemes run by the EU or national governments.

The EU currently provides a number of networks to provide assistance and information to SMEs wanting to access the internal market. However, these networks are diffuse, poorly resourced and all but invisible to most small businesses. The FSB has campaigned for the rationalisation of the EU's Innovation Relay Centres, Euro Info Centres, SOLVIT and other sources of information on the single market. We are pleased to see that the European Commission is to bring together these outlets into something approaching a single-point-of-contact. However, if these are to be truly effective they need to be visible, freestanding and properly financed.

*Threats to the internal market*

The FSB believes that economic nationalism and the protectionist tendencies of some stakeholders and Member States does represent a serious threat to the internal market. In particular, the FSB perceives a sustained attempt to undermine the Country of Origin Principle, which is enshrined in the Treaty of Rome. The replacement of the Country of Origin Principle in the Services Directive with the nebulous “freedom to provide services” is a case in point. As a result of this dilution of the text a single market in services will be achieved through judgments by the European Court of Justice, rather than being set down as a basic right.

More recently, the Country of Origin Principle has come under attack from the European Commission's Rome I proposal. The proposal, in particular Article 5, introduces new and complex barriers to cross-border e-commerce. The proposal reverses existing rules covering contractual obligations, forcing online selling by businesses to comply with 27 different sets of consumer law. As a consequence suppliers will be unable to operate throughout the EU with a single model contract, but will need a different contract for all 27 national legal systems.

For small businesses operating in local and regional economies, the internet and e-commerce is the best way of entering the internal market. In the UK alone e-commerce is worth over £100 billion per annum but this is a fraction of its potential value. Currently, 18% of FSB members sell on-line and 20% buy on-line. Growth of commerce in this area could significantly boost the internal market. However, conservative estimates drawn up by the FSB through consultation with business and legal experts suggest that a small business wishing to sell services or goods on-line could face costs of around €15,000 per Member State.

Not only does the Rome I proposal contradict the principles of the internal market, it has proceeded without a regulatory impact assessment.

*Further legislative measures and implementation*

The FSB considers that there might be areas where further legislation could extend the internal market. For example, we have welcomed the Commission's home state taxation proposal, which introduces a new, voluntary, simplified tax regime for small businesses operating across national borders. SMEs operating across EU borders encounter administrative difficulties in calculating profits according to the different tax rules in each of the Member States. This voluntary system retains the corporate tax rates of the Member States, but allows small businesses to calculate all of their profits according to the tax rules of the country where they are based.

Whether within the euro zone or not, high charges and long delays when transferring payments across borders remain a significant obstacle to the internal market, not only for businesses, but also for consumers. It is important to SMEs that electronic payments between Member States are as easy, cheap and secure as they are already domestically. This would represent a significant step in allowing SMEs to reap the benefits of the internal market. We therefore support the objectives of the Directive on Payment Services in the Internal Market.

However, what the single market most requires is a higher standard of legislation at EU level and better implementation by Member States. Bad legislation undermines the single market and erratic implementation generates peaks and troughs of regulation instead of a level playing field. There needs to be a real culture shift within all EU institutions and Member States, away from the “regulate first, measure later” approach, towards embedding in policy making processes measures to assess the impact of policies, to simplify the regulatory framework, and to consider more systematically alternatives to regulation.

This is still not happening and there is evidence to suggest that the quality of regulatory impact assessments at EU level has declined since 2003.<sup>1</sup> The European Commission's Rome I proposal, despite affecting a market worth over £100 billion per annum in the UK and reversing the country of origin principle, has not received an impact assessment in any of the three main EU institutions.

The FSB would welcome greater cooperation between National Regulatory Authorities. This would be useful to combat the problem of over-implementation of EU Directives, which still poses a serious threat to the functioning of the single market, creating peaks and troughs in levels of regulation across the EU. The FSB was disappointed by the Davidson Review's failure to propose an independent body at UK level to assess the potential burden of all new legislation. Such a body, combined with greater parliamentary oversight, could help ensure that implementation of single market rules in the UK is equal to those across the EU—thus ensuring a truly level playing field for business.

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<sup>1</sup> A Statistical Analysis of the Quality of Impact Assessment in the European Union, AEI-Brookings Joint Centre for Regulatory Studies, May 2007.

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*R&D and Innovation in the single market*

The FSB believes that technology and research have an important part to play in promoting economic growth within the single market. However, the current goal of achieving the Barcelona target of 3% R&D spending misses the point that there is almost no correlation between the percentage of net revenue spent on R&D and the innovative capabilities of an organisation or country.

The FSB believes that the EU should look at how the most basic forms of innovation and R&D are fostered in the United States. In the US small businesses are more likely to engage in R&D than their European counterparts. Furthermore, US small firms have an R&D budget seven to eight times higher than European small firms.<sup>2</sup> There is no significant difference between large firms in Europe and the US in the total amount they spend on R&D, which demonstrates the extent to which achieving the Barcelona 3% target will depend largely on SME participation in innovation and R&D. The FSB would like to see programmes at EU and UK level, such as the R&D tax credit, reformed accordingly.

## B. SECTOR-SPECIFIC QUESTIONS

### *Energy*

Despite a liberalisation program launched seven years ago many EU countries (Britain apart) remain dominated by former monopolies. It would appear that something approaching an energy cartel has been formed across some EU countries and that this could have contributed to high and rising energy prices in the UK. The EU's Competition Commissioner has threatened to take anti-trust action against utilities to help deliver greater competition in the energy industry. The FSB believes that this is the best course of action and is doubtful about the effectiveness of a single EU energy regulator. OFGEM, the energy regulator in the UK, has not been particularly effective and there is no reason to believe that an EU equivalent could make more progress than effective EU anti-trust action.

In the past, energy was low on the list of priorities for many small businesses but with energy prices escalating this is changing. A recent npower survey demonstrated that rising costs are having an impact on profitability and competitiveness with 77% of SMEs reporting lower profits and 30% reporting reduced competitiveness. Small businesses are under particular strain in a volatile energy market and this is coupled with unclear pricing policies and poor standards of service from some gas and electricity suppliers. The npower survey findings demonstrate that 40% of SMEs experienced energy cost rises of on average 25% in the last six months and 40% are expecting costs to rise by 50% in the next three years.

Small businesses behave in a similar way to domestic energy users, in terms of lack of expertise and levels of energy consumption; but do not enjoy the regulatory safeguards that domestic users receive. In light of this data it is essential that unbundling of gas and electricity proceed in tandem with support for a genuine Common European strategy to ensure healthy competition, better levels of service and predictability of supply.

### *Financial Services*

Elements of the Financial Services Action Plan have been particularly burdensome for small businesses, in particular the Money Laundering Directive, 2001 and the Insurance Mediation Directive, 2002. Concerns centre on the way these Directives have been implemented in the UK.

The Insurance Mediation Directive has introduced a hugely complex regulatory framework which has proved extremely difficult and costly for many smaller businesses to implement. On average 3.7% of a company's annual income is spent on meeting regulation. However, for companies with less than £100,000 in income that figure rises to 5.20%, compared with 1.13% for companies with an annual income of more than £100,000,000.<sup>3</sup> In their responses to the Davidson Review, HM Treasury and the Financial Services Authority did not deny that the stringent requirements amounted to gold-plating and went beyond the scope of the original directive.

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<sup>2</sup> Report on SMEs and ERA, EU Research Advisory Board, 2004.

<sup>3</sup> Contained within the British Insurance Broker's Association (BIBA) submission to the Davidson Review.

There has also been an over-implementation, or gold-plating, of the Money Laundering Directive. In the UK the rules on money laundering are extended to a wider range of businesses and professional activities than was foreseen in the original Directive. Furthermore, the UK has also made reporting requirements more onerous than was required by the directive. This has hit small businesses hard, resulting in some having to stop trading.<sup>4</sup> It also represents a distortion of the single market, which is supposed to establish a level playing field.

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### Examination of Witnesses

Witnesses: Ms KAREN CLEMENTS, EU Adviser, the British Chambers of Commerce; and Mr CLIVE DAVENPORT, Spokesman for Trade and Industry, Federation of Small Businesses, examined.

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**Q65 Chairman:** Thank you very much indeed for coming. We may be disturbed by divisions. The plot is once you hear a firebell going, it is not an emergency; it is a division, and we then break for ten minutes and those that are voting depart and come back and then we reassemble. Apologies for a slightly lighter number than normally present. That is partly because a statement is coming up on the emergency events over the weekend. For the record, I wonder whether Ms Clements and Mr Davenport could both introduce themselves so that we have it on the record, and perhaps I can ask Ms Clements to make an opening statement and Mr Davenport to do the same and then we will go to a series of questions.

*Ms Clements:* My name is Karen Clements and I am an EU Adviser for the British Chambers of Commerce.

*Mr Davenport:* My name is Clive Davenport and I am the Chairman of Trade and Industry at the Federation of Small Businesses.

**Q66 Chairman:** Ms Clements?

*Ms Clements:* The British Chambers of Commerce is a national network of quality accredited chambers of commerce positioned at the heart of every business community in the UK. The BCC represents 100,000 businesses of all sizes and across all sectors of the economy and together employ over five million people. 90% of our business members are SMEs and roughly 70% operate in the service sectors. We fully support UK membership of the European Union and we believe that the Single Market is probably its most important achievement to date. The economic benefits of the Single Market are well-known. The Commission has estimated that in the first ten years it created 2.5 million jobs and an extra £593 billion in prosperity. Intra-EU trade has increased, I think, by 35% in the last ten years alone and some extraordinarily high figure of 392% with the ten new Member States. However, it is fair to say that our membership has become gradually more critical of the European Union in those last ten years and the Single Market as well. We believe that the reasons for this disenchantment are increasing regulation, particularly environmental and social, and the fact that our member businesses are not reaping the full

benefits of the Single Market. Why is that? The reasons are threefold, we believe. In the first case, the Single Market is not yet complete, not least in the services sector. In the second case there is persistent national abuse of Single Market principles, whether it is flouting the principle of mutual recognition or failing to implement and enforce laws on time and evenly. And finally, and perhaps most importantly—and this is an area that we have not investigated yet in a great amount of detail—members are not actually making the most of the opportunities the Single Market offers through a lack of information and, they believe, government support in helping to give them access to new markets.

*Mr Davenport:* My Lord Chairman, the Federation of Small Businesses welcomes the opportunity to respond to this call for evidence. The FSB is the UK's leading non-party political lobbying group for UK small businesses, existing to promote and protect the interests of all who own and/or manage their own businesses. With over 205,000 members, the FSB is also the largest organisation representing small and medium-sized businesses in the UK. The FSB believes that the Single Market has been a remarkable success story but that the small business community has yet to share in its benefits. The barriers still remain, not least in the service sector, and the threat posed by protectionist tendencies across the EU is a concern to us. In its 2006 survey to the business community *Lifting the Barriers to Growth*, the FSB found that only 2% of members trade with EU markets. However, small businesses represent 99.8% of all businesses across the EU and they are Europe's primary job creators and innovators. If the Single Market is to realise its full potential it must include the opportunities for small businesses to prosper. On a personal note, I am a managing director and owner of a small business of four people so it affects me directly.

**Chairman:** Good, thank you very much. Lord Lee?

**Q67 Lord Lee of Trafford:** What are the remaining barriers to firms seeking to offer their goods or services in other Member States of the European Union, and particularly if you could break the answer down into what the most important of those

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<sup>4</sup> Burdened by Brussels or the UK? Improving the Implementation of EU Directives. Foreign Policy Centre and Federation of Small Businesses, September 2006.

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barriers are? Secondly, are SMEs more likely to encounter barriers when seeking to offer their goods and services in other Member States? And thirdly, what measures are needed to overcome those barriers? So the main thrust of my questions is the remaining barriers.

*Ms Clements:* The most important barriers are the continued existence of national rules and the ability for Member States to apply those national rules, either legally or illegally. I would say that whether it is in terms of price regulations or public procurement specifications or licensing systems or advertising rules Member States are still applying national rules, and that is a considerable barrier for SMEs in particular who do not have resources to find ways around this or indeed to have recourse to legal proceedings. Other barriers include slow implementation of EU legislation, uneven enforcement by various Member States, and I would say again, as I said in my introduction, the big barrier is the lack of information on the opportunities that the Single Market has to offer for small businesses and the lack of support from government services helping them to overcome those barriers that are not necessarily legalistic but, for example, are cultural, linguistic and geographic barriers.

**Q68 Lord Lee of Trafford:** Mr Davenport, is that broadly your stance as well?

*Mr Davenport:* It is, yes. I think there are three main points. Access to information is the biggest one and there being no single point of contact, there being no ability to go to a central source to get information and to know that information is reliable. There are many little trade organisations throughout Europe and a lot of our members are not even aware they exist, they are just told they cannot trade in those areas but do not know why they cannot trade in those areas. Those are the fundamental problems that occur. Over-implementation of EU Directives is also a problem. It creates peaks and troughs in what should be an equal market and there is a disproportionate increase in regulatory burdens for SMEs. The whole structure of the EU, and to a large degree this country, is geared to large businesses and a small business has a totally different approach and it has totally different pressures, as my colleague has said. The problem is that we have small numbers and we have high time constraints in our daily work and we are not able to access freely the market because of those time constraints and that is one of our biggest problems.

**Q69 Lord Haskel:** You both seem to feel that lack of information is a problem. Who do you think has the task of providing that information? Is it the Government, is it the trade organisations for different industries, is it your Federation of Small

Businesses, is it the chambers of commerce? Who has fallen down on the job?

*Ms Clements:* I think that the role is essentially one for government but that there is a huge role on our part that chambers can play and do play, but we would like to do more. We deliver two programmes for the UK Trade & Investment Agency: one to ensure that SMEs can overcome more readily the cultural and linguistic barriers that frequently occur for SMEs entering new markets; and also, which might strike you as obvious, another programme to ensure that businesses actually do market research into the market that they wish to enter before they do so.

**Q70 Lord Haskel:** So it is the businesses themselves which you think have fallen down on the job?

*Ms Clements:* I think it is a combination of the Government and information and education that we need provide. I think there is a lack of confidence, particularly with regards to the EU, and it is interesting to see that it does not apply so much to China and India which arguably are even more inaccessible in terms of their geographical location, et cetera. There is a perception that their competitors on mainland Europe have got it all sewn up between them and it is too complicated a market to enter because there is too much competition and they are at an automatic disadvantage given where they are coming from and the fact that they have not built up the partnerships as early as principally the German, French and Italian companies have.

*Mr Davenport:* One of the advantages that a lot of small business in Europe have is that by the very nature of Europe they are very close to their borders and there is automatic cross-movement between borders whereas in this country because of those 25 miles of water it has made it very much "them and us" and it is a barrier to be broken down, and my feeling is that small businesses, even organisations of the size of my colleague's and mine, have not the resource to be able to support the whole thing independently. I think it really does fall to national government or even EU government to create a system which allows an easy, single access so that if you wanted to start a building company in France you can pick up the phone and find out what the problems are to do that, but that does not exist at the moment.

**Q71 Lord Haskel:** But if you are a member of a trade association to do with the building industry, should not the trade organisation be in a position to provide you with this information because, after all, you pay some sort of subscription to them?

*Ms Clements:* It would have to be a very, very high subscription.

*Mr Davenport:* I do not think £100 a year would be quite enough to cover that, that is the problem. We would not have the resource to be able to fund it.

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**Lord Haskel:** Right, thank you.

*Mr Davenport:* Yes.

**Q72 Lord Geddes:** Mr Davenport, in your answer just now I thought I got an implication from you that there are excessive rules and regulations in some countries within the EU as opposed to others. Was that a correct inference and, if so, as a generality can you name and shame?

*Mr Davenport:* I think that there are problems with the relationship between our prescriptive type of legislation and Europe's less prescriptive type of legislation. We were involved in a meeting recently—to give you an example—with a lot of very large businesses and they prefer to do business in Europe sooner than in Britain. The reason they did that was because although health and safety and all of the other environment agencies were very good to the businesses in this country, and helped them, they were very obliging and very amenable, at the end of the day they preferred to be in a position where they knew exactly where they stood in whether it be France or Germany or whatever and they knew the penalties if they failed, they would be closed down or suspended or whatever. In this country we tend to be handholding all time and they would much prefer—which quite surprised us—to be exactly the opposite of that. They would prefer not to have handholding and to be much more left alone to do their job, which is make money, which certainly surprised me because I thought that was the exact opposite of what you would have thought would have happened.

**Q73 Chairman:** Could I ask a question of you both. Can you cite examples of SMEs coming from, for example Poland or Germany or France or Spain, and successfully doing business in this country? I think the implication is that gathering the information perhaps across language barriers and with different regulations being interpreted differently in different country makes it slightly difficult for SMEs.

*Mr Davenport:* If we follow on from what I was just saying, what happens, say you have got somebody from Poland coming here, we would be tending to hold their hand and encourage them and make sure they have got their health and safety environment correct and they have got all of the other specifications correct as they are working whereas if you take someone from here going abroad, they would have just “No, you can't do it” and not even know why they cannot do it. It would be a local trade organisation or something like that that would stop you.

**Q74 Chairman:** So you are saying that actually we are slightly more user-friendly?

**Q75 Chairman:** Our regulatory agencies and indeed others in helping inward investment and inward trade?

*Mr Davenport:* Yes, Polish plumbers can get every assistance and advantage from this country that they need so that encourages them to come to this country, which is what they have been doing. You do not see too many plumbers in Britain going to Poland.

**Q76 Lord Geddes:** I really am very surprised at that last comment because the perceived situation is that this country has a reputation for, as it is called, “gold-plating”. Up comes an EU Directive and what does the UK do? It piles on layer after layer of extra legislation on top of it. I am deliberately exaggerating. The inference that you are giving is exactly the opposite to that.

*Mr Davenport:* All I can do is tell you the information we had recently that large businesses—and I am not talking about small businesses—would prefer not to have legislation. That is what was said to us. I think that we do have a problem with gold-plating but that is another issue completely.

**Q77 Baroness Eccles of Moulton:** Could I ask a very, very quick one just to follow on from what you were saying about Polish plumbers coming to Britain. Do they also tend to go to other older EU Members like France, Germany and Italy or is there something special about coming here that they particularly like?

*Mr Davenport:* We removed the legislation for any restrictive powers. There was a standard of four years, if my memory serves me. We took it away straight away but Germany and France did not do that.

**Q78 Baroness Eccles of Moulton:** I remember, that is the reason, but otherwise if they had been as open as we have there is nothing else special about us?

*Mr Davenport:* No.

**Chairman:** We will come on to the whole issue of enforcement and I am sure this is one of the issues that we will be pursuing with the Commission when we go there later this month. Lord Haskel?

**Q79 Lord Haskel:** Enlargement—what has been the impact of the recent enlargement of the European Union on the Single Market as far as your small and medium-sized businesses are concerned? Has it helped or hindered these businesses in seeking trade in other Member States?

*Ms Clements:* Obviously it has increased the size of the domestic market and therefore the opportunities, not least because most of the new Member States have low tax environments and relatively cheap but

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highly skilled labour and a growing middle-class with a great deal of purchasing power to spend on Western products that have a pretty good reputation still. A lot of our members have used partnerships in those countries, and in particular the low manufacturing costs, to create more innovative products that they are then selling worldwide, so they have used the Member States as a springboard really to increase their sales. That has been more a case perhaps with the manufacturers than it has with the service sector. I think the service sector has definitely encountered more problems and it is particularly with the service sector that you find the low levels of confidence in wanting to tackle the bureaucracy or the geographical barriers or the linguistic barriers or cultural barriers. The reports we have had from our members show that doing business in the Central and Eastern European countries is very different from doing business in Western European countries and they have found that a huge obstacle. Those are the ones that are actually trying. There is then a whole swathe of businesses who do not even put their toe in the water because they assume that the markets are sewn up by their competitors, by France, by Germany or Italy, who have had more time to build up relationships. Again members have stressed very highly that in these countries having partnerships with existing business is absolutely crucial to developing opportunities out there and they feel that their competitors have taken a lead leaving little for them to do. They are largely unaware, I would say, of the mutual recognition principle or indeed the country of origin principle and do not realise that they are legally allowed to sell whatever product or service they have to market and sell in other Member States as they can do so at home. Again we go back to the lack of information available to them, information that I think government and ourselves have taken for granted in so far as back in 1992 when there was the "big splash" over the Single Market—and at that time I happened to work for the CBI and we put an enormous amount of effort and resources as did the DTI into raising awareness of the benefits of the Single Market—that obviously helped to raise awareness but since then there has been absolutely nothing, and I think a lot of new businesses coming on the scene, particularly SMEs, are not touched and it is much more difficult to reach them with the type of information that they require.

*Mr Davenport:* We have no real evidence to suggest that enlargement has hindered anyone but, having said that, very few of our members are engaged in the market. The figure is 2% actually engaged, which is a very low amount. Enlargement has affected SMEs, small businesses particularly, much more through the influx of labour in the new Member States; over 6% of FSB members have employed workers from the new Member States already, so there is an awful lot of people coming in.

**Q80 Lord Haskel:** With the new Member States, you have the advantage of a low cost manufacturing sector area and also the influx of labour. You have not had any problems with the implementation of Directives or slowness in the new Member States, or has this been an advantage to you in that it is easier to make arrangements to have products made more cheaply there?

*Ms Clements:* There are instances of slowness to implement but it varies very much from country to country. There are instances of corruption, obviously, and that is a deterrent to a lot of businesses. I would say that very few of our businesses have actually said candidly that they have found slowness of implementation or indeed corruption to be an opportunity rather than a hindrance.

*Mr Davenport:* I would agree with that.

**Q81 Lord Haskel:** Have your members had any problems with corruption, Mr Davenport?

*Mr Davenport:* Not that we are aware. They have never mentioned it anyway if they have had any. Perhaps they would be embarrassed to do so.

**Q82 Lord Geddes:** How big a factor does language play in this?

*Ms Clements:* In a survey that we carried out two years ago now, over half of the businesses that responded said that linguistic barriers were a problem for them and they felt that they did not have access to employees who had linguistic capabilities, and an overwhelming 90% said that they thought the Government should do more to improve the quality of language training in schools and further education. To take an example in the new markets, if one company is up against a German company in Poland, for example, it is very likely that the German SME will have a Polish speaker who is able to conclude the contract and they then win that contract. Even if the services they provide offer rather better value for money, they are certainly discriminated against if they do not speak the language.

*Mr Davenport:* Yes, I think that, from a small business perspective, e-commerce is probably the biggest route forward because the language for e-commerce is English. So I think if there is a route with less difficulties in it, it is the e-commerce route, where you are selling a product to someone abroad and that is done through the English language. Actually going into areas with different languages does exactly as my colleague says, it presents a lot of problems because we speak more loudly and that is how we get over it.

**Q83 Chairman:** Just for the record, can we be clear about the rather alarming statistic that Mr Davenport gave us that only 2% of your members are

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actually doing business in other states of the European Union.

*Mr Davenport:* Not 2% of our members; two% overall, 2% of all SMEs.

**Q84 Chairman:** That is a staggering figure.

*Mr Davenport:* It is extremely small.

**Q85 Chairman:** Is that borne out by evidence from BCC?

*Ms Clements:* As I say, we have not carried out any research of our own in that respect. It still seems to me an alarmingly small amount.

**Q86 Chairman:** Would you say that figure is going to be replicated if we look at the reverse, that is to say, other European states' small and medium size enterprises, using the same definition, doing business in Britain? I am excluding Polish plumbers.

*Mr Davenport:* I do not have any knowledge of it but it would not surprise me that it was an extremely low amount, very low.

*Ms Clements:* I certainly know from being a member of an umbrella organisation called Eurochambres that regroups all the chambers of commerce not only of the European Union but wider Europe that there is a great deal more, particularly in the public law systems, where every business is required to join a chamber by law, that there is a great deal more support from government and from the chamber for the small and medium size business and that that would probably account for what I cannot confirm in statistical terms but what seems to me to be a perception that there is a great deal more trading activity going on on their part necessarily than there is on ours.

**Q87 Baroness Eccles of Moulton:** When you talk about the 2%, are we talking about the countries that are newly joined or are we talking about all 27?

*Mr Davenport:* I am not sure when the statistic was carried out. I think it was just before the influx of new countries.

**Q88 Baroness Eccles of Moulton:** I see. So it applies to the 15 rather than the 27.

*Mr Davenport:* Yes. It is not the last 12 months. It is slightly beyond that.

**Q89 Baroness Eccles of Moulton:** There is quite a substantial difference, is there not?

*Mr Davenport:* Yes.

**Q90 Lord Lee of Trafford:** Mr Davenport, particularly given that it is obviously easier for larger companies with greater facilities and a much better strategy to deal with Europe and European legislation, with designated departments to handle

tenders and bidding processes, do you have any evidence that any of the larger companies are helpful to your smaller businesses? In other words, is there any specific example of piggy-backing in terms of your members being helped, as it were, by those who know the European ropes perhaps rather better?

*Mr Davenport:* I do not have any statistics on that at all. Personally, I have had experience of that myself from my business. It can be advantageous but it depends on your relationship with the company that you are dealing with. I think really that is where things improve but we have no overall statistics. That is purely a personal one-off, which is hardly a statistic.

**Chairman:** May we move on to enforcement, which is one way we can perhaps help SMEs.

**Q91 Lord Geddes:** I think to an extent, Lord Chairman, the question may have been answered by that 2%. The question, for the record, is: are the current remedies available to the Commission to enforce the Single Market legislation adequate and are they used effectively? I just have a feeling that if only 2% of SMEs are doing business, I am not quite sure how you are going to answer that.

*Mr Davenport:* The Commission does have the power to take Member States to the ECJ if they contravene rules that are set down but we do not get much use of that. We do not even have name and shame.

*Ms Clements:* I would like to say that the infringement proceedings could be a great deal more transparent, to echo Mr Davenport, and that they could be speeded up. The agency we have found most useful is SOLVIT, and certainly some of our members have used their services. It is an informal way of resolving problems that businesses are encountering in the Single Market or indeed consumers, and they have a ten-week target by which to resolve the case without recourse to legal proceedings, which they usually meet, and more often than not they meet it earlier than that. They have solved 75% of the cases they have been presented with since they were set up. We would certainly love to see that agency strengthened and given more resource and more support, particularly in the Member States. At the moment the European Commission acts as a portal and sends out the cases to the national authorities where it is relevant. We would like to see those beefed up so that it could perhaps—we will probably be going on to the Services Directive later or indeed the Commission's proposal on mutual recognition, but it could be a source of information and not just redress for SMEs. Our members have certainly found that extremely useful. When it comes to the infringement proceedings, as you said, very few of our members have actually got that far, not least because they do not have the time and the money to do so.

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**Q92 Lord Geddes:** Who or what are SOLVIT and where are they?

*Ms Clements:* SOLVIT is an online service and it is run by the European Commission. If you have a problem, you go on to the website and you click on your Member State; so you are a UK-based business and you are encountering a problem and you file a complaint, which goes to the DTI at the moment or the new Business Regulatory Reform Department, and they then get in touch with their counterparts in the Member State in question and try to resolve the problem between themselves. If it is a national rule that is illegal, the Member State in question agrees to disregard that national rule until such time as it can be taken off the statute books.

**Q93 Chairman:** Lord Geddes may be just about to ask this, but in which directorate general is that? Is it the Competition Commission?

*Ms Clements:* No, I believe it is DG Markt. I am not entirely sure but I believe that is the DG that runs it.

*Chairman:* I think you have just given us an extra appointment in Brussels. Thank you very much for pointing us in that direction. That is extremely helpful.

**Q94 Lord Geddes:** Can I very quickly twist it round the other way. I can appreciate that there is not much experience of UK companies running into problems on continental Europe because they are not doing very much business with continental Europe. Have you any evidence, anecdotal or not, of the reverse side of it?

*Ms Clements:* Yes. The European chambers that I mentioned earlier recently put a position paper together on the Commission's proposal to boost the mutual recognition principle and its annex lists the barriers that companies from Germany, Poland and Austria—only three countries but still three nevertheless—have encountered, and Great Britain is mentioned in all three cases, largely to do with having more stringent fire safety regulations than most other EU Member States, or applying more fire safety. The concentration of gold and silver is a huge issue, apparently, where products are stopped from being sold in this country—illegally, I might add.

**Q95 Lord Geddes:** Illegally stopped or illegally sold?

*Ms Clements:* No, illegally stopped.

**Q96 Lord Haskel:** Because of definition?

*Ms Clements:* Yes, and there are several cases of over-implementation of Directives. If you look at the list of countries and products that are being stopped, I would not say that Great Britain is the greatest offender; it is probably second on the list, but that is obviously only three Member States, and it may indicate why the UK Government is fairly lukewarm

towards the proposal for a regulation that is being discussed in the Parliament at the moment.

*Chairman:* That is very helpful. Shall we move on from enforcement now to regulatory authorities.

**Q97 Baroness Eccles of Moulton:** The question is, is there a need for greater co-operation between national regulatory authorities and would this benefit businesses, in particular the SMEs, if they did co-operate more closely?

*Ms Clements:* Absolutely. SOLVIT—again, you might think I am in its employ, and I am not, but it does just that; it puts national authorities together in an informal way and helps them to solve the problems without going through the formal complaints procedure. This obviously helps SMEs tremendously in terms of the time involved and the fact that it is a free service. Again, the proposal on mutual recognition suggests that there should be so-called product contact points so that you may go anywhere in any Member State and, because of a fantastic website where all the national authorities are talking to each other, you will know exactly which products you can sell, where you can sell them and why you cannot if you cannot. All these initiatives by the Commission are to be welcomed.

**Q98 Baroness Eccles of Moulton:** Does this fantastic website exist?

*Ms Clements:* It does not. It is a hope.

**Q99 Baroness Eccles of Moulton:** It is a hope, but it could?

*Ms Clements:* It could, but obviously there is a question of resources and where you put it, who services it, all those sorts of issues, which in fact are proving to be some of the more complicated but extremely important issues in the implementation of the Services Directive.

**Q100 Baroness Eccles of Moulton:** There has been an emphasis throughout your answers on a lack of resources and several times there has been an indication that there are others that could perhaps do a bit more to help SMEs because resources are always very limited. This is a little bit wide of the question but not very, because it has come up several times. Is there any way that you can see of the SMEs themselves helping to solve that problem by perhaps being very specific about the request for resources that would move them on but maybe in a semi-independent way so that there is not a heavy dependence on others providing the resources that are so badly needed?

*Ms Clements:* I certainly think that, as a result of this inquiry and indeed of the Commission's whole focus on the Single Market, that we at the BCC will be doing some more in-depth research into exactly what

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type of information it is that SMEs need, which will help us understand where it should come from. After that, I think we could probably have a greater idea of where the resources need to be channelled, if they need to be at chamber level, at government level or at European Commission level.

*Mr Davenport:* Co-operation would be desirable and it would also tend to reduce the over-implementation in interpretation of the Directives anyway. It would also benefit SMEs to reduce the burden of red tape. There is a plus and a minus in both directions. Everyone tends to look at what it is going to cost but we should I think focus a little bit on what it is going to save as well, both as a nation and as a European Community.

**Q101 *Baroness Eccles of Moulton:*** The next question is to do with the country of origin principle. I think we all understand what the country of origin principle is. We have a definition here. It is if you are operating in another country you are operating under home country rules. Is that the best basis, do you think, for SMEs? The country of origin principle has been under a certain amount of threat from various quarters at various times but I think it is holding pretty steady, is it not, at the moment with regards to SMEs? What comments do you have?

*Ms Clements:* We definitely support the country of origin principle. It makes absolute sense that an SME in particular need only deal with one set of rules rather than 26 others and, as you say yourself, it has come under threat, most recently in the Services Directive, which we regret. That said, we will make the most of what the Services Directive has to offer when it is implemented and we will certainly, in terms of any lobbying that we do of our government or of the EU institutions or of other Member State governments, ensure that the country of origin principle is adhered to. Unfortunately, as a national business organisation, we do not necessarily have the political clout that is required to knock heads together at Member State or government level.

**Q102 *Baroness Eccles of Moulton:*** How much are British SMEs affected by the fact that we operate under a rather different legal system to the legal system that the European countries operate under? Does that have an effect on the country of origin principle?

*Ms Clements:* It should not do since we are just operating under the laws that SMEs have set themselves up in, so in principle, everything that they need to do in order to market or sell their product or service they need to do here and they do not need then to do elsewhere but obviously, it is not working that way, which is why we have the Services Directive, even though the country of origin principle and the mutual recognition principle are enshrined in the

objectives of the Treaty and have been brought out in the case law. This is why we have the Services Directive, it is why we have the new proposal from the Commission on mutual recognition, because in practice it is not playing that way.

*Mr Davenport:* Slightly the other side of that as well, although I fully endorse what my colleague has said, the alternative to not having that principle is having 26 or 27 different ones, which is horrendous, or a need for harmonisation and the timescale of harmonisation and the legal ramifications of harmonisation are too horrendous to think about. They could go on for decades. It is just not worth it.

**Q103 *Lord Geddes:*** Could I just follow this up with two different questions. You have both said, and not surprisingly, that you are all in favour of the country of origin principle; it helps ease the passage. To what extent has the cross-border activity been hindered by the country of origin principle? Has it been hindered at all? Are there any minuses?

*Mr Davenport:* Not that I am aware of. We certainly have had nothing at all like that.

*Ms Clements:* No.

**Q104 *Lord Geddes:*** The second part of that question is—and I think I am almost asking a question to which I know the answer—is there anything that the Commission should have done that it has not done to improve cross-border activity? Obviously, I am talking specifically about SMEs.

*Ms Clements:* I think the Commission has been doing its job quite well, to be honest, in terms of fulfilling its duties as set out by the Lisbon agenda, in its recent push to improve the functioning of the internal market specifically for SMEs, which has given rise to several proposals recently, one on mutual recognition, the others on the so-called new approach Directives, and these are specifically with SMEs in mind because it carried out a consultation which brought back some alarming results whereby SMEs felt that they were not getting any benefits from the Single Market. So I think the Commission is taking that very seriously and is doing what it can within the framework of its competence. Equally, there is a lot of work going on, and has been consistently, on improving the implementation with the league tables and the naming and shaming. Perhaps we need to see some more on enforcement, but I would like to see the European Parliament or even national parliaments having a greater role in assessing the quality and consistency of reinforcements in the Member States. Everything else that it can do, for example, within DG Enterprise, which is the Directorate General responsible for promoting SMEs and entrepreneurship, is only ever going to be encouraging Member States to undertake certain actions. It does not have the competence to do

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anything other than build the foundations for a level playing field in which the SMEs will hopefully thrive.

**Q105 Lord Geddes:** Given Mr Davenport's evidence that 89% of SMEs are engaged in the service sector, I am slightly surprised that you are as sanguine as you have been on the severely watered down country of origin principle in the Services Directive.

*Ms Clements:* We are not going to be able to undo what has been done. We regret the fact that it was watered down but we have to make the most of it, and that means ensuring that the single points of contact actually do what they are supposed to do and they do it in every Member State. That is where the focus of our work is now, ensuring that we have these single points of contact up and running in time and that every Member State is providing a similar level of service. They will be the success or not of the Directive ultimately, and so it is in our interests to make sure that they work properly.

*Mr Davenport:* Exactly that; a common standard is absolutely of the essence and, as my colleague said, we are where we are. The only way round it is to create a level playing field, a common standard, and it is important that that is what happens.

*Ms Clements:* I would just like to add that the FSB, the IoD and the BCC spent an inordinate amount of time lobbying to ensure that the country of origin principle remained in the Directive as it was. Unfortunately, we were not successful but hopefully through our efforts and others we secured a Directive that was not as bad as it could have been.

**Lord Geddes:** If I can make a personal remark, I do not disagree with your last comment but I am rather disappointed that you appear to have given up. Perhaps you do not want to comment on that. That is more a hint than anything else. I think we had better move on, Lord Chairman.

**Q106 Chairman:** This Committee did previously produce a report on the Services Directive which was very critical of the decline or at least the withdrawal of support from the principle of country of origin. We shall return to the issue because I think the Committee would very much agree with your criticism. Before turning to Lord Haskel and any other questions before we draw the proceedings to a close, can I come back to one very interesting point that you made on partnerships and ask a question? For the benefit of the record, this was the point that SMEs in this country, to do business in another country, could probably best find a partner of similar size or a group of partners in order to help with perhaps a two-way flow of business. In the past British embassies and commercial attachés were helpful in my experience—and I am going back 20 or 30 years now—in helping relatively small companies find partners within the European Union—naturally,

it was much smaller then. Could you just expand on your remarks and perhaps guide us as to where we might be looking to see if we can reinvigorate this service that might be provided, either by the European Union or by the British Government.

*Ms Clements:* As you said yourself, the British Government is still responsible through the embassies and consulate sections for hosting trade promotion events for SMEs in particular keen to enter new markets. The chambers of commerce themselves run them. We run trade missions on a regular basis but not as regularly as we would like to do. We do not have the resources. It is an incredibly expensive enterprise. There is also UKTI that has a responsibility for encouraging SMEs to enter new markets and to build partnerships. Perhaps the emphasis through UKTI has not been enough on partnership building. It has certainly been something that, as chambers, we have found has worked extremely well for our members. There is also a perception that UKTI has, not fallen out of love with the SME sector, but is certainly at the moment more concerned with larger companies than with the SMEs, and we would certainly like to see that reversed. I have to say I do not have any hardcore evidence for that; it is a perception amongst the membership that that is the case. I do not have anything to support that.

**Q107 Chairman:** Could you just comment on the apparent withdrawal of resources by the government? This is not a party political point but there has been a secular decline over many years in the resources available to embassies abroad in assisting SMEs.

*Ms Clements:* The same I am assuming to UKTI, which is why the emphasis has changed in the level of service it provides, and we regret that deeply.

*Mr Davenport:* In Wales there is Wales TI, and they have tended to focus more on small enterprises. That has been reasonably successful but, obviously, it is a very small area relative to the rest of the UK, so it may be worth getting some comparisons for that and seeing what the situation is between Wales and the take-up of small enterprises and the trade that that engenders. We wholeheartedly agree that there has been a withdrawal of the back-up services really that were there many years ago.

**Q108 Lord Haskel:** Could I just make a point about Trade and Investment? As I understand it—and maybe you can correct me here—their task used to be to help small companies get into new markets by helping them exhibit their products at trade shows and all that sort of thing.

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*Mr Davenport:* Yes.

**Q109 Lord Haskel:** As I understand it, their activity within the European Single Market was cut back because it was interpreted as a way of government helping industry, so TI now concentrates on helping companies exhibit their products in markets outside the European Single Market. Is that a correct interpretation?

*Mr Davenport:* Yes, it has done that, but it still goes to European countries as well. Certainly the Welsh TI do anyway, as they have done for the past two or three years, but they do strike a very fine line between encouraging businesses . . . All they do is say, "Look, this is the business, this is the trade market that we are going to. Do you want to enrol in this area?" and you go there. You do not get any other back-up apart from that. You do not get any other additional support. They just take you to the conference or to the trade fair and that is the end of the support; the rest of it is entirely up to you, and that tends to me to seem to be almost but not quite. It is helping people to get there but not helping them to engage in business on a long-term basis.

**Q110 Lord Haskel:** When they are there.

*Ms Clements:* Yes.

**Q111 Lord Haskel:** Do the concepts of the national champion and economic nationalism pose a threat to the Single Market? We heard quite a lot about this after the summit last month and I noticed somewhere in the FSB paper you do mention it. We just wondered what was the impact on small and medium size enterprises of such a policy?

*Mr Davenport:* We roll back to the Services Directive and the problems that that has but it can be seen through those problems and the impact is effectively to try and keep SMEs out of the Single Market, or at least make entry complicated and expensive for them. It is much more difficult for a small enterprise to engage because of the resources that it requires as distinct from a larger enterprise, where they have a lot more internal resources and a lot more funding to be able to move into markets. That is about it really, I think, as far as that is concerned. I will go no further than that.

*Ms Clements:* I would echo Mr Davenport's comments. In terms of what happened at the summit, as I understand it, we do not really know what the implications will be until the IGC has been completed and there has been some tweaking and fitting the treaties together. I was talking to the person responsible for competition at UPREP last week, who seemed to suggest that there may be some scope for tweaking but certainly not for opening renegotiations on the wording. Legal experts seem to suggest that we will just have to wait and see what

happens, that in theory there is enough still left in the Treaty to protect the principle of free and unrestricted competition. Unfortunately, that does not really fill us with very much confidence. Of course it is a threat. I would say it is actually a greater threat to larger companies than it is to SMEs, who are not, obviously, trying to acquire the same shares of the market.

**Q112 Lord Fyfe of Fairfield:** Can I touch on a couple of points, one of which has been mentioned before, and that was on language. I am assuming, perhaps wrongly, that English is the principal second language of most of the countries in the enlarged Union. If that is the case, surely language should be less of a problem for British companies than it is for companies in other parts of the EU. Would I be correct in saying that? Also, one other point that occurred to me when I heard your comment: do you have meetings with similar organisations based in other European countries, similar to chambers of commerce, where you can all sit round the table and gripe about the action or non-action of each other's governments, or do you act very independently, without consultation with perhaps counterparts in other countries?

*Mr Davenport:* One of our members is the chairman of ESBO, which is the society for small businesses throughout Europe, so we do have a link there throughout the whole Europe and the Scandinavian countries as well. I think you are right in saying that English is the prime language. As I said, the devil is in the detail. It is when you get down to the smaller intricacies of dealing with someone, what does this word mean as against that word. That is when it becomes a problem and starts to break down. Normal conversational English is quite common throughout Europe, but when you are talking technical details against specific contracts and things like that, that is when you get a problem and that is where the larger business has the ability to bring in specialists that know all the fine details, and that is a very expensive commodity if you are a small company trying to deal with the equivalent one in another nation.

*Ms Clements:* Certainly on the sister organisation side, we do sit round the table regularly with other chambers of commerce across the European Union and the wider Europe within the auspices of an organisation called Eurochambres, which I mentioned earlier. In terms of the language, it is often speaking not English but the language of the state you are in; that has definitely been raised by our members, and particularly in relation to central and eastern European countries. Also, the perception amongst the membership is that, once you have had to learn another language properly, it is much easier to take on a third and a fourth and a fifth, and that it

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is the actual training in learning how a language fits together and a new language that enables you to acquire others quite quickly, and they feel that the UK is at a disadvantage compared particularly to its German and even French competitors, and not least the Dutch and the Scandinavians, although they do not prove to be so much competition in the central and eastern European countries.

**Q113 Lord Haskel:** I wonder if I could just put a last question and ask you whether small companies are, by their very nature, local businesses, and that is why we should not really be surprised at the fact that you told us that only 2% of your members trade in other European countries. So perhaps for smaller companies a vision for the Single Market is something that you do not bother about very much until the company gets bigger and it is going to expand, and then you start being concerned about a vision for the Single Market, and that really what we are looking at or what this particular inquiry is about really small companies are not really affected by it.

*Ms Clements:* Perhaps we need to split out whether it is a small company or a medium size company. In theory, the Single Market is a domestic market; it is a local market, and there is no reason why a small or a medium size company cannot trade as easily with Barcelona as it does with Birmingham. That is the whole philosophy behind it and that is what should happen. Clearly, there are obstacles to growing from a small company to a medium size company and they will largely be ones of employment really, taking people on and risk, etc. In terms of trading, it should

not be a huge obstacle to growth. It is a domestic market in theory ready for the taking. However, as we know, there are certain barriers still apparent.

*Mr Davenport:* I can certainly agree, but I also agree with you that small businesses do tend to be conservative and they do tend to operate within a 50-mile radius. That is one of the perceptions that we are trying to break with regard to the EU. We should not be in that confined situation. What we should be looking at is raising our head and raising our game so that we do deal with anyone in Europe. That is the important thing, and it is getting the barriers away from being able to do that. A lot of them are preconceived barriers but they are still nonetheless barriers. Whether they be psychological or physical, they are still barriers and that is what we have got to try and break down. That is why the structures that we have been talking about earlier are so important. It will break those barriers down. I think a lot of it could be fear even, of the unknown.

**Q114 Lord Haskel:** But the ideal of a Single Market is an inspiration to raise your game?

*Mr Davenport:* Yes.

**Chairman:** I think that is a very fitting note of optimism to end on. Thank you very much for coming. Would you do us the favour, please, of looking at the website at the evidence sessions which will come in the following two weeks, here and then in Brussels, because any comments that you have on the evidence taken, if you could come back to our clerk, we will certainly bear them in mind when we write our report. The hearing is closed.

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MONDAY 9 JULY 2007

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|---------|-----------------------|----------------------|
| Present | Dykes, L              | Haskel, L            |
|         | Eccles of Moulton, B  | Lee of Trafford, L   |
|         | Freeman, L (Chairman) | St John of Bletso, L |
|         | Geddes, L             | Whitty, L            |

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**Memorandum by the British Bankers' Association**

1. The British Bankers' Association is the leading UK banking and financial services trade association and acts on behalf of its members on domestic and international issues. Our 219 members are from 60 different countries and collectively provide the full range of banking and financial services. They operate some 130 million personal accounts, contribute £35 billion to the economy, and together make up the world's largest international banking centre.

**SUMMARY**

2. The BBA believes that the Single Market is good for banks and generally for financial services and indeed good for European citizens. We believe that it is important to take a positive and proactive attitude to the development of the Single Market.

3. Since 1999 the majority of legislation has been on the wholesale side of financial services. The legislation to integrate wholesale markets (the Financial Services Action Plan or FSAP) needs time to bed down in national legislation before the effect can be fully assessed. We believe that the Markets in Financial Instruments Directive (MiFID) will particularly benefit the large wholesale and investment banks.

4. We also believe that the Code of Conduct on Clearing and Settlement is an appropriate way to improve the trading, clearing and settlement market infrastructures in a flexible, but thorough manner. It also fulfils the criteria for the Better Regulation agenda, which we strongly support.

5. On the retail side, the European Commission has recently launched a Green Paper on retail financial services, which we believe will form an important part of the overall Single Market Review this autumn.

6. The European Commission's Interim Report to the 2007 Spring European Council<sup>6</sup> confirms our view that the consumer will play an increasingly significant role in the Single Market.

7. With this in mind, the BBA believes that proposals to integrate the Single Market in retail financial services must benefit consumers, satisfy better regulation criteria as well as give rise to more efficient markets.

8. There are still a number of barriers for providers of financial services to establish themselves in other markets, such as different market behaviour and legal frameworks. Geographical proximity can play an important role, in addition to financial considerations, for companies to invest in the new Member States' markets.

9. We believe that future competitive retail banking markets require not only access by consumers to the provision of services but also for consumers to be able to choose the best deal. Therefore, a number of persisting inhibitors need to be considered in order to increase competition for the benefit of the consumers.

10. Firstly, the transparency of information provision must be improved. For consumers to be confident in their product choices they need comprehensive and easily understood information on financial products both through advertising and marketing material and aggregator, and other websites. Steps must be taken in Member States to improve financial capability if consumers are to reap the benefits.

11. Secondly, we believe that banks across Europe should cooperate to minimise the inherent complexities in the necessary anti-money laundering and counter-terrorist financing legislation.

12. Thirdly, we believe that voluntary switching codes of conduct between banks at national level would enable customers wishing to move bank to do so more efficiently.

13. Fourthly, work needs to be done on improving data sharing between EU jurisdictions for those consumers moving from one country to another, while respecting data protection and fraud considerations.

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<sup>6</sup> "A Single Market for Citizens" COM(2007)60

14. Fifthly, consumers have to feel confident that redress mechanisms are compatible between jurisdictions if problems arise with particular financial services products.

15. In financial services we have a Single Market on the wholesale side. EU decision-makers are working with national authorities to bring the Single Market benefits to citizens on the retail side as well. We need to ensure that any action is proportionate and not detrimental to national markets. Nevertheless, we support this process because we want UK financial services companies to benefit from better access to the EU market and because we believe it will allow the City of London to remain a world leader in financial services.

#### A. THE CURRENT STATE OF THE SINGLE MARKET

##### I. *What has been the impact of the recent enlargements of the European Union on the single market?*

16. The enlargements of the EU in 2004 and 2007 have had a major impact on employment through migration from east to west. This has allowed product development in retail financial services targeted at new population groups in the UK. We expect this “mobile consumer” to become a more important part of the financial services market.

17. There are clearly increased opportunities for UK companies in the new accession countries as these are growing markets.

18. On the legislative side, another impact has been the introduction of 12 new national markets at differing stages of development and levels of financial services rules which has led to increasing support for maximum harmonisation in Brussels. Also in some areas, like consumer credit, new Member States can sometimes support more EU-level legislation where they do not already have sophisticated domestic rules.

##### II. *Are there significant barriers to firms seeking to offer their goods or services, or to consumers accessing these goods or services, in other Member States of the European Union? If so, what are the most important of those barriers? What measures are needed to overcome those barriers?*

19. We believe there are a number of barriers for firms seeking to offer their goods or services in other Member States. This includes both providing services direct to consumers in other Member States (cross-border services) and acquiring local operators or establishing a subsidiary (scale entry).

20. As an example, our recent work on the impact of the Consumer Credit Directive showed that our member banks perceived a multitude of barriers in offering consumer credit services in other EU Member States. These include:

- Problems of assessing credit-worthiness due to inability to access credit data.
- Differences in taxation, legal basis, employment laws and access to payment systems.
- Difficulties in debt collection.

21. Some “old” EU markets were considered unattractive by our members because the estimated returns on equity would be lower or equal to that already enjoyed in the UK. Many of our members do of course operate on a global basis and their investment decisions will reflect this.

22. For retail financial services we believe the EU is still very much a collection of 27 separate markets and banks cannot ignore this commercial reality. Integration is held back due to different maturity of the various markets and the differences in languages and cultures, as well as the structure of consumer demand. These differences cannot be resolved through legislation, but they need to be progressively understood and accepted on all sides. Therefore, there are greater chances of success in achieving a foothold in a market by either acquiring a local competitor or by establishing a subsidiary with separate management, systems, products and marketing.

23. It is important that banks which wish to enter other EU Member States are able to do so freely and those consumers who wish to purchase financial products and services on a cross-border basis are able to do so with confidence. It is important that the needs of the growing number of citizens who move around the EU are met in an efficient, flexible and transparent manner.

24. There is a role for the European Commission and National Regulatory Authorities to monitor market competitiveness, maintain a level playing field and facilitate cross-border mergers and acquisitions. Increasing commercial integration over time of financial services is more likely to encourage the development of an internal market than regulation forced from above.

III. *Do you consider further legislative measures by the Commission to be necessary for the completion of the single market? If so, what measures would you consider appropriate?*

25. We do not think that legislative measures are the best solution to complete the single market. Often non-legislative measures such as codes of conduct or self-regulation are more effective and flexible. There are non-legislative measures that should be considered in the retail financial services area to bring benefits to EU citizens including:

- Research into what financial services the mobile consumers (such as migrant workers) need.
- Development of market comparison websites to benefit more EU consumers.
- National account switching codes with third party oversight.
- Work around effective recognition between Member States on dispute resolution mechanisms.

IV. *Are the current provisions for monitoring market functioning and performance effective?*

26. It is difficult to judge the effectiveness of current provisions at this point in time. It is necessary to wait follow-up actions from DG Competition's Sector Inquiry into Retail Banking before it is possible to evaluate the effectiveness of market monitoring by the European Commission and National Regulatory Authorities.

27. The Commission plays an important role in ensuring the transposition of EU legislation, essential for the Single Market to deliver benefits to citizens and companies. We welcome DG Markt's Internal Market Scoreboard which examines how quickly and how well the Member States transpose Single Market Directives into national law, as well as highlighting the on-going infringement cases against Member States. However, the Commission should act more forcefully to ensure Member States comply with internal market rules. We also welcome the Committee of European Banking Supervisors (CEBS) initiative to help the Commission oversee the transposition of the Capital Requirements Directive (CRD). There should be greater scope for Lamfalussy Level 3 Committees to aid Member States transpose financial services legislation.

28. The Better Regulation principles adopted by the EU in the recent past should contribute to better monitoring of market functioning because they embody the need for effective research and impact assessment. The creation of the Impact Assessment Board in 2006 should further underpin this process.

V. *Is there a need for greater cooperation between National Regulatory Authorities?*

29. In our experience, there appear to be differences in the performance of national competition authorities. We believe that there is a greater need for cooperation and spread of best practice in the competition field which should encourage greater consistency across the EU.

30. We support cooperation between supervisory authorities rather than the development of a single EU supervisory authority. Recent legislation such as the CRD and MiFID has improved co-operation between financial services supervisory authorities. Whilst there is still much more to be done to ensure uniform implementation by supervisors of legislation, we believe the CRD is an example where supervisors have voluntarily agreed to reach consensus in the present implementation phase.

VI. *Are the current remedies available to the Commission to enforce single market legislation adequate; and are they used effectively?*

31. The Commission is responsible for ensuring that Community law is correctly applied. Consequently, where a Member State fails to comply with single market legislation, the Commission can take action through the infringement procedure against that Member State. This procedure can ultimately lead to referral of the Member State to the European Court of Justice which can impose hefty fines on countries. In practice, the process can take years before Member States are actually liable to pay fines.

32. We believe that the remedy of infringement proceedings is not effective enough to force Member States to implement EU-level legislation on time. A good example of this is MiFID where uneven implementation by EU Member States has led to considerable insecurity in the financial services industry. Of the major financial markets only the UK had implemented the legislation by the deadline of 31 January 2007. By the end of April only the UK, Romania, and Ireland had notified the European Commission of transposition measures. This led to a situation where a sophisticated financial market like the City of London found itself constrained in participating fully in the Single Market. The then UK Economic Secretary Ed Balls MP wrote a letter to EU Internal Market Commissioner Charlie McCreevy asking him to pursue those Member States who had not yet implemented the legislation. The Commission duly notified on 24 April 2007 that it had

launched infringement proceedings. We believe that the European Commission should be more vigilant in enforcing EU-level legislation to allow financial services providers to reap the benefits of the Single Market.

33. The Commission has performed well in curtailing cartels and deterring abuses of dominant positions (forbidden under Articles 81 and 82 of the EC Treaty). The Commission enjoys wide powers of investigation, such as being able to inspect business and non-business premises, and to send written requests for information, among others. The Commission can also impose fines on companies violating the Treaty Articles. More work could be done to prevent uneven application of competition law by national authorities, as was evident with the ABN Amro takeover bid for Antonveneta in 2005 in Italy.

*VII. What is your view of the Country of Origin Principle, whereby a company registered to provide services in one Member State is automatically qualified to provide those services in any other Member State on the basis of home country regulation? Does this Principle constitute the best basis for single market measures?*

34. The use of the Country of Origin principle in financial services raises a number of issues due to differences in the Member States' consumer protection legislation. Many consumers are unlikely to be aware of the different levels of consumer protection or redress systems. Where consumers are aware, those in a jurisdiction with high consumer protection would probably not buy a financial services product from a country with a lower level of consumer protection legislation.

*VIII. Do the concepts of the "national champion" and "economic nationalism" pose a threat to the single market?*

35. We believe that the effective enforcement of competition law and rigorous monitoring of markets by both the Commission (DG COMP) and national authorities will contribute to decreasing the amount of economic nationalism in the EU.

36. The removal of "undistorted competition" from the draft EU Reform Treaty, negotiated in the June 2007 European Council, raises further concerns in this area.

*IX. What is the significance of the single currency to the operation of the single market?*

37. Institutions engaged in the wholesale markets are of course used to multi-currency trading. For them the FSAP was more important than the single currency in facilitating the development of a single market.

38. However, the single currency has increased value transparency by removing the fluctuations between the currencies it replaced. Also, it is true that multinational corporations, which before needed a dozen or more sets of accounts in different currencies, with all the reconciliation and valuation that this poses, can now simply use the euro.

39. The City has proven increasingly attractive to Eurozone based financial services business. At the end of 2006, 79% of European based hedge funds assets (\$360 billion) were managed in London. The UK was the source of 27.5% of European investment banking revenue in 2006 and more euros are traded in the UK than the entire Eurozone. Also, around half of European investment banking activity was conducted in London in 2006.

40. One area that the single currency is having a major impact on is on payments. The Single Euro Payments Area (SEPA) initiative will create a single integrated euro payments environment.

## B. SECTOR SPECIFIC QUESTIONS

### *Financial Services*

*I. What has been the impact of the implementation of the Financial Services Action Plan as a whole; and in particular the Markets in Financial Instruments Directive?*

41. The Financial Services Action Plan (FSAP) has had a substantial impact on the European financial services market as a whole. However, on the whole many of the standards imposed by key pieces of new legislation such as the Prospectus Directive, the Transparency Directive and the Market Abuse Directive were already in place in the United Kingdom. Consequently, the FSAP has had a lesser impact on the United Kingdom than on many other member states.

42. In many respects the biggest impact of the FSAP has been the fact that it has ensured that a much more extensive body of European capital markets legislation is now in place. This means that European law relating to capital markets is now, generally speaking, more important than other national law relating to capital markets. This shifts the balance away from national legislatures towards the European legislative process.

43. A second, simultaneous and connected, development was the creation of the Lamfalussy Process which has:

- formalised and encouraged much greater cooperation between European regulators, and
- resulted in a more connected national approach to the implementation and interpretation of the EU legislation passed under the FSAP.

44. This shifts the balance away from the national autonomy of financial services regulators so that they are increasingly more constrained by their collective approach to issues.

45. In the case of the Markets in Financial Instruments Directive (MiFID), this Directive has not yet been implemented. It is due to be implemented by 1 November 2007 and it is anticipated that those aspects that can be implemented without the need for information coming from other European jurisdictions will be implemented by that date. It seems likely, however, that in many other European countries MiFID will not be properly implemented by 1 November 2007.

46. The implementation of MiFID raises significant issues for banks across Europe. There are few banks which are not buying or selling securities in some way or other and consequently all banks, whatever their precise business model, are likely to be affected by MiFID in some way or another.

47. An important difference between banks and other securities firms is the fact that banks already have a passport to do business across the EU under the Banking Coordination Directive (BCD)—so consequently there are a range of provisions in MiFID (mainly organisational requirements) which do not apply to banks because they are already subject to them, or equivalent provisions, under BCD.

48. The precise impact of MiFID depends, in particular, on whether or not a bank is principally carrying out wholesale investment banking, private banking or retail banking—but before discussing this it may be worth making some general comments about the likely landscape for banks once MiFID is implemented.

#### Competitive impact of MiFID on banks doing business in Europe

49. It is difficult to crystal ball gaze and it is certainly not possible to pick with any certainty specific banks which will be winners or losers as a result of MiFID. It is, however, possible to make some general predictions. These are as follows:

- MiFID will initially impose significant implementation costs on the European financial services industry. Large banks (and large exchanges) will be better placed to bear these costs than smaller financial institutions, particularly non-banks.
- Banks, generally, particularly larger banks tend to be better prepared for MiFID. Many of them have followed the negotiations closely and have well developed project teams.
- As a result, on balance, banks, particularly large banks, will be much better placed to take advantage of MiFID than many other market players.
- Overall, therefore, despite the costs of implementation, some banks are likely to reap a significant competitive advantage from MiFID. At least one research report from an analyst in JP Morgan Chase suggests that US banks operating in Europe may be better placed to benefit than European banks. This is yet to be proved—but it is certainly the case that some US banks and investment banks have invested heavily in their MiFID projects.
- Other banks will still be able to benefit from MiFID but will have to think hard about how they can best differentiate their service offerings to clients from the services of others.

#### Wholesale Investment Banks and Universal Banks

50. These banks focused on the importance of MiFID very early as it was perceived to centrally affect their business. It is not possible to cover every aspect of their business in this evidence but key ways in which MiFID affects their business are as follows:

- Trading securities, particularly equities. Key provisions include pre and post trade transparency provisions, best execution obligations and the provisions creating the concept of a systematic internaliser of equities.

- Improving the passport. A range of MiFID provisions are intended to strengthen the role of the home state supervisor and lessen the influence of host state rules. New passport rights are created eg for commodities and multi-lateral trading facilities (MTFs).
- More common conduct of business requirements across the EU as a whole.
- A greater differentiation between the rules applying to business with retail customers and the rules applying to business with professionals and the most regular players in the markets (known under MiFID as “eligible counterparties”). In essence lighter obligations apply when dealing with professionals, and even more light when dealing with eligible counterparties.

51. The most controversial and potentially expensive requirements to implement for wholesale investment banks are the requirements relating to market structure for equities business, particularly, if a bank is regarded as a “systematic internaliser”.

52. However, a bank can choose whether or not to be a systematic internaliser and can choose to structure its business so that it does not carry out such a role. At this stage, it is not clear precisely what individual banks will choose to do and there is also some uncertainty about how different European supervisors will approach the question with regard to banks which they supervise. In essence, banks are only likely to be systematic internalisers if they have a multilateral platform which is dealing with its customers in equities by quoting in a “standard market size” for those equities to which the obligation applies. This “standard market size” is likely to be, broadly speaking, a size consistent with retail equities trading rather than the much larger sizes traded by wholesale investors. Consequently it is likely that institutions which only wish to do equities business with wholesale investors will seek to structure the business to ensure that they are not systematic internalisers.

53. It is difficult to predict but it may well be the case that it is less costly for many firms to adapt their structures in this way rather than to take on the obligations of a systematic internaliser and that, in consequence, there will be far fewer banks taking on this obligation than might have been anticipated.

54. As yet, it is early days to assess the value of the new passporting rights. However, overall there are likely to be some advantages to banks who do a considerable amount of commodities business or who operate an MTF. These advantages are more likely to develop over the medium to longer term than in the first few years after MiFID implementation because it is likely to take some time for regulatory practice with regard to these new passports to settle down.

55. A more common approach to conduct of business rules could carry significant benefits. The UK's FSA will cut its own Conduct of Business Sourcebook by around 50%, and although there will be initial implementation costs it is likely that over time this will bring advantages. Wholesale banks will benefit more than retail banks if there is genuine convergence in conduct of business rules across Europe because most cross-border business is wholesale. However, there will still be scope for some divergence between rules in different States and, moreover, there are still risks of divergent interpretations. In view of this the changes to the conduct of business rules, while mostly helpful, are likely to take some time to bed down and there remain risks of continuing differences. Benefits are likely to be medium to long term.

### Retail Banks

56. The most significant impact on retail banks in the UK will be in the area of conduct of business rules. MiFID does not apply to all of a bank's retail banking business—only to business in relation to financial instruments. Consequently, its principal application is to retail securities business which in the UK is mainly the sale of equities, often on an execution only basis—and to the sale of tax-wrapped products containing securities such as pensions, ISAs and the like. Strictly speaking, MiFID does not apply to Undertakings for Collective Investment in Transferable Securities (UCITS) which continue to be covered by the UCITS Directives—although there can be some unexpected indirect effects on firms, particularly those which sell UCITS and other fund management products out of the same platform.

57. In the context of retail broking business an important issue will be the impact of MiFID on the existing retail service provider model whereby brokers access shares on behalf of retail clients. There had been concerns that MiFID requirements relating to market structure might destroy this model of doing business—but it is now felt that it is likely to survive—albeit with some modifications.

58. There had also been concerns resulting from MiFID limiting the ability of a firm to carry out execution only business in a range of financial instruments. However, it is increasingly thought that it will generally continue to be possible to carry out business which is currently considered to be “execution only” because the correct analysis of this business under MiFID is that it is business subject to the requirement to carry out initial “appropriateness” checks. Most “execution only” brokers now consider that their initial account opening procedures—whether on-line or not—already contain the right sort of checks to ensure the retail client is only

carrying out the sort of business which it would be appropriate for him to do. If they do not, however, they will have to modify their account opening procedures accordingly.

59. An important constraint for retail business will be the limitations on carrying out derivatives business. In general most continental European member states are very reluctant to permit retail clients to have access to derivative products and MiFID does not draw a sophisticated distinction between derivatives products which are generally regarded as relatively safe and low risk such as eg warrants and those which might be high risk. Consequently it is likely that it will be more difficult for retail clients to buy and sell derivatives in future except on an advised basis.

60. MiFID also contains a new distinction between “suitability” and “appropriateness”. Some products and services can only be provided on the basis that they are “suitable” and, consequently, that the client has been fully advised with regard to each transaction. Others can be sold in a lighter touch way provided the firm has carried out an assessment of the appropriateness of the client dealing in the products when beginning the account opening process. The suitability concept is well understood in the UK and in practice MiFID is unlikely to make major changes to the approach of either the FSA or the Financial Ombudsman Service (“FOS”) when assessing how a firm has behaved. There is much more uncertainty about how the appropriateness concept will work as this is a novel concept in the UK.

### Private Banking

61. In some ways this may be the area of banking that will struggle most with MiFID. The reason for this is that most of the clients with whom private bankers deal are likely to fall into the MiFID retail category and will have the full range of retail protections applied to them. Traditionally private bankers have dealt with high net worth individuals and, in the UK at any rate, most of these individuals have neither needed, or wanted, these full retail protections. Currently the UK rules mostly permit private banks to treat their high net worth clients as intermediate customers and consequently the full retail regulatory requirements do not apply to them.

62. As a result, there will be private banks which currently have business models which are not geared up to follow the processes and documentation requirements required by the regulators for mass retail banking. A positive is the fact that the FSA is using MiFID implementation as a means of removing from its rulebook many detailed retail documentation requirements that the UK currently requires but MiFID does not. However, where MiFID requires certain documents or warnings to be given to retail customers' private banks that may not currently be required to give such documents or warnings will find that they will now have to put in place processes to do this for their clients even if they consider that the client is sufficiently sophisticated not to need them. This will mean that private banks are likely to have to think very carefully about their current business models and the best way in which to adjust in order to comply with MiFID while not drowning their client base in new warnings and documents.

### Overall

63. Overall the precise impact on a bank will depend very much on its mix of products and services and the nature of its client base. It is likely to have the biggest impact on wholesale banks and on private banking.

64. The banks who are likely to be best placed to benefit from MiFID are likely to be found within the group of the largest wholesale investment and universal banks for two reasons—first, because although they will have substantial costs they will also be best placed to reap the benefits of greater cross-border competition and trading and second, because they are amongst the entities who have most closely followed the development of MiFID and are best prepared to implement quickest.

## II. *Do you support the Commission's Code of Conduct on Clearing and Settlement?*

65. We agree that this is an appropriate process in meeting the Commission's Better Regulation Agenda, and in addressing some key issues in relation to the position of trading, clearing and settlement market infrastructures (“MIs”), in a flexible, but thorough manner. The BBA supports the process in which it has been actively participating with the Commission Monitoring Group and with other users through its membership of the European Banking Federation's (EBF) User Task Force. This is commenting significantly on the performance of MIs in meeting the different chapters of the Code. This process has been going reasonably well. The first chapter of the Code on Price Transparency is nearly closed. This has led to a much greater visibility and display of price and product tariffs by the MIs, although some work needs to be completed on a fuller display of discounts and rebates, as well as enhancing billing reconciliability and comparability.

66. The BBA, the EBF and others are currently in discussion with the MIs on the next chapter on Access and Inter-Operability. We have seen a first draft of the MIs' proposals—a set of principles—designed to govern the offering and acceptance of access to, and inter-operability between, MIs. Although this is a good first effort, in what is a complex and intricate area, it probably falls short of users' expectations in some respects at this stage, and requires revision. This chapter is due to be finalised towards the end of this month, and the final chapter on Accounting Separation and Unbundling is due to be completed by the end of the year. The Commission will then be submitting a report to Ecofin in the early months of 2008 on the Code's impact and enforceability. We sincerely hope that this will give the "thumbs up" to the process. The Commission will then be turning its attention to the possible extension of the Code to other asset classes (it currently covers only equity securities), as well as contemplating whether the Code should be extended to other providers of post-trading services, such as custody banks. The BBA, and the EBF, are opposed to this, given the significant differences between MIs, which are monopoly service providers, and banks, which are subject to the rigours of severe market competition in this segment of the value chain.

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### Examination of Witness

Witness: Ms ANGELA KNIGHT, CBE, Chief Executive, British Bankers' Association, examined.

**Q115 Chairman:** Thank you very much indeed for coming and for the submission of the written document beforehand. It is much appreciated. I understand it might be convenient for you to make an opening statement for the record and then we will go into questions and try to conclude at about five o'clock.

*Ms Knight:* We have provided written evidence to this inquiry and thank you for asking us to provide oral evidence. I would like to pick up a couple of points, if I may, in my introductory remarks saying first of all why the BBA has taken such interest in this and other European issues. Our association, the British Bankers' Association, is the leading UK banking and financial services trade body and we act on behalf of our members domestically and on international issues. We have 219 members and they are from 60 different countries and collectively provide the full range of banking and financial services. That is from the retail, domestic account right the way through to international, wholesale banking. As such the whole question of market access and open markets is of considerable importance to us and we believe that the single market will bring benefits, not just to our members but indeed to Europe as a whole. We participated in the whole of the single market programme throughout the Financial Service Action Plan and indeed the Basle process as well. Overall these will bring some positive developments and although there are failures these tend to relate to, for example, the failure to undertake market studies first, the failures of the Commission to really understand what the business is all about and indeed what the barriers are. Our members are multi-jurisdictional. Many of them interestingly already have the majority of their wholesale business operating out of the UK, out of London in particular, irrespective of where they are supposed to be quartered. In effect we are seeing some considerable market shifts already taking place in advance of the full

implementation of the FSAP measures. Changes are taking place across Europe. Annually we produce an abstract of banking statistics. We have not quite published the ones for 2006 but I have brought the essence of some useful numbers, I hope, to this Committee with me. Bank earnings from the exports of services totalled £10 billion in 2006. That is 21% higher than 2005. Banks in the UK now hold nearly 23% of all European banking assets. That again is an increase on last year. The 9% growth in 2006 of international lending by banks operating in the UK reflected an increase in their European business. Thus our involvement as an association with the European agenda is clearly very important and undoubtedly those numbers do start to display just how changes have started to take place, even though some of those barriers which are still in place across Europe are yet to be fully addressed.

**Q116 Chairman:** This Committee is looking prospectively at what further action is needed, initiated by the Commission, to perfect the internal market as it relates for example to financial services. What we are not doing, because that is the responsibility of another committee, is to look at the individual pieces of secondary legislation which will flow and which will be examined. I wonder if you could tell the Committee which areas in your judgment have not been covered by the Financial Services Directive and need to be looked at carefully and studied by the Commission in the future?

*Ms Knight:* If we look at the body of legislation which is on its way through right now, that is very substantial and it affects more or less everything and every entity that operates within the financial services industry. Yes, there are some exceptions but they are few. The extent of the involvement also varies depending on the type of business but nevertheless this is a very substantial body of legislation. Although in Brussels terminology they have completed the action plan, in the terminology

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of the countries that are implementing it, we are only part of the way through. Some of the main changes do not start to take effect until the end of this year. Thus it is impossible to say really what it is the Commission should be doing next in that part of the financial services market other than ensuring that once the changes have taken place they look at them, where any lacunae lie, where any issues of barriers which can be reasonably addressed lie and also do some further market studies. The part of the single market which is yet to be properly looked at is that which relates to retail, the individual consumer. That is much harder than in the wholesale side because you are talking about people, different languages and them often wanting only to deal with people that they know in a system that they understand. In that area do lie some actions and activities that have not been addressed yet and those are areas which the Commission needs to start looking at properly. It has launched now a Green Paper looking at the retail financial market scene and also there is some secondary inquiry which is looking at bank accounts in particular. There is some work under way but it is really only just at the start. It is a long way from completion and inevitably there will be many more gaps, even though it is a much harder area to address than has been the case in the broadly speaking wholesale measures that have been looked at so far.

**Q117 Lord Haskel:** You spoke about this mass of legislation which is on its way through. Obviously it will be up to each of the nation state regulators to carry this through. There is no actual model on how these regulators are set up or how they should act. Are you satisfied that in each of the nation states the regulators will be able to enforce the legislation which is coming through?

*Ms Knight:* I do not think I am satisfied at all. I think it is the big conundrum right now. The work of the Commission in this area of equivalent implementation and equivalent regulation is work that to date the Commission has not really addressed or undertaken. If I may mention one particular directive known as MiFID, the Market and Financial Instruments Directive, which is the big framework directive of the current legislative programme, that is due to be implemented across Europe in November of this year. At the moment, the only countries that are likely to be ready are the UK—and indeed we will be ready—and Bulgaria. Ireland will be a little bit late. One of the Scandinavians might make it and that, broadly speaking, is it. The rest of the countries are going to be six months, nine months or maybe even further behind. Even that ability to implement at the same time is not there. Secondly, within the various regulatory structures in the various countries, there

are all sorts of different responsibilities. Some countries still have regulation more set in statutory legislation. Others like ourselves have the regulator set up by statute but then are given devolved powers to implement and change rules, obviously a much more flexible process. The calibre of regulators and the framework in which they operate are also different. Frankly, these are the sorts of issues that the Commission ought to have looked at much earlier rather than setting on the path of change but we are where we are. My personal view is that before the Commission starts on any further legislation it has to get the current situation in a much better place and it has to look at legislation as being a last resort rather than a first resort, because the laws of unintended consequences play very strongly in this area and costs are very significant indeed. Your question is entirely right. No, I am not content with the current process. It has a long way to go.

**Q118 Lord St John of Bletso:** You mentioned the Green Paper and the launch of the retail financial services. In paragraph 22 you make the very strong point that there is a collection of 27 separate markets, with particular emphasis on “separate”, and that banks cannot ignore the commercial reality. Do you see the likelihood for, for example, UK players getting more involved in the retail financial services market in Europe more by acquisition or by organic growth? Clearly you say here that the likelihood of organic growth will be a lot tougher by acquiring local players.

*Ms Knight:* Absolutely. I think it will be. When you are discussing with individuals, each individual wants it in their language, done in their way, under their rules and with a person next door. It is going to take a long time before we move from that particular position. Whilst there undoubtedly will be some appetite for cross border sales of retail products where the entity is quartered in one country and selling to individuals in another country, we consider that for some considerable time ahead that will be the minority, not the majority way, in which individuals get involved in financial markets. That is why, when looking at a retail agenda, it has to be based in reality. The first thing to do is some consumer research. Too often there is a leap to, “What can we do? Where shall we do it? There must be this barrier or that barrier. Let’s create a directive.” It is quite rare that proper market studies in any form are done first. Before we move down the path of a retail agenda which goes from a centralised perspective, that consumer research has to be done and that is the major point that the BBA is making in its response on this Green Paper inquiry by the Commission.

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**Q119 Lord Geddes:** My question was on exactly the same subject but I wanted to probe a little further. You said in your opening remarks vis a vis the retail side that there was a number of areas that needed to be explored. Could you expand a bit on that?

*Ms Knight:* Yes, I can. I will do it, if I may, by three examples. The first is that we have an increasingly mobile working population in Europe. Sometimes it feels that all the young Poles are here in the UK. That might exaggerate to make a point but anybody living or working in London knows from daily experience that there is a mobile, young, working population of Europe. In the financial services industry it tends to be somewhat exaggerated in the sense that there are a lot of international people operating in financial services. We have young people in jobs moving across Europe. They will open a bank account in the country in which they went to university. They will be taken on by a company in another country. Their girlfriend is from a third and they get seconded to work in a fourth. Does anybody know for certain, apart from the individual themselves, how easy it is for that individual to open those various bank accounts under current anti-money laundering legislation, to pay bills in one country from money earned in another? There are some things that can be done easily; there are some things that cannot. That is the first area of exploration. What is it that we need to think about in the financial services industry that means that that mobile population of Europe, which will only increase, can get its financial services done and at a reasonable price. A chunk of legal issues there will no doubt remain as problems. There will be tax issues as well but there are other things in there which we need to think about. That is one example of areas where "something should be done". The second is that the Consumer Credit Directive has just been more or less agreed. It still has a stage to go but that is a long time piece of legislation beloved by the Brussels political classes. The idea is to make credit more easily accessible right across Europe. The theory is not a bad idea. The practice of creating that Directive has been frankly ghastly and the results are unknown. If I am a bank and I am going to offer credit to an individual, I need to know something about that individual. I need to be able to look at some data about them and yet at the moment there is little or no exchange of information about individuals because the data collection is different across Europe. It is in different pieces of home grown legislation. Different things are collected. If we are going to be serious about trying to open up markets a bit, we need to go back to some fundamentals and look to see what could be done there before just addressing what is believed to be some other problem. That is another area which I think needs

to be explored within this data area. The third is the role of the Internet. All of us increasingly use the Internet for something. Some of us use the Internet for more things than others. For example, if you Google financial services, up will come all sorts of things. On that first page, you will get at least half a dozen comparison sites. If you go into a comparison site and you want to compare bank accounts, insurance, a financial product—say, a collective investment of some sort—you only have to put in a little bit of information about yourself and then come up some further choices of what you can buy, who you can buy it from and the price at which you can buy. Put in a bit more information, refine your choice and you get further options come up. The ability of the use of the Internet to open up choice and offerings to individuals, wherever they are quartered in Europe, is very good. It is not something for which one legislates. In fact, it might be that there is some legislation that results in that choice and that use of the Internet becoming rather less attractive in some countries than in others. That is a further area where exploration is required. Let us just look to see what the true barriers are and what the true opportunities are and then facilitate rather than having some centralised view of what a single market should be and just going for it.

**Q120 Lord Geddes:** Does not the increasing use of the Internet, which I fully understand, to an extent get over the linguistic barrier?

*Ms Knight:* It does but the one thing that you cannot say when you are negotiating in Brussels is that it does not matter about the language because everybody speaks English. In effect, that is precisely the case. The Internet sites are mostly in English and they are Internet sites in all their forms. The predominance is in English. I need to say that they are also there in many other languages as well but you are right in the point that you make.

**Q121 Lord Lee of Trafford:** How helpful are the commercial developments taking place on the ground being in helping to create the single market and overcoming barriers? To an extent my question is somewhat complementary. I am thinking obviously of banking mergers, stock exchange mergers or intended mergers. I am thinking also of the activities of people like Provident Finance establishing operations and subsidiaries in Eastern Europe on the door to door lending and similar and the overall thrust of this taking place from the ground in real, commercial terms, as distinct from the efforts of politicians.

*Ms Knight:* The nub of the matter is if a commercial entity sees a commercial opportunity it is going to take it. Perhaps the two things that these last few years have done as far as the liberalising of market

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measures is concerned is that they have firstly wised up different entities in different countries to the commercial opportunities and, secondly, wised them up to the commercial threats as well. We can see steps being taken from a commercial perspective before the supposed barriers have started to be removed. In the end it is that commercial thrust which will bring about the changes because, unless there is a commercial opportunity, it does not matter whether there is a barrier or not in front of you; you are not going to shift from your current market.

**Q122 Lord Lee of Trafford:** The commercial will drive the political agenda in a way?

*Ms Knight:* Yes. There is sometimes a healthy and sometimes an unhealthy competition between the two, dare I say it. There has been competition where a business is on its way and it says, "Look, there is this, this and this. Can you do your part of it?" That is fine. It is when business is on its way and politicians say, "We do not like you doing that, that and that." That is where you get the unhelpful discussions between the two.

**Q123 Baroness Eccles of Moulton:** In something you said earlier there was a suggestion that the Commission had rather tended to use legislation to solve some of the problems perhaps a touch prematurely and that it would have been better if the ground had been more thoroughly prepared or maybe that they had been more knowledgeable about particular problems they were going to hit. I know it is looking backwards but sometimes that can inform what to do now. What are the sorts of things that the Commission might have done in order to prepare the ground more thoroughly before legislating?

*Ms Knight:* It is important to look back. Many other trade associations and the Commission themselves are looking back, not to rewrite history but to learn the lessons of history. The Commission also sometimes find themselves in the middle between national politicians saying, "We want this to be done" and the market saying, "Hang on, we need to think about it." What happened in the case of the Financial Services Action Plan was a political decision made to bring down once and for all the barriers across Europe. Clearly this is not going to happen but it will mean a significant number of positive steps in providing a single market. However, given that broad, political thrust, the Commission not only had to find ways of putting in place what their political masters had asked for but do it against a very tight timetable. The whole area of looking to see how markets operate differently in different countries—whether they had time to do that or not I do not know, but even if they had time

to do it they did not think about it then because that was not the way of doing things. Today, if this current Commission was given exactly the same political task to undertake, this current Commission would say, "Right, we are going to do the market studies. We will get the consultation process in place. We will notify the relevant trade associations, bodies and groupings. We will have our communication lines tied up with the relevant powers, national assemblies and so forth and, when we know what we are doing, we will move forward with codes of practice. We will look at competition policy. We will look at commercial realities and only then will we get to Directives." That is the lesson learned from this current wave of legislation. I sincerely hope that those learned lessons will become law within the Commission and not just get pushed to one side when we have a Commission change, as we will at some point.

**Q124 Baroness Eccles of Moulton:** When you say that the current Commission perhaps ought to have been a bit more thoughtful and prepared the ground a bit more, what length of time has elapsed since the previous Commission rushed into it without doing the things you have just described?

*Ms Knight:* The current programme by and large got itself under way in about 1998. We have been drawing teeth for a very long period of time over this. It started to bear fruit into legislative proposals in 2000/01 but such things as the arrangements which bring together regulators, members of the Lamfalussy process, the Committee of European Securities Regulators and so on all had to be created at the same time. To give them their due—and I do sincerely want to do so—the Commission learned as it went along and learned quickly, particularly about consultation because consultation is truly about asking the industry, getting the industry's response, having a consideration and making some changes accordingly; and, if you do not make changes, explaining why not. Prior to that it was mostly information dissemination: here is the com doc. Whatever you say we are going to do it anyway. They have shifted substantially. However, the whole of the promotional regime within the Commission is still based upon he or she who manages to create a directive and get it through. That gives them the next step up the ladder and can also be quite good as far as the pocket is concerned. Until we get a change which says it is also about promotion, being a good implementer, understanding the market, getting equivalence across Europe, all that will happen is that we will slip from knowing that the best way is to find out first and do later back into the directive making machinery. That is why I say the current Commission has learned well and I just hope that

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what they have learned continues and becomes standard, good Commission practice.

**Q125 Baroness Eccles of Moulton:** One could say that the comments on the previous Commission that started it off in 1998 are partly informed with the benefit of hindsight and that lessons have been learned during the process. Your message is: let us hope that those lessons are adhered to and various matters are put right so that it does not slip back?  
*Ms Knight:* Yes. Lessons have been learned by the industry as well, wherever it is quartered. If somebody says, "Come on now folks, let's create a single market", there are times when industry has to say, "Hang on. Let's think this through". The industry did not all jump on the podium at the same time and say, "This is a good thing" without thinking it through. The industry must learn across Europe. Most European countries have not had a history of the kind of trade association that operates here in the UK, one that is staffed, that looks at technicalities without fear and will take up matters privately and publicly with the lords and masters. This type of trade association which we have here has started to develop in different ways and different cultures in the different European countries and that is all to the good because that means that there is a conduit through which the Commission can ask questions, often technical questions, and can get answers.

**Q126 Baroness Eccles of Moulton:** That rather implies that a central Commission regulator would not perhaps be the answer.

*Ms Knight:* I do not think many people would put their hand up for a central regulator. Even if one puts to one side legal differences, cultural differences, the fact that some business operates in some countries and some does not operate in others, you would never get the flexibility that is required for the open, vibrant market that we all want. As far as we are concerned here in the UK, we would see our business move elsewhere.

**Q127 Lord Dykes:** Is there some hope that realistically the European trade association formation that you mentioned could also be a catalyst to this process? Obviously there are huge variations in the examples, depending on the particular sectors, but all too often presumably they have just been representatives of the national federations in each country coming together and being a sort of co-federal occasional meeting, rather than having collective teeth. Do you think that is developing now?

*Ms Knight:* In some respects I am the wrong person to ask because I am new on the banking scene and so new to the European Banking Federation. In my

previous role I created a grouping of securities and trade associations across Europe. If I give my answer in a slightly more general way than would otherwise be the case, these pan-European groupings can work well as long as they concentrate on the things in which they have common agreement. Inevitably, not only are their members sometimes in competition; in fact, you can have a firm that is a member of a trade association in one country and a similar trade association in another country saying different things because it is a competitive business that they operate in. One has to recognise that there will be competitive issues and you cannot go there; that there will be legal issues and you cannot go there. There will be some cultural issues. We buy things in one way in one country and not in another and you are never going to come to an agreement. Having said that, on the plus side of the line there are some areas in which these pan-European trade associations can be a serious force for providing good, competent, high quality decision making and information. To my mind, the way that the one I am now associated with, the European Banking Federation, needs to think about it is not trying to come up with something which 27 nations agree with on everything but to come up with something that 27 nations agree with in key, important areas where there is a true agreement.

**Q128 Lord Dykes:** Can I pursue that particular area as a putative example? The Commission decreed that from 1 January the banking transactions between countries would be in the single market context rather than foreign transactions from one country to another. Obviously one does not think so much of the need to look after the large corporations and even smaller companies because they often have the personnel and the means to do it and their advisers as well. If you think of individual, personal customers of banks, there was a lot of publicity in the British press recently about excessive charges for domestic customers in Britain. Presumably there is even more likelihood that there will be excessive charges, whatever that word means. You mentioned the increasingly mobile EU population, Polish people coming here and all the other examples. It is getting very mobile now, faster than America, and there will be excess charges levied. Do you think that is now getting better with the pressures, with the banks taking the lead in creating a genuine single market, or is it very slow?

*Ms Knight:* The great problem in this whole area is that you as an individual customer are not sure what it is that you are going to be comparing or how to look at like for like. The reason is that the information is not necessarily readily available elsewhere. We are used to operating in an

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environment which is not only transparent but pretty comprehensible as well. Getting information is one thing. Quite another is giving information in an understandable manner.

**Q129 Lord Dykes:** The press did not say that in Britain recently about domestic accounts.

*Ms Knight:* I will come to that point in a moment, if I may. The question that needs to be addressed right across Europe is one of transparency in a format that can be easily comprehended, where costs and services are available for you, the customer, to choose or not to choose. If I come to some of the specifics, we recently had a report undertaken by Oxera that compared personal banking in the UK with 14 or 15 other jurisdictions. A number of those jurisdictions were European but not all of them because there are North America, Australia and one or two others. The intention was to look at the overall costs and experience for the individual in four standard categories taken from our Office of National Statistics and to see what happened, how did the individual get on in terms of finding information, charges that they paid, the overall experience. Interestingly, one of the European countries—I had better not mention it—had to be dropped out of that research. It was a very major European country. It had to be dropped because the researchers simply could not get the information. In the other countries—again, I stick with Europe—it was possible to get relevant information but you could not get, for example, unbundled accounts in most. You found yourself with charges regardless of how much you had in your bank and your banking experience. You also found, especially with credit cards, that the point at which you had to pay interest or settle kicked in much earlier than it does in the UK. The UK did not come top at everything but put all together it came out top in all categories, in things like with elderly people. The overall charges to them and the typical way in which they would operate bank borrowings and so forth over the course of the year was something like 70% cheaper in the UK than elsewhere. This does not say the UK is perfect. We are not perfect. I do not pretend we are perfect, but some of the things that we do here in terms of transparency, in terms of unbundling, in terms of trying to make it easy for people to have choice, need to be reflected elsewhere if we are truly going to be able to help the consumers of Europe have the choice that they want, especially when they are part of a mobile population.

**Q130 Lord St John of Bletso:** You have touched on transparency. I am more interested in accountability. You mentioned earlier on the role of the Commission in terms of the efficacy of enforcing

single market legislation. In your paper you say that the Commission can take action through infringement procedure against Member States and of course, when it comes down to anti-trust, curtailing cartels and deterring abuses of dominant positions, the Commission has been very effective here and it can impose fines. Does the BBA have any statistics as to how many times the Commission has been successful in enforcing fines against Member States or how many cases there have been where they have imposed fines against companies?

*Ms Knight:* I do not know the answer to the question. One of my experts sitting behind might know. Whilst I do not have a number for you here, I can certainly get hold of what information we have internally and let you have it. That will give at least some statistics in answer to your question. There is a general point here. How truly successful can the Commission be in bringing about equivalent information implementation? What can it do about infringements? It seems to me that they have a limited ability. After all, if you have a country that is seriously infringing, you cannot cut it off at the bottom and throw it out into the Mediterranean and sink it. You are pretty stuck with what you can do. If you go to any of the tables that the Commission publishes from time to time, you always find buckets and buckets of lists of things that have not been implemented in various countries or are late or whatever. In any event, the infringement process is a long one. There is only a limited amount that they can do. If, however, they perhaps got on with the job of trying to get things right before they went wrong, we would be in a much more profitable place. The Commission have historically said that until they see that there has been an infringement in practice and it has been reported to them they cannot do anything about the infringement. I think the industry does not really take that as the only answer. Now that we have some of these mechanisms that have been created through the Lamfalussy Process, we do think there is a quick and easy way in which the Commission could take early action. The trade associations and their members know when something has not been done in one country when it has in another because they are trading in both countries. You can report that through either to your trade association that goes on to one of these Lamfalussy committees and up directly to the Commission or whatever. That way we can get things fixed at an early stage. We believe that that is a much better process than waiting for the full infringement activity. We also believe that the competition authorities have a strong role to play. Sometimes barriers are left in place in order to protect your home state industry. That is a competition issue. Whilst competition issues can be quite difficult to address from the European

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perspective because they get immensely political, nevertheless they need to be addressed. Otherwise, we are doing a lot of expensive changes for not enough beneficial end result.

**Q131 Lord Haskel:** You said that the Commission could get more effective implementation by working with trade associations and the competition

authorities. Do you think the Commission just needs more powers?

*Ms Knight:* I think the Commission has enough powers. It needs to find ways of using them more effectively.

*Chairman:* That is a very concise, elegant answer. Thank you very much indeed. Do have a look at the draft record and if there are further comments that you would like to help us with or further submissions, we would welcome them. Thank you.

### Examination of Witness

Witness: MR SIMON GROSSMAN, Head of Government Policy and Mobile Regulation, Orange PCS Limited, examined.

**Q132 Chairman:** Mr Grossman, thank you very much indeed for coming. For the record, would you give your name and your responsibilities at Orange?

*Mr Grossman:* My name is Simon Grossman. I am Head of Government Policy and Mobile Regulation at Orange.

**Q133 Chairman:** I understand you would like to make a brief opening statement?

*Mr Grossman:* I have some brief opening remarks that might be of assistance. I am Head of Government Policy and Mobile Regulation for Orange in the UK. Orange UK is part of the wider Orange Group that is owned entirely by the France Telecom Group, one of the world's leading telecoms operators. It operates in all five continents and has over 150 million customers. It provides mobile, fixed telephony and broadband services. I should stress that because my responsibilities are for the mobile business in the UK, although I can try to assist the Committee with a flavour of our international views and our views on fixed issues, my primary responsibilities and expertise are in relation to mobile issues in the UK. Orange is of course supportive of the single market. We want to stress that it is competition that really makes the difference. It is competition that counts. Although the single market is obviously designed to assist that process, it is not something that of itself would assist either Orange or, we believe, our customers. The mobile sector is perhaps slightly different to some of the other sectors that you have been considering. Mobile has been competitive since its inception. There is no concept of incumbents within the mobile sector, as there was obviously in fixed telephony, and presumably in some other industries that you may look at. In a sense we were already competitive before we existed. Liberalisation in the telecoms market is very important but it is more for the fixed sector than the mobile sector. A key point that I want to conclude my opening remarks with is that, although the single market is important and critical

in creating a competitive climate, what is perhaps even more important is the way that the rules are implemented. It is the quality of the regulator as much as anything that determines the outcome for Orange and our customers. One can have the best framework in place but if those who implement it and those who are responsible for enforcing it do not do so in a correct, thorough and well analysed way, perhaps we will not receive the best outcomes.

**Q134 Chairman:** Following your comments that it is the fixed telecommunication market that is probably more appropriate for the Commission to address in terms of improving the single market, which particular facets of the fixed telecommunications market do you think we should be looking at?

*Mr Grossman:* It is obviously long recognised that, within the UK, BT is dominant. I should say, sitting here on behalf of Orange and France Telecom, France Telecom is in a similar position in France. That of itself places me in a slightly difficult situation because of the market in the UK. We are a new entrant operator. Orange in the UK provides broadband services and fixed telephony based on those broadband services. Those services are necessarily dependent upon access provided by BT. In France, France Telecom is the incumbent and it is in the same situation as BT. It is important from the UK perspective to focus on opening up BT to competitors. The Committee may be aware of the process of functional separation which took place in the UK whereby BT has been split into the Openreach and BT Wholesale divisions. That was done to try and allow competitors to have equal footing with BT. It is required to offer its competitors the same access as it offers to the other part of itself. Broadband is the area that has been most contentious. The UK was somewhat behind other countries, particularly France, in terms of rolling out broadband, in terms of competitors becoming involved in that market. That is

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something that Ofcom has now addressed but perhaps addressed a little later than it might have done, certainly a little later than was the case in France.

**Q135 Baroness Eccles of Moulton:** In the good old days before there was electronic communication and incumbents like French Telecom and BT, where so much of the telecommunications were hard wired, presumably then it was much easier to maintain a monopoly. Nowadays when so much can bypass hard wiring except for the last few inches into the home, it must be much harder for the original monopolies to hang on to their powers and therefore is there not a tendency for the whole fixed telecommunications or electronic communications to be much more competitive?

*Mr Grossman:* That is true apart from the point that you identified, known as the last mile. That is what makes the real difference. The copper line from the exchange to the home is what BT controls. It is BT and BT alone that goes into every home in the UK. The cable networks cover a reasonable number of homes but not 100%. Although one may wish to have very high speed fibre networks rolled out to all homes, the investment required would be enormous. At the moment, BT's position is very strong because it keeps that last mile. Therefore, if you want to provide something to a customer in their own home, you have to do so via the access that BT provides. You are absolutely right. With the core network, what sits in the centre and links everything together, makes it much easier to create a competitive state of affairs because there is less required.

**Q136 Baroness Eccles of Moulton:** Fibre is still just a modern substitute for copper, is it not? It just happens to work a great deal faster?

*Mr Grossman:* Yes.

**Q137 Baroness Eccles of Moulton:** You are still dependent on the owner of that bit of fibre, presumably?

*Mr Grossman:* Yes.

**Q138 Baroness Eccles of Moulton:** Whereas if you are up in the air, depending on air waves, it is quite different, is it not?

*Mr Grossman:* That is true. Obviously use of the air waves is dependent upon spectrum and that is licensed. One needs to have the right to use that spectrum. Potentially, it is easy to be competitive in that environment because the spectrum can be bought, sold and traded; whereas fibre or anything into the home is there and exists. Wireless technologies certainly provide a greater means of encouraging competition and that is taking place but one should never underestimate the importance

of that last mile into the home which at the moment is in the hands of BT.

(The Committee suspended from 5.08pm to 5.20pm for a division in the House)

**Q139 Lord St John of Bletso:** The new regulatory framework has identified a number of areas of reform that the Commission has recommended. Do you think that these areas of reform are the right areas of reform and can you comment on additional areas of reform that you think Orange would like to see?

*Mr Grossman:* I have taken the opportunity to have a quick flick through some of the wide range of recommendations and proposals which the European Commission made. I am happy to touch on some in a little more detail. Some of them we would enthusiastically support. Whilst others we would have slight concerns that they have gone a little too far and they risk over-regulating. The key point is that from Orange's perspective a lot of these proposals and issues somewhat pass by the wayside when we are developing real services and real products for real people. A lot of these are things that we would have to cope with and do. There are proposals about appeals mechanisms, the review process and how that would work. There are proposals about the security process and service technology neutrality principles. These are broadly things that we would support, certainly in relation to spectrum and technology neutrality. There are some detailed concerns that we have but those in Orange who are actually responsible for doing things, as opposed to people like me who are responsible for responding to regulatory proposals, are relatively unaffected by what the European Commission might propose. What really affects our ability to deliver services to consumers is the amount of cash that we have, the bottom line. That is to a large extent affected by regulation. The key areas of regulation imposed on us at the moment with which you may be familiar are regulation of call termination and roaming charges. These are taking hundreds of millions of pounds from our bottom line. That means that, in simple terms, we have fewer people and resources to be able to implement and deliver real services to real consumers. It would be wrong of me to say that any specific proposal that the Commission has identified is going to stop us or curtail our ability to offer a particular service, because I am pleased to say that regulation does not go quite that deep. But the broad effect of the major forms of regulation such as roaming and call termination does have an effect in that it takes hundreds of millions of pounds away. That means redundancies, restructuring and reorganisation. That means that services which would have been delivered will either be delivered

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later or not at all because we simply do not have the money and people.

**Q140 Lord St John of Bletso:** Can you be a little more specific about the services that the consumer would not be getting as a result of roaming charges, for example? It is inevitable that roaming charges would have to come down. Are you saying that you think that the telecommunications sector and self-regulation are the way ahead and the Commission should not get as involved as it has so far in bringing more protection for consumers?

*Mr Grossman:* In a sense, I would say that, wouldn't I, but I understand the realities and political imperatives that regulation of certain markets is going to happen and regulators will feel that is the right and correct approach. The Committee may be aware that Orange and other mobile operators had particular concerns about the roaming regulation, the manner in which that was done, in the sense that the regulator was taken largely out of the process and it was very much a political negotiation which led to a certain price point being chosen. I cannot give you particular examples of services that are not going to be delivered, because they are not going to be delivered, so in one sense they do not exist. But perhaps I could indicate that Orange, for example, made a 15% headcount reduction last year, so there are several hundred people who would be working for Orange were it not for that reduction. That reduction has been brought about, I would not say entirely as a matter of regulation, but partly as a matter of regulation because of the fact that we are several hundred million pounds short of where we would otherwise have been. I should also say, partly as a matter of market forces and competition, as the mobile market in the UK is intensely competitive. It is not just Orange; all mobile operators are in a similar situation. It is an intense market combined with regulation that does affect the bottom line and, therefore, we simply have less people working for Orange and working under much more stringent conditions.

**Q141 Lord Haskel:** I wonder if you could come back to the matter of the operation of the Single Market. You told us that you were a supporter of the Single Market and that you felt that competition did a lot to keep prices down, you felt that liberalisation would help the Single Market operate better and you told us that part of that liberalisation would be the break-up of British Telecom and France Telecom. Could I ask you, do you think that the Commission has got the ability to carry that through? Why has that not been carried through, is it the local regulators that have fallen down on the job or is it the Commission that has fallen down on the job? Is it that this is going to happen anyway

and it is just a matter of time? Why do you think this has not happened? Where does the weakness lie?

*Mr Grossman:* Do you mean specifically the break-up of British Telecom or France Telecom?

**Q142 Lord Haskel:** You said that you felt the market would be liberalised if British Telecom and France Telecom were broken up.

*Mr Grossman:* In a sense the market was partially liberalised when we moved from a situation of a single incumbent, to one where new entrants and new operators are able to enter, and obviously that process was begun in the UK in 1984 by the Telecoms Act. British Telecom in the UK is not broken up but it is separated. That was a decision which Ofcom took following a period of consultation. It had the ability to break it up completely. It certainly did not lack the powers, but I am probably correct in saying that no-one, even in the industry, was proposing that. I think it was thought to be such a significant step that it would take up the regulator's mind and resources for a period of months, if not years. Therefore, there would not be any short-term, or arguably even medium-term, benefit to BT's competitors because it would be such a significant upheaval that any benefits would be too far down the line. They took the compromise proposal, which was what they termed functional separation, separating the wholesale, retail and Openreach divisions, and ensuring that Openreach offered access to BT on the same basis that it offered it to its retail competitors. That was seen to be a good compromise and the means by which you could open up the market and you could allow the competitors of BT retail to compete on equal terms. France Telecom, you will appreciate, does not believe that functional separation in France is required. It believes that the UK situation was brought about by the fact that Ofcom was slow to act against British Telecom, particularly in respect of local loop unbundling. As I mentioned earlier, local loop unbundling was far more advanced in France than it was in the UK. Ofcom was under significant pressure in the UK to do more, to get broadband rolled out to more consumers, and it was seen that functional separation was a way of doing that. Yes, it was far broader than that but to some extent that was seen to be the kick-start because BT had been, shall we say, in the view of some of its competitors, a little slow in responding to the request to open up its network and in particular its telephone exchanges.

**Q143 Lord Haskel:** So you think that the Commission has done its job, it is a matter for the regulators of the nation states?

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*Mr Grossman:* Yes. I certainly do not think that the Commission is lacking in powers. I think one of the things that is very important, and of which you will be aware, is that the Commission has made proposals and raised the possibility of creating a single European regulator. I do not believe anyone other than the Commission supports the concept because it sounds good in theory but in practice a regulator needs to understand its own national market. The market in the UK is so different from the markets in Spain, France and Germany, so to have a single regulator which attempted to do everything would not seem to add anything to the process and arguably would take something away. We feel that it is best done by local regulators. Of course, regulators are as different as anything else and in the UK we think we have got a pretty good one. Ofcom is generally well respected throughout Europe and probably grudgingly by most of the industry. It conducts generally fair analysis and, although one might not support all of its eventual decisions and outcomes, I do not think that generally speaking we would object to the manner and thoroughness of its analysis. Unfortunately, the same cannot necessarily be said of our sister companies in some other European countries. They do not feel that their regulators take quite the same detailed and thorough approach that Ofcom does. In a sense, if one was to have a broader pan-European approach in some countries we think we would benefit because the European regulator would be better and more thorough than the existing local regulator. But in other countries like the UK we think we would suffer because we think we have got a regulator that fully understands the market and is likely to give the most appropriate outcome, if not the best from the industry's perspective.

**Q144 Lord Haskel:** Do you think that the Commission should be beefing up the regulators who are not doing their jobs?

*Mr Grossman:* Well, I hesitate to comment because my knowledge of other European regulators probably is not good enough to give too much detail. I would not want to mislead the Committee. Certainly from what I understand from colleagues in other member countries, they do not feel that their regulators are sufficiently thorough. They do not feel that their analysis and understanding of their markets is sufficiently deep. Whether or not the Commission has the power to do anything about that, to some extent it has to accept the regulators that it has. It can decide whether or not to give them more powers but it is very difficult for them to say, "I am sorry, you are not up to the job. You are not conducting a detailed and thorough enough analysis. You are not understanding your markets

well enough". To be fair, a lot of them look to Ofcom for that type of expertise and knowledge, so Ofcom stands above as an expert that others can look to follow.

**Q145 Lord Geddes:** I have two questions which to an extent are linked. The first is perhaps the more factual one. You have spoken much about France Telecom and British Telecom having a monopoly position on what I would call the fixed line. What is the situation in the other 25 Member States, how does that vary?

*Mr Grossman:* I should say not quite a monopoly either in the UK or in France.

**Q146 Lord Geddes:** All right, a quasi-monopoly.

*Mr Grossman:* I am afraid I am hesitant to answer the question, not wanting to mislead the Committee. Orange is a strong and powerful force in both the UK and France. That is where my primary knowledge lies. I would not want to give any information about other countries because I do not feel sufficiently knowledgeable to do so.

**Q147 Lord Geddes:** Let me move on to the second one then. Presently, with the new regulatory framework there is quite a lot of discretion still for Member States regarding implementation. Do you think that is a good thing or do you think that there should be less discretion and, therefore, greater harmonisation?

*Mr Grossman:* Well, this is a difficult question that we wrestled with for reasons I have just been speaking about in the sense that in some countries we believe that, yes, a greater level of harmonisation would benefit.

**Q148 Lord Geddes:** Sorry, your previous reply was with regard to the regulators.

*Mr Grossman:* Yes.

**Q149 Lord Geddes:** I am talking about the actual implementation of the framework.

*Mr Grossman:* The manner in which certain markets are reviewed or—

**Q150 Lord Geddes:** The manner in which the new regulatory framework is actually working and is put into place. Is it operating?

*Mr Grossman:* Largely, certainly in my view, it goes to the same point in the sense that we have the five Directives and obviously they are in force. It is a question then of how individual regulators implement those Directives, whether or not they follow the Universal Service Directive or the Access Directive. We have the rules, we are happy with the rules, we believe the rules are appropriate and to some extent necessary. However, from a broader

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perspective we are concerned that not all of the Member States, by which we mean the regulators within the Member States, are properly implementing them. Obviously it is a matter for the Commission whether or not it wants to take action, and I know in some cases it has done so, but from Orange's perspective we are broadly satisfied.

**Q151 Lord Whitty:** I am interested, if you like, in the strategy of the approach here. You have talked largely about liberalising national markets, which we are told the framework can do to some extent but, nevertheless, you are breaking down monopolies and ensuring that all companies can operate within national markets but, from the consumer's point of view, what the consumer wants to know is, "If I go into a shop and buy an Orange telephone in Victoria Street, am I offered the same range of terms and prices that I would be if I walked into a similar shop in downtown Athens or Bucharest or wherever?" In this market, which after all has only existed for a few years, the technology has only existed for a few years, it is very odd that you would get a different range of options in each of those markets. I am not entirely sure whether this is the regulator's fault or whether it is the companies adjusting to what they think is the preference of the consumers within those individual national markets. *Mr Grossman:* Do you mean a variety of products and prices?

**Q152 Lord Whitty:** Leaving aside the competition, for your company the range of ways in which you can pay for the telephone, the balance between buying a set, and you probably have, I do not know, ten different options if you go into a London shop and in some of these other markets you would not have anything like ten different options but it is the same company.

*Mr Grossman:* There is a minimum set of terms and consumer protection rules, so in the UK they are contained within the general conditions of entitlement. So there are 22 general conditions which broadly set out some basic levels of consumer protection. There are requirements relating to number portability, that it must be made available; requirements for services to disabled people; requirements for directory inquiries; a variety of, if you like, basic consumer expectations and those will apply, assuming that they have been implemented, throughout the EU. We would be concerned if regulation went any further, certainly in relation to prices. We do not think that the price that is charged in the UK should necessarily be the same as it is in Spain or in Germany. Prices should be a matter of competition. Prices tend to be very good in the UK because competition is so intense, but if one were to have price regulation that said "This particular

mobile phone, this particular service, needs to be offered at a single rate", we would certainly feel that was over-regulation. In terms of handsets and products, the type of handset that you can buy and what you can do with it, again we think that should be a matter of freedom for individual countries and, in a sense, it is a matter of individual cultural differences. For example, some cultures will prefer a contract type of handset, paying per month and others will prefer pre-pay, pay-as-you-go; that does differ. Orange is not, if you like, so centralist that we have a single policy that says, "This type of handset must be made available at this price offering this type of service". Even within our own group we have the ability to differentiate, to understand the market, to react to competitors, to offer what we believe is the best product within that market. That varies from Orange in the UK to France, to Spain, to Portugal. We certainly do not think that the regulator should get involved in that level of detail.

**Q153 Lord Whitty:** If there is a genuine Single Market, and I am not talking about price in absolute numbers, I am just talking about the range of options that you would have available to you, obviously the actual way the market works out is some people would prefer a more contract-based arrangement and others pay-as-you-go or whatever, should not the market end up by offering a similar range of methods of payment in each part of Europe rather than a limited range in some countries and a pretty wide range in this country and in Germany?

*Mr Grossman:* As I say, I think that is a matter of competition. If in a particular country that had a more limited range there was seen to be a competitive advantage to offering a wide range or a different type of product or service then we think that would happen. In the UK people tend to care most about price and handset. That tends to be what determines their buying decision, so it is very likely that the operator who offers the widest range of handsets and has them on the market soonest tends to benefit. One of the issues that Orange has had in the past is that we have got handsets a little more slowly to the market than some of our competitors, so in a sense we lose customers because they do not really care whether they are on Orange or one of the competitor networks. They simply want this particular handset as soon as possible, so that is something that in response to competition we have had to change. We have had to get faster and we have had to get those handsets to the market more quickly. There is no reason why that form of competition would not take place in all markets. In others, perhaps less developed markets in Eastern Europe, they might be slightly less concerned about the latest shiny handset but more concerned simply about price. The same goes for services in certain

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markets. One might be more concerned about getting Internet access or email access; in others it is simply a matter of coverage, "All I want is my mobile phone to work in the most rural parts". So in that country we are going to invest in rolling out the network, building more masts. We are going to invest less in Internet and email services because that is not what a particular Eastern European country may desire. There needs to be an element of freedom and not over-regulation which we do not feel would be in the consumer's interest.

**Q154 Baroness Eccles of Moulton:** Can I just return for a minute to unbundling and the comparison between BT and Ofcom and France Telecom. I think you said that when Ofcom caused BT to be separated into retail and wholesale it was not necessary for France Telecom to do the same thing because they were already a step ahead of BT, or is that not quite what you said?

*Mr Grossman:* In relation to broadband and unbundling of the local loop, yes. I do not know whether the Committee is familiar with the process. This involves a competitor physically placing their equipment into the exchange of British Telecom or France Telecom and by doing so they take control over that copper line that we were discussing earlier. In the UK there were difficulties for competitors to get access to BT's exchanges. In some senses these were very practical difficulties, it was simply taking too long and the processes were not in place. In France it was easier; it was quicker. At a certain point in time, say a couple of years ago, there were far more local loops unbundled than in the UK. Broadband was more widely available; it was available from a larger number of operators because local loop unbundling was significantly further progressed.

**Q155 Baroness Eccles of Moulton:** So although we had, as it were, unbundled by separating the retail and the wholesale, that did not assist the rapid broadband introduction?

*Mr Grossman:* That came subsequently. The functional separation—again, forgive me, I cannot remember the dates precisely—took place about two years ago and it was in the period leading up to the functional separation that there were real concerns in the UK about the speed of broadband roll-out and the lack of competition in that market.

**Q156 Baroness Eccles of Moulton:** But France Telecom is not functionally unbundled.

*Mr Grossman:* No.

**Q157 Baroness Eccles of Moulton:** Yet they found there it was much easier to introduce broadband.

*Mr Grossman:* Yes, because they obviously took a more enlightened approach. They did not make it as difficult for competitors, arguably, as BT had done and that is something that the entire broadband industry in the UK for a period was up in arms about. They simply could not get into BT's local exchanges. They could not break through that barrier and they were crying out to Ofcom to take action. In France the issue never arose because France Telecom was more open, their local lines were unbundled so the regulatory pressure did not arise.

**Q158 Baroness Eccles of Moulton:** Was it not just a question of capacity? We have been told that we could not have broadband because there simply was not the capacity and they did not have whatever it was they needed in the local exchanges in order to introduce broadband. That was the a function of the inheritance whereas presumably in France they were much better equipped so they could introduce broadband.

*Mr Grossman:* It depends what you mean by capacity.

**Q159 Baroness Eccles of Moulton:** Maybe I am getting into deep water here in trying to talk about technical things that I do not fully understand.

*Mr Grossman:* In terms of network capacity there should not be a reason why you cannot unbundle a local loop; why a competitor cannot come into a BT exchange, install his equipment and effectively take over that line.

**Q160 Baroness Eccles of Moulton:** This is not at all what we were told at the time.

*Mr Grossman:* I believe there are issues sometimes in terms of physical space and capacity. In some BT exchanges there have been issues that there simply has not been—

**Q161 Baroness Eccles of Moulton:** They could not fit the box in?

*Mr Grossman:* Yes, there has not been the room to install the equipment. Again, I am no expert on BT exchanges so I would not like to comment further but I believe that of itself in some instances has been an issue.

**Q162 Lord St John of Bletso:** I think what Lady Eccles is referring to is the extent of dispersible bandwidth, the limited amount that is available, and there has not been the extent of dispersible bandwidth for some of the additional services necessarily needed for that extent of broadband.

*Mr Grossman:* It is hard to know exactly where the issue came up. All telecom networks are to some

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extent constrained by capacity and data speeds are determined by capacity and links to the exchange. If the Committee has previously taken evidence that there were issues on capacity in respect of the fact that it prevented roll-out of broadband, I would not immediately know, other than from a space perspective, where those concerns arose. There may be issues sometimes with whether or not one gets the sufficient speed because the network is overloaded. But I do not think getting to first base, ie you cannot unbundle this loop because there is

not the capacity to do so, should be a difficulty. I do not follow that argument myself.

**Chairman:** Thank you very much indeed, you have been very patient with us. It would help the Committee if, having studied the record, you felt that it would be helpful to us to submit a very brief description of comparison between France Telecom and British Telecom in terms of the functional separation of wholesale and retail. I think it would be helpful to us when we come to write our report. Thank you very much.

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MONDAY 16 JULY 2007

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|---------|-----------------------|----------------------|
| Present | Dykes, L              | Haskel, L            |
|         | Freeman, L (Chairman) | St John of Bletso, L |
|         | Fyfe of Fairfield, L  | Whitty, L            |
|         | Geddes, L             |                      |

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**Memorandum by Centrica**

**A. THE CURRENT STATE OF THE SINGLE MARKET**

Note: Centrica has answered the questions most relevant to it from the perspective of an energy company operating in the UK and continental Europe.

*Are there significant barriers to firms seeking to offer their goods or services, or to consumers accessing these goods or services, in other Member States of the European Union? If so, what are the most important of those barriers? What measures are needed to overcome those barriers?*

Centrica agrees with the Commission energy sector inquiry in January 2007 which confirmed serious competition problems in continental Europe. The final report concludes that consumers and businesses are losing out because of inefficient and expensive gas and electricity markets. Particular problems include high levels of market concentration; vertical integration of supply, generation and infrastructure leading to a lack of equal access to, and insufficient investment in infrastructure; and, possible collusion between incumbent operators to share markets. To tackle these problems, the Commission noted that it will pursue follow up action in individual cases under the competition rules (anti-trust, merger control and state aids) and act to improve the regulatory framework for energy liberalisation. The Commission has already conducted raids on the premises of a number of companies and more recently has commenced formal investigations in a number of instances.

The market in the UK is fiercely competitive, evidenced by the recent round of price reductions for domestic customers. However, a report by Global Insight estimated that in 2006 importing European oil-linked gas cost UK consumers over £10 billion.

*Do you consider further legislative measures by the Commission to be necessary for the completion of the single market? If so, what measures would you consider appropriate?*

Our response to energy sector specific questions in Section B of this evidence highlights the range of measures necessary for the completion of the single market. These consist of a Third Energy Package and in the interim, in light of the time that it will require for this package to be implemented, a binding regulation on legal and functional unbundling.

*Are the current provisions for monitoring market functioning and performance effective? What evidence is there that Member States are honouring their obligations equally?*

The Commission repeatedly points to the need for the second electricity and gas Directives to be implemented, not just in their letter but also in their spirit. The Commission has initiated proceedings against many Member States for non-compliance with those directives. However, Commission investigations are time consuming and constrained by resources.

The UK is generally compliant in this area, but in other Member States, regulators are also often resource-constrained, and may lack the necessary independence or powers to act. Greater market transparency would make the process of monitoring market functioning easier, as well as helping market access itself.

*Is there a need for greater co-operation between National Regulatory Authorities?*

Because of the importance of cross-border energy flows and the significant levels of congestion at borders, it is essential to improve cooperation between National Regulatory Authorities. This has been recognised by ERGEG (the group of European energy regulators) and could be further strengthened by a harmonisation of regulators' legal powers/duties within a "third package" of EU legislative measures, as well as by explicit provision for cross-border intervention under what has come to be known as "ERGEG +". As evidenced by the Global Insight report in 2006, UK consumers can be severely impacted by partial or ineffective regulation in other Member states.

*Are the current remedies available to the Commission to enforce single market legislation adequate; and are they used effectively?*

Existing Commission remedies are extremely slow, particularly those aimed at member states rather than companies. For example, a number of Member States have still not implemented the 2003 Energy Directives fully and appropriately into national law.

*Do the concepts of the "national champion" and "economic nationalism" pose a threat to the single market?*

Spain's recent intervention in the takeover of Endesa has proved a timely reminder of how the desire to protect national interests can override the need to create and defend free markets. In the UK foreign ownership is an economic reality which has helped deliver jobs and growth.

The UK is one of the most economically liberal markets in the world. It is no coincidence that the UK is forecast to have the strongest business environment of all major European economies from 2005–09 (source, EIU 2005) or that it leads Europe in Foreign Direct Investment with an FDI of \$170 billion in 2006.

There are signs that the rate of progress in Europe towards liberal markets is slowing in favour of a swing towards national champions. These national champions mean a lack of access on an equal basis to national and regional markets and to important Trans European pipelines, including those which are important for UK suppliers seeking to access gas supplies from the East.

## B. SECTOR SPECIFIC QUESTIONS

### Energy

*Has there been sufficient unbundling of gas and electricity markets in all Member States?*

There are two key issues here. First, the existing provisions of the 2003 Directives for internal (legal, accounting and management) separation have not been effectively enforced and complied with in a number of Member States. Second, even if they had been properly implemented, the provisions do not go far enough to resolve the serious deficiencies identified by the Commission's recent inquiry.

The European Commission repeatedly points to the need for the existing unbundling provisions to be properly implemented. The Commission goes on to note "it is essential to resolve the systemic conflict of interest inherent in the vertical integration of supply and network activities, which has resulted in a lack of investment and discrimination"; to this end the Commission makes a clear preference for ownership unbundling though it also considered the alternative model of Independent System Operator (ISO). ERGEG state "In principle, regulators consider ownership unbundling to be the preferred model".

There are many problems with the existing unbundling structures. "Chinese walls" in most cases do not address conflicts of interest at Board level. For example, in Italy ENI was fined Euro 290 million for delaying necessary cross-border pipeline development as it would have had a negative effect on its own gas sales. Addressing these concerns involves a heavy, ongoing regulatory burden on both the company and the regulatory authority.

Full ownership unbundling has many benefits. There are clearer capital and financing structures which reflect the relatively low-risk capital intensive activity of network ownership. There is no risk of investment decisions being inappropriately influenced by internal generation or supply interests. There is a distinct and independent management focus on the network and the needs of network users.

The Scottish electricity ISO model was not established to address a conflict of interest in the common ownership of generation and networks. Not surprisingly, therefore, the ISO is not a solution to this problem and transposing this Scottish ISO model across Europe would not work. In the UK we have a strong regulator that is independent of government. Similarly we have an independent Office of Fair Trading and Competition Commission and a vigorous consumer lobby. All of this is against a background of a political ideology that opposes national champions and puts consumer needs ahead of those of companies. This is simply not the case in much of the rest of Europe.

The regional ISO model that transcends national borders is fraught with practical difficulties and is merely being advocated to delay the necessary liberalisation.

The situation is more urgent in gas because of the need to import gas across several Member States and due to the slower progress in achieving effective third party access to gas networks, compared to electricity.

As the required changes will take some time to implement, it is important that the draft and non-mandatory ERGEG guidelines on Functional and Informational Unbundling are quickly transposed into a binding set of regulations.

It is clear that the internal market framework to support healthy competition does not exist. Unless there is urgent reform, customers will continue to pay higher prices than necessary and energy security of supply will be undermined. While the focus has been on transmission, effective distribution unbundling is necessary for retail competition. Effective unbundling of both transmission and distribution is no panacea on its own but it is an essential part of the solution.

*Is there agreement on the fundamental importance of a genuine single market to support a Common European strategy for energy?*

Centrica agrees with the UK government and the Commission on the importance of this issue. Moreover, contrary to recent reports, there appears to be a clear majority of member states in favour of fundamental reform because of the recognition of the failings of the existing arrangements. Unfortunately, a minority of countries—including some of the largest Member States—vigorously oppose the necessary changes.

*What are the implications for the single market of the Commission's commitments on climate change?*

Collective international agreement and action is required on climate change. The Commission's commitments on climate change are an essential part of that collective agreement. The substantial reductions in green house gas (GHG) emissions place an increasing need for a stable long term carbon price to allow the necessary industry investments. The EU Emissions Trading Scheme (EU ETS) should be a key means to ensure the necessary GHG reductions as this market mechanism will ensure that reductions take place at least cost.

Estimates produced for the DTI show that total UK power generator windfalls from free EU ETS allowances were up to £1 billion per annum. The German Environment Minister claimed that the four biggest European Power producers—EON, RWE, Vattenfall and EDF—were profiteering from the EU ETS at the expense of consumers by between Euro 6 billion and Euro 8 billion per annum. Recently the Commission rejected many Member States' proposals for GHG emissions.

A reformed EU ETS is critical to the creation of an effective (global) carbon market, to the elimination of these problems in Europe and ensuring we get the greener yet diverse power generation mix that UK customers need. A move to full auctioning of allowances to emit CO<sub>2</sub> from 2012, rather than free handouts, plus a commitment from all EU Member States to the ETS and to cut emissions, will trigger the billions of pounds of investment needed. It is important the UK government continues to battle hard in Europe to make this happen.

The renewables energy target is particularly challenging. There is a danger that this is an overly prescriptive solution to the need to reduce GHG. It will be important to understand how this target will operate alongside the EU ETS.

*Should there be a single EU energy regulator?*

There are currently three important areas where Member States have to date shown a reluctance to resolve in a satisfactory manner. These are market dominance and national champion issues, exemptions from Third Party Access for new infrastructure and regulation of end-user prices. It is important that regulators act swiftly to resolve such issues.

To do this, the powers and resources of many national regulators need to be increased and harmonised and there is a need for their independence from government influence. Regulation also increasingly needs to be extended from a national to a European context and the existing working arrangements of regulatory co-operation via ERGEG need to be formalised and enhanced because of the importance of cross-border flows.

3 July 2007

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### Examination of Witnesses

Witnesses: Ms NICOLA PITTS, Head of UK and EU Public Affairs, National Grid, MR JAKE ULRICH, Managing Director, Centrica Energy, MR MARK AKEHURST, Corporate Development Manager, Ms FLORENCE FOUQUET, Head of European Affairs, and M BERNARD BRELLE, Deputy Vice President of the Strategy Division, Gaz de France, examined.

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**Q163 Chairman:** Good afternoon, and a very warm welcome. Thank you for the effort you have made, both in terms of the written submissions but also we have three coming from Gaz de France itself which is much appreciated. For the record, may we just ask Nicola Pitts, Jake Ulrich and Bernard Brelle to introduce themselves for the record and then we will ask you if each of you would like to make a brief opening statement. Can we take Nicola first.

*Ms Pitts:* I am Nicola Pitts. I am Head of UK and EU Public Affairs at National Grid.

*Mr Ulrich:* I am Jake Ulrich, the Managing Director of Centrica Energy. My responsibilities include all the upstream businesses, power production, trading and operations and I am also responsible for our European operations.

*M Brelle:* I am Bernard Brelle. I am the Deputy Vice President for strategy in Gaz de France. I am accompanied by Florence Fouquet, who is responsible for European Affairs, and Mark Akehurst, who is our representative in the UK

**Q164 Chairman:** The acoustics in this room are not good, so I would strongly recommend raising your voices a little bit.

*Ms Pitts:* I want to explain National Grid's relevance to this debate. We are the transmission system operator in England and Wales on electricity, we are the Independent system operator in Scotland on electricity, we are the Transmission system operator in gas across the whole of Britain and in terms of our businesses in the US, we are also a transmission operator operating under two different independent system operators in the US, in the New England area and the New York area. We also half own the Anglo French electricity interconnector. We have just announced that we are going to build another electricity interconnector to the Netherlands and we also own a gas LNG importation facility at the Isle of Grain. That is a bit of context as to where I am coming from.

*Mr Ulrich:* At Centrica we operate in the UK under the name British Gas and Scottish Gas. We are the largest gas supplier in the UK. We are also a major electricity supplier in this area. We also do business in

North-West Europe and Spain. We have operations in the Netherlands, Belgium and Germany.

*M Brelle:* It is a great honour for us to have been invited by the House of Lords. French energy companies are often considered to be against the liberalisation process of energy markets in Europe. I would like to give evidence that Gaz de France has experienced huge changes over the last 10 years and is now a European group which realises 40% of its turnover outside of France, essentially in Europe. We consider liberalisation as an opportunity and strongly support the objectives of markets opening and integration. In France, both the state and the operators fully implemented the European directives in the field of energy. A strong regulator was created, legal unbundling was put in place and we strongly supported the work on new regulatory rules by the European network of energy regulators, ERGEG. If you would allow me, I would like to say a few words about the single market in gas and specificities of gas. The first point is that Europe's security of supply in gas must remain one of the major points of attention. Diversification of routes and sources is part of the solution, but Europe's gas supply will become increasingly dependent on a small number of foreign suppliers. In 2030 Europe will import 80% of its needs and Europe will be increasingly in competition with other consuming regions and countries for access to gas resources. The other key challenge for Europe's security of supply is the timely realisation of necessary infrastructure, LNG terminals, pipelines and underground storage. In trying to improve our legal and regulatory framework we must ensure that our decisions are consistent with these challenges. In this context we are hoping to work with the Commission to define what the options could be and how to best ensure both security of supply and competition. We look forward to an open discussion on the ways to ensure effective unbundling, including the issue of ownership unbundling, which are most likely to secure these objectives. Thank you for your attention.

**Chairman:** Thank you. Each member of the Committee is going to look after a different group of questions. The first group is on regulation, Lord Dykes.

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and M Bernard Brelle

**Q165 Lord Dykes:** I would like to ask members of the panel, and already M Brelle has very kindly referred to ERGEG, do they themselves, perhaps from slightly different vantage points, because they are representing their different companies, really welcome wholeheartedly the idea of the creation of a European regulator rather than just national regulators? Added to that, should the national regulators in different countries, again with different legislation, be given stronger powers with new fresh national legislation co-ordinating with the Commission's documentation to achieve the appropriate level of interaction with a European regulator? I am sorry if that is a rather complex combination of questions, but I think it is better if we deal with both of them in the same context.

*Ms Fouquet:* Europe has experienced important changes in the last 10 years in the field of regulation. National regulators were created and ERGEG's network was created as well. For Gaz de France, we really support this because we think that regulation is a key element to progress towards an open and integrated market, so for us regulation is very important. We realise currently 40% of our turnover outside of France, essentially in Europe, so we are a new entrant in a lot of European countries. We do notice and experience that national regulators' powers and prerogatives are very different in the different countries and it is a huge preoccupation as a European actor. That is why we think the current situation in regulation needs to be improved and for that we think that two actions have to be carried out. The first one is to harmonise national regulators' powers because the differences are too huge between the different countries. Some Member States fully implemented the current directive but others did not, and it is a real problem for operators like us because we are obliged to deal with 25 or 27 regulatory frameworks and it is a real technical barrier for us. The second action which needs to be carried out is to strengthen regulation at the European level. We think that ERGEG was the first step and that ERGEG is not sufficient anymore. It is very difficult to make a decision when you are 27 around a table and Europe really needs a European agency specialised in regulation which could have powers on cross-border subjects when several Member States are involved and could as well be in charge of defining new guidelines in regulation in order to have less differences between Member States. We think that this European agency could work together with strong national regulators. We think that we need two levels, firstly, a European agency and, secondly, strong and independent regulators. Your question on regulators' independence, we think as well that it is very important. In France, the regulator is an independent administrative authority, which means

that this regulator is independent both from the energy sector and from the state. We think as well that in certain Member States regulators are not strong enough and that maybe new guidelines could be developed in order to be more precise on the powers that the regulator has to have. We know, for example, in the UK guidelines exist on good regulatory practices and maybe that could be an appropriate solution in order to have strict rules about regulators and their organisations.

*Mr Ulrich:* I would say that we concur with ERGEG and with the Gaz de France representative that there needs to be harmonisation amongst the various national members and there needs to be a levelling up of power to do that, not a levelling down. Because of the importance of cross-border energy flows and the levels of congestion which do occur at the borders, we think it is necessary to improve the co-operation amongst the various Member State regulators. In that context, again, the regulators' powers should be looked at on a pan-European level as opposed to a national level. If there are some explicit provisions for cross-border intervention, either from ERGEG, known as ERGEG+, or from the Commission, we think that is all a good idea. As far as a specific regulator for all of Europe, we are not convinced of the need for that yet. We are open to that suggestion, but it does depend on how well the current rules are implemented and how strong the national regulators are.

**Q166 Lord Dykes:** Of course I suppose if the national regulators were strengthened individually, however long the process might take, and particularly say in the ten new Member States, no criticism of them because they are coming newer to the scene, you could have the gradual accumulation or co-ordination between the national regulators, so much that there might be a kind of quasi-ERGEG system in its own right. Do you feel that might be a possibility?

*Mr Ulrich:* Possibly.

**Q167 Lord Dykes:** Time will tell.

*Ms Pitts:* Could I add to that. I concur with most of the points which have been made. I think we have to recognise that there is a huge amount of investment which needs to take place across Europe in terms of both electricity and gas and in terms of the networks which will connect all of those. We are seeing a great coming together of the various markets within Europe and I think that interconnection and greater interconnectivity is critical. Can you do that without having some form of pan-European regulation? I think it would be very hard to deal with those cross-border issues. That then leads us to another question about how do you get this pan-European regulation

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and M Bernard Brelle

to be accountable? I presume it would have to be accountable to a range of authorities within Brussels.

**Q168 Lord Dykes:** Coming back to 10 January this year, everybody, almost universally, welcomed the idea of the Common Energy Policy but, of course, it was mainly taken up in the newspapers by the people concerned with the ecological aspects of it—climate change, global warming, greenhouse gases—whereas really for you and the practitioners in the industry, the producers, suppliers and distributors, the main concern would be the genuine creation of a European single energy provision market in the different products. Do you feel that the Commission has got sufficient powers either yet or potentially under the Common Energy Policy formulations to really ensure that there is a genuine single market created throughout the 27 Member States?

*Ms Pitts:* Certainly I would feel disappointed if they launched a third legislative package and did not try to make sure that every Member State fully implemented it, which I think has been a problem with the last two. I think the powers are there. It is very helpful that DG Comp are doing their investigations and I hope that both of these things together and a very strong commitment from the Commission to absolutely implement whatever the third package is would be fine.

**Q169 Lord Dykes:** Are you optimistic that will work out all right?

*Ms Pitts:* I hope that it will work out.

**Chairman:** We have got some supplementaries, Lord Haskel and then Lord Geddes.

**Q170 Lord Haskel:** My question follows on from exactly what Lord Dykes' question was. A number of Member States still have not implemented the 2003 Energy Directives fully and appropriately into their national law. Now we are going to have a third set of directives, do you really feel that they can be implemented, because if the national states do not implement these directives, then we will never get a single market and how can they? How would you suggest the Commission can persuade the Member States to implement these directives?

*Ms Fouquet:* I think it is a very good question because very often we say to the Commission that we are in favour of liberalisation, in favour of progress in the internal market, but that the previous directive was taken in 2003 and it is only three years ago and we know that liberalisation takes time. For example, in the UK you began 20 years ago; in the United States it took 20 years as well, so it is quite a slow process. Maybe we think that for this third package the priority should be to give the Commission more tools in order to reach the harmonisation in the different

countries. For example, this third package could be very interesting if it could lead to a European agency in regulation and to more precise rules for regulation. It was one of the problems of the previous directive in 2003 because some measures were too vague and it left too much freedom to the Member States to implement them. If we want this third package to be efficient, we need tools in this package for the Commission to help harmonisation. It is not a question of stronger rules but it is a question of harmonisation; we think it is a priority.

**Q171 Lord Dykes:** You would give more power to the Commission to insist?

*Ms Fouquet:* To insist, yes.

*Mr Ulrich:* I think there are two issues for us, one is the power of the national regulator and one is the power of the Commission. One thing which is evident, in the UK we have a very strong regulator who is completely independent of the government and that has been at the very core of why the UK market has been so competitive. We do not see that in any other European country, none that I am aware of, I may be corrected, but only in the UK, have you had customer choice, 50% of customers have actually changed suppliers at least once. In the UK, Ofgem also has powers around competition as well as powers around regulatory issue tariffing and in most other countries those are completely separate jurisdictions, the competition issues and the regulatory issue. As far as retail tariffs, in some countries the regulator only has an advisory role, again in the UK you have one independent regulator who has the right to discuss or to look into any of those factors. Again, I think that is one of the great things about the UK system. There would need to be further legislation strengthening the national regulators to get to that point. We are somewhat frustrated by the Commission's lack of progress, as has been mentioned, the 2003 Energy Directives have not been fully adopted in a number of countries. An investigation was launched in 2005 and it is still ongoing, so here we are four years later without any conclusive evidence. The Commission has started infringement proceedings, we see that against ENI and RWE. I do not know how long that is going to take, but currently it is very difficult for the Commission to proceed with any rapidity when it is a Member State that is under investigation versus an individual company. There needs to be some strengthening allowing the Commission to have greater powers in regard to implementation.

**Q172 Lord Haskel:** A comment, politically it would be very difficult to persuade the British people to give more powers to the Commission.

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*Ms Pitts:* I think it is a question of using the powers that they do have and using them as fully as they can, that would be the starting point for me.

**Q173 Lord Geddes:** My question is extremely brief and one for definition at this stage. All three of our groups of witnesses have used the word “European”, can I take that throughout as being European Union or, in the case of Gaz de France, you said that 40% of your turnover comes outside France but mostly from Europe, again, European Union or geographical Europe?

*Ms Fouquet:* European Union.

**Q174 Lord Geddes:** Is that the same throughout, just so we know where we stand?

*Ms Fouquet:* Yes.

**Chairman:** If we can move on to the second group of questions, unbundling, Lord Geddes.

**Q175 Lord Geddes:** My first is a rather controversial question. Would you say, and please, do not answer this immediately, unbundling has always seemed to me to be a rather difficult word, is separation the same thing? What we are talking about is the division between transmission assets and competitive business, and that really is what the whole of the question of opening the market seems to hang on. If there is going to be fair and equal access to the networks and central to effective competition in Europe, do you agree that such—you are now going to use my word—separation is necessary?

*Ms Pitts:* I absolutely think that it is. Looking at our experience within Britain and also within the US, we feel that full separation of the Transmission system operator, and Transmission system operator as a whole, should be separated out from the competitive activities, whether it be in gas or electricity. We think that it has brought about a number of benefits which certainly England and Wales have seen, but I do think that it needs to be coupled with, as Jake was saying, strong regulation to make it work. The experience that we have seen in the US where there has been some degree of separation without the Regulatory Framework to back that up, I do not feel that has been a success. I think if you have a proper degree of separation and you have strong regulation, that can bring benefits in terms of making sure that the network investment is delivered according to demand. It allows confidence that there will be proper third party access to the market. It brings an air of transparency to the whole system because the transmission system operator has no incentive to hide anything. In terms of dealing with tricky issues across Europe, like congestion management and delivering the right size network, I think it has proven itself in

England and Wales and in Britain to some extent to work in that regard.

**Q176 Lord Geddes:** If I may, I would like to come back to this question of congestion because when we took evidence, when we were doing a specific inquiry on the single market in energy, this question of congestion transporting particularly gas across continental Europe became a very important point. Can I park that for the time being and I would like to come back to it. Centrica, would you like to comment?

*Mr Ulrich:* We certainly agree, and I think it is a consensus across Europe that unbundling is necessary for effective competition. The question now has turned on, what is separation or unbundling? How is that implemented?

**Q177 Lord Geddes:** That was my next question.

*Mr Ulrich:* We will get to that. There are a number of elements to this. One thing I want to bring up though is separation or unbundling currently does not apply to storage and storage is just as essential for a new competitor or for a competitive environment. We would like to see any unbundling legislation or regulation extended not only to the transmission system but also to the storage system, otherwise there are many Member States where storage is operated to the benefit of the incumbent which does not allow new parties to come in. Very quickly you are buying gas, long-term contracts with fairly set volumes and you have to supply both winter peak, seasonal peak, as well as short-term peak. It is very difficult to do under the contract, it is necessary to have some sort of storage to do that. That is certainly one point. Ownership unbundling was not mandated in the UK and yet it has come about at the transmission level. I would point out again, the shareholders of the old British Gas have reaped a very sizeable reward from having Transco, BG International and Centrica focused on different parts of the value chain, a different risk profile and thereby different financing. Clearly separating the networks from the supply business with the more volatile business would allow more efficient financing and lower rates to consumers.

**Q178 Lord Geddes:** From that, do I take it you do not think that absolute clear ownership unbundling is necessary?

*Mr Ulrich:* I think it is easier because the regulation required to make sure that the Independent system operator is acting outside the incumbent or state interest is difficult, not to say that it cannot be done, I would not go that far.

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*M Brelle:* I would like to start from what I said as an introduction regarding security of supply and the high and increasing degree of dependency of Europe on imports. We believe that it is very important not to weaken the European operators in order to allow them to be able to negotiate with producers which are big companies with very strong market powers. It is important not to weaken these operators, taking into account that for some of them the network is a very important part of their assets. Separating or unbundling the ownership of the network from the ownership of the company would weaken the financial structures of these operators which would weaken the degree of security of supply of Europe. We believe that ownership unbundling can be applied, but that it is not the only solution to have the necessary independence of network operators. We believe that there are different possible models which can achieve the same results. Up to now there has been no demonstration that ownership unbundling would better achieve these objectives than other systems. We think that this should be left to subsidiarity on the basis of a common framework for all European countries. We would like to illustrate that with the example of Gaz de France and its subsidiary which is in charge of transmission in France, which is GRT Gas. This affiliate has taken into account all the rules for a transparent and non-discriminatory access to the network. There have been no complaints from any operator regarding access to the gas network in France. There are more than 30 competitors active on the French market and we believe that this is proof that you can have transparent, non-discriminatory and efficient access to the network without having ownership unbundling.

*Mr Ulrich:* I would take exception to one point and that is the one about companies not being able to negotiate gas contracts and deal with larger companies. There are two points to make. If you look at the size of Shell and BP, for instance, how much has that size helped in negotiating Russian gas supply issues? I do not think that size per se is a matter. We have been able to sign £12 billion of gas supply contracts without any pipeline system and the credit worthiness is not based on assets but on the fact that we have market shares. I do not believe you have to have the integrated utility to buy the gas and I do not believe that the producers or sellers feel that way either.

*Ms Pitts:* Just on that point, I would say that having a separated transmission system in both gas and electricity has not weakened our security of supply. I think the fact that we have seen a huge amount of gas investment coming to Britain is probably due to the fact that we have a very open market underpinned by an absolutely clear third party access system, which is

underpinned by having an ownership unbundled Transmission system operator.

*M Brelle:* If I can add two points. I would like to say that to our knowledge there is no example in the world of mandatory ownership unbundling: neither in the US nor in the UK, there are obligations to ownership unbundling. The second thing is that European Parliament has in its report on 10 July recognised that there are specific solutions which have to be found for gas and Parliament urged the Commission to propose appropriate solutions on that topic.

*Ms Pitts:* Under our licence, which I suppose is a form of legal obligation, we are precluded from having any generation of supply interest or, indeed, getting involved in upstream or downstream gas. We are an example where the Government has taken action to ensure that we are very, very, if I can use the word, pure in our approach or focus and only focus on the transmission side of business.

*Mr Ulrich:* Again, I will re-emphasise, the decision in the UK to unbundle was not driven by regulation or it was not mandatory but it was perceived, I believe correctly so, to be in the best interest of consumers. It was driven by commercial interest by the old British Gas.

**Q179 Lord Geddes:** Can I come on to this question of congestion and I think my colleagues who were on the Committee at the same time may well want to come in on this also. If my memory serves me right, we received evidence which said in an unbundled situation in a time of congestion there was a real risk, and indeed it did take place, where national interests superseded contractual interests, and therefore the legal obligation to transmit gas from A through B to C was in the time of congestion superseded by national interest where gas was wanted in the country of B. Have you come across this particular one? Would you like to comment on that?

*Mr Ulrich:* Not that specifically. There have been two cases referred to by the Commission. One is where a company did not invest in infrastructure to relieve congestion because it was discovered that it would hurt the earnings of one of their subsidiary companies and that is the ENI investigation where they were fined €250 million for not proceeding with increased infrastructure. The second one I am aware of, which the Commission pointed out, is there are three TSOs in Germany which made €400 million because of congestion charges and high prices on capacity and have invested less than €40 million to try to alleviate that. I do believe that it is in the interest of the incumbent to under-invest in order to keep margins higher for the subsidiary companies. Clearly that is not true everywhere and I am not familiar with your specific case.

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**Q180 Lord Geddes:** Rather than getting hooked on to this specific case, would genuine and, if it can be done, total unbundling avoid the two situations which you have instanced?

*Mr Ulrich:* I believe it would because the unbundled investor, the infrastructure owner, would have the incentive to increase revenues by increasing throughput where the supplier may not have that same incentive.

**Q181 Lord Geddes:** I have the feeling Gaz de France may have a slightly different opinion from you.

*M Brelle:* Regarding this question of investment and the way to avoid congestion, it is crucial for the development of the market and it is also crucial for the overall security of supply of the European market. There is a need for independence, once again, of decisions for increasing and developing capacities, but we do not see why ownership unbundling would be a better solution for achieving this goal. Once again, we have at least the example of GRT Gas in France which has considerably increased its investments in order to create new entry capacities in the country and new interconnection capacities within the country in the different regions. This programme of investment has been decided in conjunction with and controlled by the regulator, which allows this programme and drives this investment programme for the reason that it is deciding the tariffs. This model gives the proper incentives for the operator to invest because it is reasonably paid for the investment it makes.

*Ms Fouquet:* We can give you some figures. The investments of GRT Gas have doubled in three years. They were at €200 million in 2004 and they are now at €500 million per year, so that is an important increase of investment. The French regulator developed as well an innovative mechanism in order to be able to organise the market before the launch of investment because in gas when you have an investment, you need four or five years to launch the investment. The French regulator developed capacity release. It means that the integrated company is the first which is interested in the investment because if you do not invest you lose your capacity, so the regulator will take your capacity and give it to new entrants. It is possible to organise the market if there is a wish from the regulator when you are an integrated company with capacity release. If you do not invest and you are an integrated company, you will lose your right to use the capacity. It is quite a strong mechanism but you can have an incentive even with legal unbundling independent of the Regulatory Framework. We presented this solution to the ERGEG working groups and they said to us that only France did that, so it is up to ERGEG to develop such systems in order to avoid congestion.

*Mr Ulrich:* It is a simple fact, and it may work very well in France, but there is insufficient gas capacity from Germany into Belgium, from the Netherlands into Belgium and there is insufficient power capacity between Spain and France and between Holland and Belgium. There are a number of cases where there has been long-term structural congestion and this has not been alleviated. Only last year there was an open season to start getting new gas capacity, ten years after the interconnector was built, to try to align more gas transit capacity across Belgium, the Netherlands and Germany, so a very, very slow process where if driven slowly by increasing throughput and increasing revenue would have happened years ago.

*Ms Pitts:* I want to make the point that just being a network company you are under an absolute incentive, where there are opportunities to grow the network because of demand you absolutely go for those because that is your income stream for years to come. There is very much an incentive to invest and invest the right amount. I think there is also another point around having a Transmission system operator together in that relieving congestion might be about configuring the system in a different way so that there are system operation ways of doing it as well as building new networks. Having that function together I think adds a few more tools in the toolkit to be able to do that.

**Lord Geddes:** I think we have separated unbundling fairly effectively, my Lord Chairman.

**Chairman:** May we move on now to the third group on market concentration, Lord Haskel.

**Q182 Lord Haskel:** I agree, we have certainly discussed unbundling and concentration, so I wonder whether we could look at this from the point of view of the consumer. Mr Ulrich mentioned the consumer, are there any potential benefits in costs to consumers of further mergers or de-mergers in the European energy sector?

*Mr Ulrich:* I think the merger takes place between a national monopoly, like we had National Grid and Transco who were not competing, and there is some room for synergies and cost savings, that can help the consumer. You can also see it in a very competitive market where two companies merge and, again, are able to work more efficiently and pass those cost savings on to consumers. Clearly there are cases where it does make sense. There have been examples, for example the one where EDP and GDF in Portugal were set to merge prior to the market opening and that was blocked, where increase in market concentration may not have helped the consumer. It depends on the progress within the region as far as competition.

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*M Brelle:* I think you cannot answer this question in general but there are mergers that can bring value to the industry and to the consumer. For each important merger you have the European Commission which decides if the merger is possible and, if the answer is yes, what remedies have to be brought to the market. If I take the example of the possible merger between Gaz de France and Suez, the idea of this merger is to create a really competitive company able to bring competition both on the gas market and the electricity market to all the European territory. By merging a big gas company in France and a big electricity company in Belgium this builds a European energy company able to compete with the biggest companies in Europe and at the same time creates a company which has the size and the strength which makes it able to discuss with the producing countries and companies. We think this type of merger can bring something to the consumer. In this case of a possible merging between Gaz de France and Suez, the European Commission has decided some remedies to avoid a market dominant position and we observe that they have not decided any remedy for the French market, which means that type of merger, in the Commission's opinion, does not create any reduction of competition in the French market.

**Q183 Lord Haskel:** How would you decide where the consumer is better off? Would you decide that the consumer is better off in Britain where energy prices are, I think, cheaper, or better off in France where the situation is as you have just described it?

*M Brelle:* I would not want to decide which country is happier, in France or Great Britain or elsewhere. Frankly, I do not know.

**Q184 Lord Haskel:** The matter for the consumer is surely paramount because consumer demand leads to innovation and innovation leads to development rather than the other way round. Surely what we want to do is to stimulate consumer demand and that will stimulate innovation in the business.

*Mr Akehurst:* Prices in the French market are always difficult because you get the comparisons between the UK and France with tax and without tax, depending on consumption. We are slightly higher than the prices in the UK but still competitive. There is also the question with the French which we mentioned earlier which is the French market is in transition, so going from a particular market structure to another market structure. The competition process began much later and is ongoing and will continue. The consumer's interests were defended in one way in the previous structure and the regulator is looking after the consumer's interests as the transition goes through.

*Ms Fouquet:* For the electricity in France there were some problems with big industrial consumers because certain of them consider now that there are higher prices for their electricity than before, so it depends on energy, it depends on the type of industry, on the consumers, and it is quite a difficult problem.

**Q185 Lord Whitty:** If I could just approach this from a slightly different angle. In terms of the UK market it is usually assumed, and I think the prices tend to bear it out, that because there is some ability for the consumers to switch, and Mr Ulrich mentioned this, and quite a lot of consumers have taken advantage of that, that denotes a competitive market. Actually the structure of the market is not that competitive, there are relatively few large companies involved, and from all you have been saying you seem relatively relaxed about more mergers taking place. Whilst on a day-to-day basis the consumer has choice, the structure of the market in a more classic approach to competition is not that competitive and is becoming more concentrated across Europe, do you see that in the long run that benefits consumers or would you want to see more breaks? Clearly the Commission can put conditions on mergers, and indeed block mergers, but the tendency is towards mergers. Do you think that more breaks would be in the interests of the consumer?

*M Brelle:* Maybe if we observe what is happening on the French market now, we see a small number of medium-sized companies, or big companies, which are competing for gas or electricity and we also see some smaller companies which are acting with not exactly the same approach, who are not active on the whole market but more on the niche market, which are very innovative. What I want to say is that at the same time you can have a limited number of big companies big enough to ensure a large part of the market and to ensure security of supply of the European market and, besides, a number of smaller companies which are developing a business, a profitable business, in competition with these big companies because they are more innovative, maybe more efficient, and they are developing a business. We see that in France, we see new companies which are really developing an interesting business.

**Q186 Lord Whitty:** In relation to the domestic consumer, most of those new businesses are, in effect, brokers who deal with the larger providers. There are some industrial users who have niche markets but you have still got the dominance of the large companies. Would you be so relaxed about the tendency towards mergers if the driver for the merger were a non-European company, Gazprom for example?

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*Mr Ulrich:* I was waiting for that! Look at the UK, for instance, we have six major healthy competitors and it is a very fierce environment. We are also in the Belgian market with our friends at GdF, we are co-owners of SPE. I think we are the second largest supplier in that market, and we have five per cent market share as the second largest supplier. Is that a competitive marketplace? I do not believe so. I do have a problem with a number of large companies who are dominant in their own area and then take small slices in other countries because that, to me, is not competition. What we need to see are the large buyers mixing it up in each of the Member States and in that way the consumer would have a better deal. As far as non-EU, that is a very difficult question. We have had no discussions with anyone outside the EU regarding that. Again, if the regulator is strong and the rules are enforced then it should not really matter if it is a non-EU owner coming in.

**Chairman:** We will move now to security of supply.

**Q187 Lord St John of Bletso:** Thank you, my Lord Chairman. M Brelle, you spoke in your opening remarks about the likelihood in the future that Europe will need to import, I think, 80% of its energy needs from less stable regions in the region, and certainly this highlighted the importance of security of supply. We have also spoken about the ever-increasing need for increased investment in the network infrastructure both in electricity and gas. My first question is what are the major barriers to investment? We read a very interesting paper submitted to us by National Grid that, "we have the increasing difficulty of obtaining planning permits, particularly for electricity". The second is the so-called regulatory gap. Could I just put that to the panel, talking here about the constructs rather than how much has been invested.

*Ms Pitts:* Really a very, very big issue is the whole area around planning and we are absolutely supportive of the Government's proposals for reform and we see that as a very large barrier to achieving both security of supply and tackling climate change. For example, close to 75% of the generation projects that want to connect by 2010 in the UK have not received planning permission as yet. As you will probably all realise, building pylons on anybody's land is probably more controversial than having a wind farm, so we face a really big problem between consumer desires for energy and actually delivering that through to the end consumer. I would say that planning is a big issue. We are also getting to the situation where we will be increasingly dependent on gas-fired generation. We estimate that in the next ten years about 55% of our generation will be gas-fired. Obviously that brings a very strong impetus to try to make sure that the European market is actually

feeding us gas as much as possible and to ensure that we are an extremely attractive location for LNG ships. There are some big issues facing us and the one that Government and public policy can do the most is tackling the issue of planning.

*Mr Ulrich:* I would concur that planning is clearly at the top of our list. The other issue is around having an integrated Single Market. The analogy I would use is if you are booking a train ride from London to Edinburgh, you do not book three different segments through three different agencies and then try to make sure that the capacity is available. For us to book gas molecules from Germany to the UK is physically very, very difficult, it is extremely time-consuming, people have different open seasons, there are different constraining issues as far as when capacity will be built, different terms that have various degrees of overlap. If the European energy system is going to perform efficiently and more like the transit system it is then we do need to see the Commission and the national regulators step up and give us a single integrated system.

*M Brelle:* What are the obstacles for the necessary investments in the network? The first one could be the lack of long-term visibility to the operators of the regulatory regime. If this long-term visibility is not available to the market participants we probably would have insufficient investment in transit routes or in interconnections between member States. Another factor probably is insufficient co-operation and co-ordination between the Member States and the national regulators. It is very clear that what we observe is there are lots of difficulties for the national regulators to agree on ways of developing new interconnections. There is probably a need for European supervision of all of these cross-border interconnection issues and also a need for better harmonisation of technical rules in order to facilitate these interconnections. The last point I would like to mention is that we need appropriate tools to make long-term forecasts or long-term assumptions regarding the needs for infrastructure. This is probably not given by the existing regulatory framework today and the existing environment.

*Ms Pitts:* Can I just add on that, the whole issue of interconnection. Going forward potentially in a world where we have much more wind-powered generation, greater interconnection does afford us the opportunity to share generation on non-windy days, so I think there will be much more interchange of electricity between us and the Continent. It is also quite an efficient way of doing it. It means overall across Europe probably we will not have to build quite so much gas storage, quite so much generation, because we are actually sharing the power and gas where we can. I think it is quite an important thing for us going forward in filling that regulatory gap.

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**Q188 Lord St John of Bletso:** Thank you. If I could now touch on the whole issue of the need for a physically integrated EU transmission network. Clearly the feeling is that this is fundamentally important to the efficient operation of a Single European Market, however I think I heard Mr Ulrich say that you did not feel this was essential in the operation when it came to Centrica's operations, or did I hear you wrong? Is this critical?

*Mr Ulrich:* No, we think it is essential.

**Q189 Lord St John of Bletso:** It is essential?

*Mr Ulrich:* It is essential.

**Q190 Lord St John of Bletso:** If I could possibly look to expand the question to the rest of the panel.

*Ms Pitts:* Absolutely.

**Q191 Lord St John of Bletso:** You all agree. If I could then go on to the whole issue of storage capacity. Mr Ulrich, you mentioned that you felt there was a necessity for unbundling of storage capacity and certainly here in the UK we have low storage capacity in relation to the larger European countries. Perhaps it is a question more for National Grid. What measures do you think are being taken to improve the position here in the UK?

*Ms Pitts:* One of the key blockers at the moment, because there is a huge amount of storage projects which are being proposed which could take us up to, say, 15 per cent of our national demand, and we are at around four or five per cent at the moment so that would be a massive increase, and I do not want to hark back, is planning. A number of those storage projects have been rejected already and without planning reforms I fear that a number of the other projects will go the same way.

*Mr Ulrich:* On the Continent, the issue of access to storage is controlled by incumbents and it is absolutely essential that you have that flexibility if you are going to provide a service to residential or heating load customers. There is very little other way to provide that kind of flexibility. The ability to get access to storage in a non-discriminatory manner is key. We do have that in the UK. In Centrica Storage Limited we have a wall between my group and Centrica Storage's group. Centrica Storage is restrictive as to how much space we are allowed to take, the rest of it is auctioned and transparent, so anyone can enter this market and pick up storage capacity. We do not have that same ability in many of the Member States. There may be auctions but the incumbent already has a better, lower regulated tariff that we are competing with with other players for a very small amount. Again, this access is essential if we are going to see competition.

*M Brelle:* I fully agree that access to storage is essential to allow competition in the final market. It is also essential in order to ensure the public service obligations of the suppliers and to ensure security of supply. We have to have in place an environment that is favourable to investing in new storage capacity which will be necessary throughout Europe. We have to have rules which oblige storage operators to offer transparent and non-discriminatory access to storage for all suppliers. In France we have very clear rules granting access to storage to any supplier who wants to supply domestic consumers or industrial consumers. This is fully applied by the infrastructure branch of GdF.

**Q192 Lord Geddes:** This is a personal question. You were talking of planning consent and you referred to pylons, but what is the multiplier cost of burying cables rather than putting them on pylons?

*Ms Pitts:* It is about 20 times more expensive. It is a few million to do a kilometre of pylons.

**Lord Geddes:** 20:1. Thank you.

**Q193 Lord St John of Bletso:** I am just wrapping up the question because most of this debate has been answered, but my final question is what are the security of supply implications of progressing with market liberalisation?

*Ms Pitts:* I think it is a positive thing. Market liberalisation is absolutely critical to get gas through, it is critical to be able to share generation, so I see it as being positive.

*Mr Ulrich:* Yes, very positive. More diversity of supply, more players and more investment.

*M Brelle:* What we think we need for guaranteeing security of supply in the long-term is, first, strong operators which are able to guarantee this security of supply. Second, we need long-term supply contracts and transmission contracts in order to be able to guarantee these long-term supplies, taking into account the fact that the producers want to be secure for their investment and new capacity. Third, we need to keep Europe attractive for the producers in order to be able to compete with the other regions in the world which will compete for access to resources, which means counterparts which are able to take, vis-à-vis the producing countries, the commitments they want to have from their consumers.

**Q194 Lord Whitty:** In parallel with this Committee I am also sitting on the Committee on the legislation on climate change, which has been referred to in passing as one of the main objectives of energy policy. The main instrument at European level is obviously the Trading Scheme, there are also commitments at both European and national levels to targets and there are various interventions at the national level,

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in the UK, for instance, we have the Renewables Obligation, to try and reduce carbon or greenhouse gases as a whole. In the Centrica evidence there was quite trenchant criticism, I felt, of the effect of the European Trading Scheme at present in calling for reform suggesting its outcome had not achieved huge environmental benefits at the expense of consumers. What changes would you like to see at the European level on the Trading Scheme? Are there other regulatory interventions which would help meet the climate change objectives, either at European or national level?

*Mr Ulrich:* To briefly reiterate the main point of that, we do find it rather odd that those who pollute the most are rewarded the most under the current Trading Scheme. With the absence of auctioning it is very difficult to ascertain the value of these carbon permits. By awarding free certificates to the highest polluters and the price of carbon is already incorporated in the electricity price, so we are covering both the cost of generation and giving the free certificates, it is a windfall, and I see the DTI number of £1 billion per annum even here in the UK, so they are staggering numbers. The German and European estimates are that it could be €6 billion to €8 billion per annum for the four or five largest producers. We are talking significant value that is not going to consumers but staying with the generator. We think there are a number of things, the primary one being that these have to be auctioned, that there is no room for free allowances post-2012. The second thing is we do need to see transparency and a long-term commitment to whatever scheme or whatever trading system is put in place. The investments that we make, Grid makes, Gaz de France makes, are long-term. A gas-fired power plant is 20-plus years; pipelines 40–50 years; clean coal plants a 30 or 40 year lifecycle. We are basing these on a carbon pricing scheme that has not been finalised yet and it is a real deterrent to investment in the UK power sector, especially in areas of clean coal. Auctioning should be wider so it is not just the energy and a few large industrials, we do move it into other sectors. Controversially, transportation may or may not be a large part of it but, again, there still need to be allowances across the breadth of the system. The third one is more difficult, which is how do we make it deeper and how do we get it down to the actual household level. I am not advocating that we move the Trading Scheme down to you or me but there need to be some efficiency standards, like we have the new housing standards, applied standards. There need to be ways in which we can help people make the right decisions. All of these things are necessary if we are truly going to see a change in the carbon footprint. My final point is the focus does need to be on a reduction of carbon as opposed to an increase in

other things. It is great having renewables but I think the target should be a reduction of carbon and we cannot favour specific technologies but move forward with the most market efficient solution.

**Q195 Lord Whitty:** I can see the widening of the scope, tighter caps, auctioning of certificates and so on, would lead to a more effective carbon price but probably it would not lead to a stable carbon price, which is what you also seek here in talking about long-term investment. It would be an escalating carbon price probably if the trading system worked over time because carbon would become more expensive and more susceptible to trading. If the market were clearly signalling a long-term escalation in the carbon price, do you think we need anything else apart from the trading system as a regulatory intervention or would the trading system, given all those rather politically difficult changes, deliver on its own?

*Ms Pitts:* I would say, again, planning because otherwise you just cannot build anything.

*Mr Akehurst:* The point we would stress is it is vital that whatever scheme is put in place there are important decisions to be made about the nature of the scheme. I would go back to the point Mr Ulrich stressed on the importance of the fact that for long-term investments you must give investors the confidence over the long-term and if it is going to be a rising price of carbon then it is a rising price of carbon, but something that gives you that visibility so that as an investor you can make a commitment. The concern would be, and obviously this is particularly in power generation, if that does not happen then we will not be getting the level of investment we want.

*Mr Ulrich:* The other issue is there are a lot of schemes out there and if we had the correctly planned scheme it would probably be adequate, but right now we have the Energy Efficiency Committee and that goes into the carbon emission reduction target sometime post-2011 and we have the Climate Change Levy and the Climate Change Levy will be moving into the Carbon Reduction Commitment for large users. So there are a number of different schemes operating with slightly different rules and slightly different standards, and the more we can harmonise and have a transparent well-planned concept or scheme, the easier it is for everyone to make planning or investment decisions.

**Chairman:** One final supplementary question from Lord St John.

**Lord St John of Bletso:** I will not ask the question, time is going on. I would have liked to have found out more from the panel because clearly nuclear power has been a major breakthrough for many years in the whole carbon emissions issue. I would be interested to know the panel's view about the proliferation of nuclear plants in the rest of Europe. It is too big a question and that is why I simply flag it up as an issue.

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**Chairman:** I think Lord St John's question is slightly wide of the mark. Perhaps we could pursue it in our Sub-Committee. Thank you very much indeed. We have trespassed on your time but sincere thanks for a very, very helpful series of answer to our questions. Thank you.

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MONDAY 23 JULY 2007

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| Present | Eccles of Moulton, B<br>Freeman, L (Chairman)<br>Haskel, L | Powell of Bayswater, L<br>St John of Bletso, L |
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**Memorandum by the European Commission**

**A. THE CURRENT STATE OF THE SINGLE MARKET**

*What has the impact of the recent enlargements of the European Union been on the single market?*

The recent enlargements substantially increased the size of the single market, providing firms with additional opportunities to draw on a wider range of comparative advantages characterising the different Member States. This is a source of further dynamism and efficiency. On the other hand, while the economic changes induced by this enlargement have been absorbed quite smoothly and there is no evidence of disruptive impacts on the product and labour markets, the increased divergence among the 27 members constitutes a challenge to its proper functioning. The enlarged single is an important source of growth and jobs. The estimated “gains” from the single market amount to 2.2% of EU value added and 1.4% of total employment (or 2.75 million jobs) over the period 1992–2006. While the single market and EMU have been associated with trade boosting effects and the EU27 has managed to maintain its share of world exports and imports over the last decade, the EU27 continues to reveal a comparative disadvantage in high tech sectors including ICT. The lag of the EU in developing ICT industries can be partly explained by a lack of progress in the creation of a competitive single market for services and to a European innovation deficit.

*Are there significant barriers to firms seeking to offer their goods or services, or to consumers accessing these goods or services, in other Member States of the European Union? If so, what are the most important of those barriers? What measures are needed to overcome those barriers?*

The EC Treaty upholds the free provision of goods and services throughout the Union and the freedom for operators to establish in any Member State. Notwithstanding these basic freedoms, the degree of integration and trade in services markets lags behind that observed in goods markets. This reflects the low tradability of services and the continued existence of regulatory barriers.<sup>1</sup> The Services Directive (2006/123/EC), adopted at the end of last year aims to remove legal and administrative barriers to the development of service activities, to facilitate growth in cross-border service provision, and enhance consumer confidence. The key will be thorough implementation and enforcement of the Directive’s provisions. The Commission is making every effort to assist the Member States in ensuring successful transposition ahead of the deadline of end 2009.

*Do you consider further legislative measures by the Commission to be necessary for the completion of the single market? If so, what measures would you consider appropriate?*

In whole swathes of economic activity, the single market has been achieved and the legislative framework is in place. On the whole, the single market therefore can be said to move from the legislative phase into the implementation phase. However, the single market is an ongoing process rather than a fixed state and further legislative measures by the Commission, may still prove necessary for a variety of reasons, though legislative measures need not be the only instruments to be used. Administrative cooperation or self-regulation may be useful and effective alternatives. Impact assessments usually guide the decision on whether to propose legislation in these cases.

Further legislative measures may prove necessary in areas where the single market has not yet been achieved or is not yet completed. This may be because certain fields of activity have been kept out of the single market up to now, but the political vision on this may change (eg certain services), or because the process of creating the single market in a particular area has started later and is still ongoing (eg postal services,

<sup>1</sup> See for example European Commission, *Steps towards a deeper economic integration: the internal Market in the 21st century*, 2007. Economic Paper 271, Available at: <http://ec.europa.eu/economy—finance/publications/economic-papers/2007/ecp271en.pdf>.

rail transport). Further legislative measures may prove necessary because circumstances change (eg because of technology) and existing legislation, though in itself functioning and complete, needs to be updated or modernised. Also in this category should be considered, legislative measures intended to consolidate or simplify existing legislation. Further legislative measures may prove appropriate where experience with existing legislation or alternatives such as self regulation, as well as the Commission's monitoring of market effects demonstrates that the hoped for results have not been fully achieved.

*Are the current provisions for monitoring market functioning and performance effective?*

Better single market regulation depends on a better understanding of the obstacles preventing markets from functioning well. This would imply moving from a largely legalistic approach to a more economic approach based on the monitoring of markets. The Commission has wide experience with market and sector monitoring that has been used as a basis for policy shaping and policy implementation. In the framework of the single market review, the Commission is considering a more systematic and integrated approach to monitoring the functioning of key goods and services markets. It is expected that a good understanding of markets resulting from closer monitoring of product markets and sectors will foster policies that would create more open, competitive and innovative markets generating concrete benefits for citizens.

Monitoring is also essential for bringing the single market and its governance close to the citizen. Deepening the single market implies the opening up to competition of sectors (such as the services sector) that are politically sensitive, because it directly affects the employment of a large number of people. In order to increase acceptability, it is crucial to provide evidence illustrating the overall benefits of reforms proposed; to consider the most appropriate sequencing of reforms; and to facilitate the process of adjustment particularly for those most directly affected. Once the reforms are implemented it is important to ensure a close monitoring of the effects of the reforms undertaken.

*Is there a need for greater cooperation between National Regulatory Authorities?*

A greater cooperation between National Regulatory authorities is all the more important when the single market moves from the legislative phase to the implementation phase. Such cooperation gives expression to the principle of subsidiarity by putting supervision close to the market and the citizen. Good administrative cooperation will also foster the finding of solutions for citizens' concrete problems (eg. through the SOLVIT system). However, in practice a number of problems are encountered. National regulatory authorities do not always have the same competencies (eg to investigate or to sanction) or level of independence, both from national authorities or from national operators and the application of the principle of mutual recognition leaves to be desired. Continued cooperation and exchange of good practice will increase coherence and trust.

*Are the current remedies available to the Commission to enforce single market legislation adequate; and are they used effectively?*

It is necessary to give some background on the procedure that the Commission follows in the case of late transposition by a Member State. Such cases follow the strict procedure prescribed in Article 226 of the EC Treaty. In the first instance, the Commission sends a letter of formal notice to the Member State concerned, drawing its attention to the fact that the deadline for transposition of a directive has elapsed. The Member State then has two months to reply. If the Member State's reply is not satisfactory or if the Member State does not react at all, the Commission will send a reasoned opinion. The Member State then has approximately two months to comply with Community law. In the case the Member State persists in its non-compliance, the Commission may bring the case before the European Court of Justice ("ECJ") in Luxembourg. If a Member State still won't comply after having been condemned by the ECJ, the Commission may bring that Member State before the ECJ under Article 228 of the EC Treaty which essentially provides for the same steps to be taken (letter of formal notice followed by reasoned opinion) and which ultimately may lead the ECJ to impose fines (periodic fines and/or penalty payments) on the Member State concerned. In practice, many cases get solved before the Commission brings the case to the ECJ.

The primary responsibility for ensuring the correct application of single market rules lies with the Member States. It is in their common interest to ensure that the single market functions properly for the benefit of their businesses and citizens. As the guardian of the Treaty, the European Commission is looking more critically at non-timely transposition and is starting procedures for non-transposition more quickly than in the past. On 23 March 2005, the European Council called on Member States to spare no effort in

honouring the commitments given in Barcelona in March 2002 as regards the transposition of directives. The Heads of State and Government have decided that a policy of “zero tolerance” is to be adopted as regards directives overdue by two years or more. The results show that to date the track-record of the Member States has never been better when it comes to timely transposition of EU directives into national law. That is an achievement to be acknowledged. The good result is partly due to the exchange of best practices.

When directives are not applied correctly by Member States, EU citizens and businesses are deprived of their rights. This self-inflicted damage causes harm to the European economy and undermines the confidence that citizens and businesses have in the single market and the EU in general. Where the Commission considers that single market rules are not properly applied, it may take infringement action against the Member State in question, as set out above. Clearly, every infringement case is one too many. Infringement cases are costly and can take a long time to resolve. The Internal Market Strategy therefore called on Member States to reduce the number of infringements against them by at least 50% by 2006. Whereas the record as regards the transposition of single market directives has improved dramatically overall, the situation is not so good insofar as the correct application of EU law is concerned. No Member State has achieved the aim of a 50% reduction of infringement proceedings by the year 2006, compared with 2003.

*What is your view of the Country of Origin Principle, whereby a company registered to provide services in one Member State is automatically qualified to provide those services in any other Member State on the basis of home country regulation? Does this Principle constitute the best basis for single market measures?*

The Country of Origin principle is a specific legislative technique based on a long line of cases of the Court of Justice. It is enshrined in specific EU laws, such as the eCommerce Directive and the Television without Frontiers Directive. It enables economic operators complying with rules applicable in their home states, to provide a service throughout the EU without having to comply with additional regulatory requirements. Country of Origin has in some areas proved a useful instrument for bringing down unjustified barriers to trade. In line with better regulation principles, the Commission must assess, when considering new draft legislation, whether Country of Origin is the right approach to market regulation, or whether other approaches—for instance, harmonisation—are to be preferred. When carrying out this assessment, it takes account of the specific situation of the markets concerned and of all interests at stake.

*Do the concepts of the “national champion” and “economic nationalism” pose a threat to the single market?*

This depends largely on the definition and meaning given to these concepts. In general, however, they tend to refer to preferential treatments or positions given to certain operators on the basis of nationality. In as far as this conduct infringes on the rights and the ability to exercise these of other operators within the single market, there would be a threat to the single market in the sense that this market would no longer be a single space, with a level playing field for all operators. The growing reality of the internal market has brought the economies of Member States much closer together and has encouraged European undertakings to grow across national borders. Sectors which were once closed for competition, like telecoms and transport, have been progressively liberalised. A number of undertakings in these sectors in Member States have been privatised. This trend is at least partly also a proactive response by European undertakings to the challenges and opportunities of globalisation. Recent responses by some Member States against proposed operations of concentration seem to be a reaction to this rapid business-need driven movement towards corporate cross-border integration. While EU competition rules do not prevent Member States from protecting legitimate general interests, such as for example public security—including security of energy supplies—or guaranteeing adequate prudential control, it would appear that in some instances the overriding interest that Member States have wanted to defend has been to guarantee continued national ownership of companies for which a cross-border bid has been made. The Commission, as the guardian of the Treaties and therefore of a level playing field for all, has always kept a watchful eye on such developments and has intervened whenever necessary.

*Should there be a greater role for technology and research in facilitating the single market?*

Technology and research and development can play a larger role—both in terms of the governance of the single market and its economic development. In terms of governance, new IT tools will enable Member State authorities to cooperate efficiently in applying single market rules; for example using the Internal Market Information system (IMI) to ensure compliance with the provisions of the Services Directive or to enable recognition of professional qualifications. In terms of the economic development of the single

market, the Commission has already identified the advance of Europe's knowledge economy as the central aim of the Lisbon strategy. The Commission seeks to build a single market for knowledge and intellectual property in order to stimulate greater innovation, growth and job creation. In this contest, it recently presented its views on the way forward to enhancing patent systems in Europe, including through the establishment of the Community patent. The use of Information and Communications Technologies (ICT) by enterprises, citizens and government has the potential to reinforce the internal market, blurring geographical boundaries and helping to overcome obstacles to trade in products and services. At the same time, a properly functioning single market will stimulate the uptake of ICT and the diffusion of innovative technologies and business practices, with positive consequences on the competitiveness of the whole European economy.

*What is the significance of the single currency to the operation of the single market?*

The creation of the EMU has reinforced the integration and the competition effects of the single market by reducing the costs of cross-border activities (costs of managing multiple currencies and of exchange rate risks) and by increasing the transparency of prices.

In turn, well functioning markets are also crucial to improve the adjustment capacity of the EMU to changing demand and supply conditions. Therefore, there is significant scope for structural policies aiming at creating a better integrated single market to influence the adjustment process:

- internal market policies, aiming at increasing competition on the markets increase price flexibility. The price and wage setting behaviour of companies are indeed important instruments of adjustment to asymmetric shocks;
- a more integrated single market facilitates the reallocation of production factors from declining sectors to sectors where the economy has a comparative advantage; and
- competitiveness improving policies and policies fostering integration have to be accompanied by policies aiming at increasing flexibility of labour markets.

## B. SECTOR-SPECIFIC QUESTIONS

### Energy

*Has there been sufficient unbundling of gas and electricity markets in all Member States?*

The Commission recently completed a detailed sector inquiry into gas and electricity markets.<sup>2</sup> This demonstrated significant shortcomings in the functioning of those markets. Many of these problems can be traced back to insufficient unbundling of gas and electricity networks from the production or supply parts of the business. The inquiry found that companies that own and operate the networks which are needed by their competitors, have an incentive to distort the level playing field in their own favour. Similarly, investment incentives are distorted, creating risks to security of supply, with decisions not necessarily taken in the interest of the network users as a whole but instead on the basis of the supply interests of the integrated company. Finally, it is clear that vertically integrated companies have little incentive or inclination to co-operate with each other to build an integrated market since this will mean more vigorous competition. It is much easier for them to segment markets into smaller areas where each maintains a high degree of dominance. The Commission considers that the most effective way to remove the incentives for network companies to favour their own commercial activities is to remove the ownership link. Other models such as the establishment of separate "independent system operators" (where the vertically integrated company remains owner of the network assets and receives a regulated return on them, but is not responsible for their operation, maintenance or development) at national or regional level have also been put forward. The Commission is currently examining all of these with a view to putting forward proposals in the second half of 2007.

<sup>2</sup> <http://ec.europa.eu/comm/competition/sectors/energy/inquiry/index.html> (COM(2006)851 and 5EC(2006)1724, 10 January 2007).

*Is there agreement on the fundamental importance of a genuine single market to support a Common European strategy for energy?*

The Commission considers that a real Internal Energy Market is essential to meet all three of Europe's energy challenges:

- (i) **Competitiveness:** a competitive market will cut costs for citizens and companies and stimulate energy efficiency and investment;
- (ii) **Sustainability:** a competitive market is vital to allow for the effective application of economic instruments, including the emissions trading mechanism to work properly. Furthermore, transmission system operators must have an interest in promoting connection by renewable, combined heat and power and micro generation, stimulating innovation and encouraging smaller companies and individuals to consider non-conventional supply;
- (iii) **Security of supply:** an effectively functioning and competitive Internal Energy Market can provide major advantages in terms of security of supply and high standards of public service. The effective separation of networks from the competitive parts of the electricity and gas business results in real incentives for companies to invest in new infrastructure, inter-connection capacity and new generation capacity, thereby avoiding black-outs and unnecessary price surges. A true single market promotes diversity.

In its Spring Summit conclusions of 9 March, the European Council endorsed this approach, "pressing for the EU to put in place an integrated policy on energy" fighting global warming, ensuring security of supply and enhancing business competitiveness.

*Should there be a single EU energy regulator?*

With respect to gas and electricity, there are several barriers to cross-border exchanges. The first of these is, fundamentally, the lack of interconnection capacity that has been constructed. Although this is partly due to the difficulty in obtaining building permits, it is also apparent that the vertically integrated companies have little incentive in this respect. However, even when capacity exists, it is often used ineffectively. Often different operating rules on each side of the border or different tariff systems prevent exchange taking place. There is also a tendency for all constraints in the system to be superimposed at the borders, even if the main infrastructure restrictions are internal. As well as ownership unbundling, there is also a need for different Member States to adopt consistent trading and operational rules to ensure that the maximum possible use of the network can be achieved. At present, for example, the nomination timetables and balancing rules differ substantially, even for different networks in the same Member State. A common regulatory framework will help in this respect and the Commission is looking at ways to improve co-operation between national energy regulators. The creation of the European Regulators' Group for Electricity and Gas (ERGEG) has not provided the governance required, The role of ERGEG would need to be formalised, and it would be given the task to structure binding decisions for regulators and relevant market players on certain precisely defined technical issues and mechanisms relating to cross border issues. This should not replace national regulators but strengthen them. In its Spring Summit conclusions of 9 March, the European Council endorsed this approach calling for "the establishment of an independent mechanism for national regulators to cooperate and take decisions on important cross-border issues."

## Telecommunications

*Is the EU telecommunications market genuinely cross-border at present?*

While the existing regulatory framework has led to significant benefits for citizens and enterprises, a single market for e-communications is not yet a reality. The EU telecoms market is still regulated as 27 national markets, albeit under a common framework. As long as spectrum, numbers and rights of way are administered nationally, there will be differences between Member States which make the deployment of cross-border services more difficult than they would be in a genuine single market. Nevertheless, the harmonised approach on market definition and market powers assessment—alongside the Commission's role in reviewing the regulatory measures imposed by National Regulatory Authorities—has already proved its worth in consolidating the single market. But market players regard the current variation of regulatory approaches as an obstacle to the single market, More consistency in the imposition of remedies is needed. Regulatory tools for harmonising spectrum allocation exist and have contributed to strengthening the

internal market, but overall the European market for wireless services is still hampered by fragmented spectrum regulation, while wireless equipment markets are very often global, but the free circulation/operation of such equipment throughout the EU is often hampered by regulation on spectrum usage.

*Is the current EU regulatory framework for telecommunications sufficiently technology neutral?*

The current framework is in principle technologically neutral, but this does not rule out the possibility of having some regulation that is specific to certain technologies. The EU framework is about regulation of markets, and to the extent that specific markets are linked to specific technologies, some regulation will also be linked to specific technologies. Although the current regulatory framework includes the principle of technology neutrality, in some cases (eg from a spectrum perspective), its implementation may not be defined precisely enough. These issues are being addressed in the ongoing review of the EU regulatory framework for telecommunications.

*Does this regulatory framework require modernisation?*

The current regulatory framework has produced considerable benefits, but given the fast developments in the underlying markets and technologies, it needs attention in a number of areas in order to remain effective for the coming decade. For instance, important spectrum aspects are not addressed to the same extent as other regulatory aspects (authorisations, access to infrastructure, market dominance etc). In the context of the fore-mentioned ongoing review, other potential changes have been identified, which would seek to consolidate the single market, strengthen consumers and user interests, improve security, deregulate certain markets, remove outdated provisions and simplify processes in line with the Commission's better regulation agenda.

## Financial Services

*What has been the impact of the implementation of the Financial Services Action Plan as a whole, and in particular the Markets in Financial Instruments Directive?*

The deadline for implementation of the Markets in Financial Instruments Directive is in November 2007. More time will be needed to assess its economic effects. The Commission is launching an evaluation of the economic impact of the Financial Services Action Plan as a whole, Results are due for early 2009. However, two recently published studies assessing the economic impact of the FSAP suggest that the benefits outweigh the costs, in the long run:

- A study by Europe Economies for the European Parliament estimates a long run stimulation of trade in the EU banking by 3.4% and a reduction of the cost of capital by 0.1% in the UK, 0.2% in France, 0.3% in Germany and 0.7% in Italy. An increase in the sustainable GDP growth rate of EU-15 is estimated at 0.1%.<sup>3</sup>
- A study by Centre for Economic and Business Research for the City of London estimates a net increase of the EU financial intermediaries' economic output by 2% over five years.<sup>4</sup>

*Do you support the Commission's Code of Conduct on Clearing and Settlement?*

The Code of Conduct on Clearing and Settlement is not a Commission, but an industry initiative. However, the Commission supports the Code. The Code was deemed as a more flexible and faster solution to some of the efficiency issues currently present in EU post-trading. If properly implemented, the Code will lay down the foundations for competition between post-trading infrastructures. So far, it has already significantly enhanced price transparency in the market for post-trading services. The Commission is closely monitoring the implementation of the Code—via a Monitoring Group which also includes the European Central Bank and the Committee of European Securities Regulators—in order to ensure that the requirements of the Code are implemented properly and on time.

6 July 2007

<sup>3</sup> Europe Economics (2007) *The Impact of the New Financial Services Framework*, a study for the European Parliament's Economic and Monetary Affairs Committee; European Parliament, Policy Department—Economic and Scientific Policy, March 2007 (PE 385.623).

<sup>4</sup> Centre for Economics and Business Research (2007) *"The Importance of Wholesale Financial Services to the EU Economy 2007"*, City of London, May 2007.

### Examination of Witnesses

Witnesses: MR THIERRY STOLL, Deputy Director General, DG MARKT, MR JENS NYMAND CHRISTENSEN, Director, Secretariat General, Ms ELIZABETH GOLBERG, Adviser to the Secretary- General, MR PETER SCOTT, Head of Unit, DG INFSO, MR ADRIAAN DIERX, Deputy Head of Unit, DG ECFIN, MR ANDRAS INOTAI, Administrator, DG COMP, MR EMANUEL CABAU, Administrator, DG TREN, and MR LUC THOLONIAT, Administrator, Secretariat General, the European Commission, examined.

**Q196 Chairman:** Good morning.

*Mr Christensen:* My Lord Chairman, Lords, ladies and gentlemen, first of all, on behalf of the Secretariat General, I would like to welcome you to the European Commission this morning. I will make a few introductory statements. I thought it would be better if we started by introducing ourselves at the very beginning so we get to know each other a bit more by name and background, particularly those of us over here. If you agree, I would ask my colleagues to briefly state who they are and what DG we are representing today.

**Q197 Chairman:** Then perhaps we could repeat the courtesy.

*Mr Christensen:* Thank you very much.

*Mr Inotai:* Good morning. My name is Andras Inotai and I represent the Competition Directorate-General.

*Mr Tholoniati:* Good morning. My name is Luc Tholoniati and I work in the Secretariat General of the Commission.

*Mr Scott:* My name is Peter Scott. I work in DG Information Society and Media.

*Mr Stoll:* Good morning. My name is Thierry Stoll, I am Deputy Director General of DG MARKT, the DG that deals with the internal market.

*Mr Christensen:* My name is Jens Nymand Christensen and I am Director in the Secretariat General.

*Ms Golberg:* Good morning. Elizabeth Golberg, I am Adviser to the Secretary-General.

*Mr Dierx:* Good morning. I am Adriaan Dierx, I work with the internal market issues within the Directorate-General for Economic and Financial Affairs.

**Chairman:** Thank you very much indeed for your hospitality and for meeting us this morning, which we hope will be a very productive session. May I introduce myself: I am Lord Freeman, the Chairman of Sub-Committee B which deals with the internal market part of the House of Lords Select Committee on the European Union. We are well into our inquiry into the future of the internal market, awaiting the Commission's report, or review, which we expect later this year when we would like to come back to Brussels to talk directly to some of the Commissioners before we produce our report at the turn of the year. May I go to my right and ask Lord Powell to introduce himself.

**Lord Powell of Bayswater:** Charles Powell, member of the Committee.

**Baroness Eccles of Moulton:** Diana Eccles, member of the Committee.

**Lord St John of Bletso:** Anthony St John, member of the Committee, Crossbench member of the House of Lords.

**Q198 Lord Haskel:** Simon Haskel, Labour member of the House of Lords and a member of the Committee.

*Mr Christensen:* Thank you very much. We have been looking forward to this occasion very much to discuss this subject with you and I can tell you, my Lord Chairman, that we would very much welcome you back here again once the Commission has moved forward and adopted its Internal Market Review. In a way, this is an opening to some of these contacts. This morning is a welcome and, I must say, rather unique opportunity for us to discuss directly with you the ongoing review of the internal market. Strengthening our contacts with national parliaments is a priority for the Barroso Commission and its main overarching objective of better regulation. One illustration is the new procedure of direct and immediate transmission of all Commission proposals to national parliaments, which has been in place since last year and in our opinion is already yielding very promising results. We value the efforts from national parliaments to strengthen the European dimension of their work and we appreciate very much your making contact with us and coming here today. Early contacts and consultation is always very much in the spirit of the Single Market Review, which we are going to discuss this morning. Before we go into the substance of the matter I would like to make a few general remarks on the exercise by way of introduction. My first remark relates precisely to the nature of the exercise. This review of the Single Market is a participatory process which builds on extensive consultation and takes account of the views of many stakeholders. More generally, it builds on the premise that the Single Market is for the common good of the EU and what we in jargon call "Brussels" cannot and should not deliver alone. In a larger, more diverse Europe the success of the future Single Market will depend on an effective partnership between all those concerned, in particular within Member States as well as between them, with the Commission playing a steering and facilitating role. Internally, as you will see from the participation at this table, the work on the review involves many departments and services of the Commission. Thierry Stoll, who is sitting to my left, is the Deputy Director

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23 July 2007

Mr Thierry Stoll, Mr Jens Nymand Christensen, Ms Elizabeth Golberg,  
Mr Peter Scott, Mr Adriaan Dierx, Mr Andras Inotai, Mr Emanuel Cabau  
and Mr Luc Tholoniati

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General from the Directorate-General for internal market and services. He has kindly accepted to join us this morning to go into greater detail about the plans. Colleagues from the Directorates-General for Economic and Financial Affairs and, I hope, ultimately, for Transport and Energy when he joins us, Competition, the Information Society and the Secretariat General are also present to respond to your questions. My second remark relates to the timing of the exercise. As you know, in February the Commission presented its vision for the Single Market of the 21<sup>st</sup> century. This took the form of an interim report to the Spring European Council. The report was welcomed by the Heads of State and Government which gave a clear mandate to the Commission to come forward with concrete proposals this autumn and we hope to present the final report by, I would guess, mid-November. This should be the starting point for an informed discussion in the various Council formations in order to prepare and decide on the key priorities at the next Spring European Council. Your report will no doubt prove very timely in this context. My third remark relates to the significance of the exercise. What we are discussing today is not routine business. The Single Market is one of Europe's concrete success stories with direct benefits for citizens and business across Europe. It is the cornerstone of other European successes, such as the abolition of border controls for most of us, the creation of a single currency and the strength of the EU in global trade talks. From a Commission perspective the Single Market is a living project, it is not a "done deal", a part of the *acquis* for which we just have to monitor the implementation. It cannot and will never be finished business because it has to adapt constantly to new circumstances and challenges. Globalisation, enlargement and technological changes have radically transformed the Single Market of 1992 and the new challenges on energy, climate change and the ageing of the population will transform it once again. This is why the Commission considers it essential to take stock of achievements in an open manner and to take a resolute course of action in order to design a Single Market which can meet the expectations of our European citizens and businesses. You will understand that it is too early for the Commission to give a more precise list of the priorities and initiatives which will feature in the final report but the interim report published in February indicated a number of avenues to explore. The written reply that we have transmitted to you also provides some facts and ideas. My colleagues are here to help you gather the evidence you are looking for and we will be available to provide any further assistance you may seek following the meeting today. At the same time, it

would be very interesting for us to hear your preliminary views. It may be too early for us to disclose our final thinking but it is never too late for the Commission to listen to your experience and ideas. I hope we can have a fruitful meeting and look forward to working with you in the coming months. Thierry, I do not know whether you want to say a few opening remarks.

**Mr Stoll:** My Lord Chairman, ladies and gentlemen, thank you very much for coming to see us. I very much appreciate this initiative which is a good example of democracy being interested and involved in European matters. I have had the privilege of appearing before a Select Committee in the House of Lords in London and I have come to appreciate the high level of competence of these committees and the very thorough work that they are doing, which I think is a model for other Member States. Your visit is very timely, not just because of the upcoming review of the Single Market but because I think the internal market as such is at a crossroads. I have been heavily involved in developing the internal market on the side of the Council, especially in the 1980s when the Single Market was one of the key policies that was fairly easy to put in place. I remember the discussions in the Council when President Delors was the President of the Commission and Lord Cockfield was in charge of the internal market, and each Presidency could boast the adoption of tens of dozens of directives. Today we may think this was too much, or too much in one go, but the least one can say is that very much of the internal market was put in place in those days and what we are looking at now are the more difficult parts, the last mile or the last centimetre of achieving the internal market, although this will never be a completely finished story. We have produced the facts about the benefits that the internal market has brought in economic terms. I would say that today what is different compared to the 1980s is more the perception of the internal market and the way this policy is being developed and, even more importantly, applied on the ground. It is quite clear from the works that we are engaged in within the Commission that the focus will have to change. Of course we will continue to produce very important legislation to complete the internal market where this is not the case, but increasingly I think we will have to devote our attention to the upstream process and the downstream process. By that, I mean the upstream process is to be much more engaged in understanding how the internal market is working on the ground and how it is affecting various parts of the population. We tend to look at the users or beneficiaries or actors of the internal market as one single coherent group but we know this is not the case and when we consult in preparation for legislation

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one criticism that we hear very often is that we only listen to the usual suspects and we neglect some of the less vocal constituencies, in particular in the civil society. It is all too easy to put a draft Bill or draft legislation on the Internet and ask those who are interested to comment on this but this will not reach many of the concerned and affected parts of the population. We are learning lessons from this as part of the better regulation process. We need to devote more resources and attention to establishing the facts, establishing the real nature of the problems that we want to address and through the better regulation agenda seek the best means to address this, whether legislative or not. Downstream of the legislative process, the focus will certainly increase on the whole issue of enforcement, application on the ground, providing information about the rights and opportunities of a Single Market and helping to resolve problems. I think we will come to talk about this in more detail later on, but one of the keys for the success of the future internal market will be the way in which national administrations also take ownership of the internal market and deal with each other to apply it from the ground, smooth problems and not just have the Commission acting as a guardian of the Treaty to pursue them if they do not apply the law on the ground. It is a shift in the nature of the way that we deal with the internal market, less legislation, better regulation and also more focus on the non-legislative instruments to make the internal market work. It is a change in the approach and in the spirit in which we want to handle the internal market, very much in the spirit of the 10 May 2006 Communication which sought to bring the internal market, and through it European integration, much closer to the citizens who we have seen are sometimes concerned about where the European Union is going, sometimes they view the internal market as a threat, and they need to be reassured and convinced on the basis of facts that this is in the overall interests of the European Union. We look forward to having this exchange with you today and also in the future and very much welcome and look forward to the exchange of views this morning.

**Chairman:** Thank you very much indeed, Mr Christensen and Mr Stoll. It might be helpful if we proceed by asking different colleagues to lead a brief set of questions and discussion, but I think the areas that you have already identified as being important provide a good agenda for this morning. I think you will find a great deal of sympathy from this Committee towards your general approach, which is the Single Market is something that is growing and we need to be flexible in our understanding of what the needs of the European Union and its citizens are. It is a living organism and it is important that our

regulators and those responsible within the European Union listen to citizens, to consumers, to businesses, particularly small businesses, and perhaps a greater emphasis is put upon effective implementation of existing regulations rather than fresh. I think there is a great deal of sympathy within our Committee towards that general approach. I would like to ask Lord Haskel to start and perhaps he could focus on the consumer, the citizen.

**Q199 Lord Haskel:** Thank you very much for your kind words and for your reception, it has been very welcoming. What we would like to do is start off by understanding a little bit more what you mean by the benefits to consumers and citizens. I would like to probe this to see whether the rhetoric is, in fact, reflected in reality because it is a very difficult matter. Perhaps you could start off by telling us how have consumers, citizens, benefited from the Single Market in general?

**Mr Stoll:** I will give maybe a very general reply to this to begin with. I need not come back to the growth benefits of the internal market, benefits in terms of growth and jobs, because to some extent they are only partially relevant for the individual citizen and consumer. What we need to look at is how individual consumers have felt the benefits of the internal market. We have conducted a number of surveys in order to measure this impact, both in real terms and also in terms of perception. A couple of facts that are worth reporting are the following: when you look at the financial side, what is measurable in your wallet, at the end of the day we can say that the benefits of the internal market have translated into nearly €500 worth of additional annual revenue or income, or richness, per head over the last ten years, or even the last 14 or 15 years. This is the way to translate the growth of 2.2 per cent that can be attributed to the development of the internal markets from 1992-2006. 2.2 per cent of GDP does not mean much to a citizen but €500 in addition does, which may not sound a lot but you have to consider the population of the European Union. In terms of concrete rights, therefore, not just measurable financially but the rights, the picture is very positive as well from our findings. Take the possibility of being able to study abroad, that is one of the major successes of European integration. It is considered positive by 84 per cent of citizens and 1.2 million students, young people, have completed part of their studies in another Member State as part of the Erasmus Programme. If you ask me what are the three main flagships of European integration I would quote the Erasmus Programme as one of the most successful ones to bring home to citizens that they are part of a wider union and that they have very concrete rights

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flowing from this. The ability to travel in another Member State is another clear benefit. Compared to ten years ago, three-quarters of citizens in the Union say that travelling is now much easier. I think that applies even to citizens from countries that are not in Schengen because, generally speaking, travelling has become easier. Another very important, decisive benefit from European integration is the right to work and live abroad. There are still restrictions, of course, flowing from the last enlargement but the right to work in another Member State is seen as a positive development for 70 per cent of European citizens. Indeed, more than 15 million European citizens have moved across borders either to work or to enjoy their retirement and obviously a number of them are UK citizens. They can vote and stand for election in local elections, municipal elections. When they work abroad they also enjoy full equality of treatment as regards employment, remuneration, social security and conditions of work. These benefits may be taken for granted by the vast majority of citizens but they are there and when you ask the citizens they recognise that. In terms of consumers more specifically, what consumers generally see as a benefit of the internal market is a wider choice of high quality goods and services. 73 per cent of citizens consider that this has been one major benefit of the internal market, a wider range of products and services on offer. They also see the positive side of competition. 67 per cent of citizens very much welcome the increase in competition in areas like transport, communication and financial services. It tends to be the same example again and again but there are others. To quote telephone prices, they have come down by 40 per cent between 2000 and 2006 through the abolition of national monopolies. Consumers, when they go shopping, have a very wide ranging number of consumer rights when they shop outside their own country. The majority of citizens, 53 per cent, a smaller majority and I think we need to look at that, consider that internal market rules have increased consumer protection within the EU. This is certainly true when it comes to the levels of product safety, standards, misleading advertising, unfair terms in contracts, and air passenger rights where this has been very visible. We should not hide the fact, nevertheless, that there can be situations where consumers feel less secure when shopping abroad. Certainly they feel less encouraged at the moment to shop by the Internet, although this is a developing trend as well with the help of secure payment across the Internet, for instance, which is one major source of concern. I would like to highlight in the financial services sector tangible benefits from financial integration. One excellent example is the price for cross-border payments. Since the adoption of the

regulation in 2001 which evened out fees for domestic and cross-border money transfers in the EU there has been nearly a ten-fold reduction in the average fee for a cross-border transfer of €100 from about €24 in 2001 to €2.5 in 2005. The fees for normal, common financial products like bank accounts still differ substantially between Member States but the price discrepancies between banks are falling compared to areas like the United States or in the Asian market. One last example which is very telling is declining retail prices in banking, and in particular mortgage provision. One experience of opening up in the Dutch market has diminished mortgage profits by 50 per cent over just three years. This means that the consumer in the Netherlands saves €100 a month on a mortgage of €200,000. All of that is thanks to the arrival of new entrants to the banking market in the Netherlands. The story about the benefits for citizens and consumers, and I think there could be many more examples, is a positive one. That is not to say that the opportunities for shopping, buying and selling across the internal market are totally exploited. One of the important strands of the Single Market Review will be how to involve the consumer better in the definition of policies, again upstream, and how to ensure that he feels confident enough to exercise these rights across the Union and feels that he has equivalent means of redress and equivalent legal certainty as he would when shopping at home. We know that rogue traders also exist in the national markets but we must minimise the risks that exist from an enlarged market involving 27 Member States. It is a positive story but certainly one that can still be improved. There are sectoral areas where the benefits for consumers have also been very markedly felt and maybe some of our colleague would like to comment on that?

*Mr Christensen:* Thank you. You raised some specific questions relating to DG TREN and we spoke about airline liberalisation where all the consumers have visibly seen a significant drop in the costs of flying. We also spoke about roaming and I do not know whether Info Society would like to develop a little bit more on it because they are examples that people talk about where the internal market has brought tangible and proven benefits in a very clear way to the consumers.

**Q200 Lord Haskel:** Could you say something about the energy market?

*Mr Christensen:* Let us hear from DG TREN.

*Mr Cabau:* Thank you very much, my Lord Chairman. I will talk about the gas and electricity internal market. This is the process of liberalisation of the gas and electricity market that started in the 1990s with two series of directives with the first Gas

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and Electricity Directive in 1996 for electricity and then in 1998 for gas. Then there was a new series of Directives in 2003. Recently, in January 2007 in its Communication on the internal market for gas and electricity the Commission made its first real assessment of the functioning of these markets and the reality is that things have improved a lot. It was a very, very ambitious project because in most Member States the situation was one of national monopolies, so nobody could compete with gas or electricity suppliers and the same companies in most Member States were holding the network at the same time and were the monopoly suppliers. As for any network industry, the process of liberalisation is especially different because we are trying to liberalise supply but we cannot liberalise the infrastructure, the infrastructure has to stay in the hands of the monopolies, that is the pipeline for gas and the electricity line for electricity, so as with telecommunication you have a need to create national regulators that will ensure third party access for competitors. It is a difficult process. Clearly the process has led to very significant improvements with all the main legal frameworks being in place with most Member States, with national regulators in place, third party access in place so the general framework is working, but what is not working in many Member States is you need effective competition to develop and you need market opening to become something effective. It is not enough to have rules, or even strong rules, you need to create the market at some stage. Our conclusions were that some of the rules were not strong enough to enable the development of this market. I guess I will come back later on the more precise issues. Although the picture is that very good and strong progress has been made, it is not enough to have effective competition and effective market opening developing and not enough to have a single EU market developing.

**Q201 Lord Haskel:** In your paper about the Single Market for citizens you make a feature of the euro being a big benefit to the citizen. I wonder whether you could say something about that.

*Mr Dierx:* The euro and the internal market work together in creating better functioning markets and better internal markets, so I can go into a bit more detail on the inter-relationship between the Economic and Monetary Union and the internal market if you want.

**Q202 Lord Haskel:** Really I think what we are interested in is of what benefit it will be to those countries who are not members of the euro.

*Mr Dierx:* Of course, if the internal market functions well within the euro area you create more competition within the euro area which leads to lower prices, and since the countries which are not members of the euro area tend to import a lot of goods and services from the euro area they will also benefit from the lower prices and increased competition within the euro area. Of course, the countries which are not within the euro area do not gain all the possible benefits from being inside the euro area. One important benefit for consumers from being inside the euro area is the increased transparency of prices. Consumers within the euro area can compare prices, let us say in Belgium and Germany, they can see if goods are cheaper in Germany and it is fairly easy to go across the border to buy German products if they happen to be cheaper. Increased transparency of prices is a benefit for citizens within the euro area. This is a benefit that UK citizens will not necessarily have as much because they have to make the calculation and they would have transaction costs in terms of the exchange rate exchanging pounds for euros. There are some additional costs involved for non-euro citizens in terms of the functioning of the internal market. I would say there are some benefits from an economic perspective from increased competition within the euro area for non-euro area countries but citizens outside the euro area lose out because they miss this price transparency.

**Chairman:** I think we should try and move on now, if we may, to the second group of questions. I am going to turn to Lord Powell to deal with responsibility for the functioning of the market.

**Q203 Lord Powell of Bayswater:** Thank you, my Lord Chairman. Can I first say I thought the Commission's interim report was an excellent document and your answers to our questions in writing were extremely helpful. Thank you for that. I was around in 1984–85 when the Single Market initiative was launched and although the goal of a Single Market was in the Treaty of Rome no-one had done anything much about it until the early 1980s, so there had to be a torrent of legislation in the early days to get the thing geared up and running. I very much agree with Mr Stoll that we are probably now past the high watermark for new legislation and the question is how do we make it function more effectively. That is a combination of monitoring, implementation and enforcement. My question is how are we going to make that better? What does it mean in institutional terms? First of all, does the Commission need new powers to make the Single Market work more effectively? Do we need something resembling the Competition Directorate which has strong legal and enforcement powers, is

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that part of the Commission's thinking? Or are you thinking more in terms of European level regulators who would not necessarily be part of the Commission but, nonetheless, would be European institutions regulating particular sectors of the market and making sure that they work? Alternatively, do you think that we should be using more the technique of bringing together national regulators at the European level, with or without Commission guidance, in order to get better implementation? Finally, do you think it really has to be left to the national regulatory authorities with the Commission looking down from on high, as it were, and intervening when they see that these authorities are not fulfilling their tasks? Maybe the answer is it has to be a combination of all of those, I do not know, it could be. I would be very interested in your thoughts about how we achieve this better implementation and better enforcement because quite clearly there are areas where the Single Market does not work as it was intended to do.

*Mr Stoll:* Thank you very much. I think this is indeed one of the key issues for the Single Market Review if we want to improve the functioning of the internal market in the future. It is the responsibility of the Member States, of course, to make sure that EU law is being applied and respected. The Commission has its role defined in the Treaty as the guardian of the Treaties, which it usually performs in the guise of infringements that can lead to court decisions, but our feeling is that this division of labour with Member States being responsible for the application of the law and the Commission sitting on high, as you say, just pushing a button that launches a missile called a 226 Letter is certainly necessary but not sufficient if we want to make sure that we have a smooth application of the rules. You need to look at different areas of enforcement. The very first one, of course, is to transpose directives in a timely and correct fashion and that is, indeed, the responsibility of the member States but we are developing a number of tools to assist the Member States in this task, not just waiting until the expiry of the transposition of the deadline to then check whether Member States have transposed and if they have not then take the legal route. We are now very much involved in talking to the Member States from day one after the adoption of a directive, providing guidance on how they should transpose the directive because we also want to be sure that the directive is transposed in an equivalent way in the 27 Member States. One good example is the Services Directive which was very difficult to negotiate, as you will remember, where we are about to issue a handbook to Member States on a number of issues that they need to take into consideration when transposing the Directive,

including such steps as putting in place points of single contact, administrative co-operation, even the IT structures that are necessary to ensure smooth co-operation between administrations. This is quite a new approach to making sure that when the transposition deadline has lapsed we do not have to launch infringements. We will probably have to continue doing so but we hope to minimise this aspect. The second important element is what happens after the directive has been transposed and this is a daily battle, I should say, because even when the directive has been properly transposed it regularly happens that administrations, in good or bad faith, let us be clear, misapply the law. There we very much believe that there is not one single answer, but the one common feature of the various answers is that this should be a shared responsibility between the Commission and the Member States. There are sectors where the directives have imposed the setting up of regulators in the telecoms area, in the financial services area there are regulators, in the postal area, but these regulators should work together and should be able to address issues in common and deal with the problems as they arise. Whether there should be an overarching regulator at the EU level is still an open question because there are pros and cons. By putting in place an overarching regulator there is the risk, in my view, of reducing the responsibility of the national regulators and just adding possibly another layer of bureaucracy or making the functioning of that particular sector more difficult. Of course, it would have the advantage of facilitating or bringing under one roof the behaviour, the practice, of 27 national regulators. This is something that has to be determined on a case-by-case basis depending on the sectors. I want to emphasise the one common feature of whatever approach we choose is that there should be more co-operation between the national administrations. Where there are no regulators this must become a daily task, a daily reflex of national administrations. We know from experience through the setting up of something like the SOLVIT system that the national administrations will do so if they are helped in establishing in particular the IT tools that are necessary to communicate with each other, including in 23 different national languages. There is a lot of work to be done on the use of IT instruments to network national administration in the EU. It would be inappropriate if we had a common legal regime as established under the EU Treaty but we continue to have national administrations that only deal with one part of that Single Market, that is their own national part. Increasingly we would like to see them as co-owners of the Single Market regulations and solving problems on a concrete basis by talking to each other very directly. There is an area which is

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not directly addressed by your question and that is when we do not have directives, or regulations for that matter. An important part of the internal market is simply built on applying the Treaty rules, Articles 43, 49 and 56, the free movement of capital, and there, of course, the powers of the Commission as guardian of the Treaties are even more important because in the absence of secondary legislation it is up to the Commission to remind Member States of their duties and their obligations. There we need to think about transparency mechanisms where Member States are not bound by directives that they have negotiated and accepted themselves in the legislative process where they have to apply the rules of the Treaty directly. Short of harmonising or other secondary law instruments we should provide for more transparency from the Member States. They should develop a European reflex in making sure before they act or legislate that they look at the internal market dimension of what they are about to do and, if necessary, consult the Commission. We will be most willing to assist Member States rather than having to use our powers under the Treaty too late when they have created legislation that is creating a barrier to the internal market. This governance of the internal market will be key to its success in the future with a common feature, more dialogue, more ownership between the various national administrations, but certainly not a one-size-fits-all solution, it has to look at the specific needs of the various sectors. That is as far as I will go on the general comments on governance of the internal market.

*Mr Christensen:* Can I add to that before giving you back the floor? As Mr Stoll says, there is not one single solution to this issue. You may be interested to know that the President, Mr Barroso, intends to take to the Commission immediately after the summer recess a big communication about how the Commission plays its role in better monitoring, implementation and infringement work. The whole idea is to build on the logic that Thierry Stoll has just described involving far more Member States as partners of the Commission rather than going down the legal path, that we work in very close partnership with the Member States, which is a reflection of the fact that the Union of 27 is very different from a Union of six and, therefore, we need to approach our responsibilities with the aim not that we are not fulfilling the role right now but we think we can do better in a Union of 27. It is a far more complex situation to be in with 27 national systems. We know that we need to be willing to monitor the implementation from the perspective of when we identify problems and it is not only a question of problems with the national authorities, it may turn

out that we can see in a large number of Member States there are problems with the implementation on the ground or that the legislation does not deliver the objectives set out that was the background for the whole process and, therefore, we may wish the Commission, with Member States, to go into a process of reviewing that piece of legislation and is there a structural problem, why does it not work, was it made for a different kind of union or are there parts of the legislation that merit review because on the ground the national authorities, the local regional authorities, across the board in a number of Member States seem to have trouble delivering the purposes of it. Mr Barroso is coming forward with this communication, which does not mean that we are stepping away from our role of policing on behalf of everybody but we are trying to redefine it in such a manner that we can target it more where it really makes a difference and there has been an important breach of Community law or on the ground it makes a very significant difference for businesses or consumers that Community legislation is not correctly implemented.

**Q204 Lord Powell of Bayswater:** I just want to follow up those two very helpful answers. Am I right to interpret that in essence you are saying that you do not see a need for any further transfer of powers or new powers as such to the Commission but it is a question of using moral pressure, persuasion, technology and all sorts of other techniques under the existing Treaties?

*Mr Stoll:* Yes, indeed. The Commission is certainly not looking for additional powers. At the last IGC we did think about giving the Commission the possibility of having more direct injunction powers with the Court of Justice but, on the one hand, we feel that we need to look at the existing instruments and, for instance, we are looking at possibly a better use of Article 86 of the Treaty, competition law, where we could take action to force Member States to break down excessive monopoly situations. We want to reflect carefully on using these instruments. We could also imagine asking the Court for more direct, more immediate injunctions where there is a matter of urgency, but these are powers that we hope to use only as a last resort. We want to build up a more preventive and proactive approach upstream than having to deal with the problems when very often it is too late. There are areas where this is very critical. Take mergers and acquisitions, for instance. When Member States take action to thwart a merger or to make it more difficult the only way the Commission can act is by intervening very rapidly and saying very clearly that this would represent an infringement of Community law and try to dialogue with the

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authorities and bring them into line. This is the best approach possible. Of course there will be cases when we have to go to Court, in particular when we want clarification from the Court itself on important questions of law, but this is clearly not the preferred route. National judges should also become much more involved and in particular have more training in Community law so as to have the reflex to look at incidents of Community law when they have to decide on practical cases. I would also mention that increasingly I think directives will include mechanisms that will allow the Member States to apply the legislation properly and in a networked fashion. By accepting this obligation in the directive the Member States undertake a commitment to do everything possible to apply the law which they have not done in the past. Everything will be helpful but we are not seeking additional powers, we are looking for a much smarter use of existing powers, including in the Member States themselves where they have a lot of unused possibilities to make the application of Community law work much better.

**Chairman:** Thank you very much. May we move on now perhaps allocating just ten minutes each to the three last remaining questions which look at specific sectors. If we could turn to telecommunications first, then financial services and then energy.

**Q205 Baroness Eccles of Moulton:** Thank you very much, my Lord Chairman. You have given us a great deal of extremely interesting information so far, thank you very much, which has given rise to many questions. As we are now getting a bit short of time I must focus down on telecommunications. This Committee recently has looked at two directives, the one that was updating Television without Frontiers and then the quick Roaming Directive. The first question I would like to ask you is to what extent has the telecoms sector moved towards achieving a Single European Market in the sector or have we simply seen liberalisation of national markets? What evidence is there that a pan-European market would offer greater benefits to consumers? I have got two more questions after that.

**Mr Scott:** Thank you for those questions. If I look at the benefits of the Single Market first of all, what I think we can see in something like roaming is that this was a feature which was built into mobile networks from the very beginning, they were designed under a Single Market principle that the user should be able to use that telephone set anywhere in the Community. From the beginning we were able to create mobile networks that worked everywhere in Europe. The recent regulation has addressed the problem of the high price you pay when you travel abroad and in that piece of internal market

regulation we have been able to address the high prices directly and bring down those prices and we should be seeing that happening in the near future, in other words this summer. One other thing in terms of evidence of the Single Market. What we are seeing is a number of operators are investing as much in other countries as their own country, so somebody like British Telecom has large business interests in other countries of the EU and the same is true of France Telecom, Telefonica, lots of the incumbent operators are now working in other markets, competing in other markets, and they only do that because of the benefits of the Single Market. The operators certainly see the Single Market as an opportunity to widen their marketing area. For pan-European services, I have mentioned roaming as the typical telecommunication service that benefits consumers, but one of the technical developments that is taking place in telecommunications at the moment is that the networks are getting more intelligent, which means that the provision of the service is no longer linked to the underlying network. If any of you use voiceover IP, which is a system whereby you can use your computer to make telephone calls very cheaply, this is an example of services that can be operated on a pan-European basis, there are a few operators that offer these services on a pan-European basis and consumers are really benefiting from these services right now. It is simply because the Single Market allows the providers of these services to offer them throughout the EU under a standard set of terms and conditions. If we talk about television, things are slightly different there because a lot of the markets are national because of linguistic restrictions. What we are trying to do in the update of the Television without Frontiers Directive is recognise the changes that are coming about and you have more and more means to access television programmes in other Member States and that Directive seeks to allow that to happen to a greater extent, although it has to be said that there are some people, like those who work in Brussels, who maybe do a lot of watching television across borders but the linguistic barriers can cause problems for many consumers. Of course, for the English language programmes where there is a huge amount of content there are clear advantages but for other languages the advantages may not be as obvious.

**Q206 Baroness Eccles of Moulton:** Thank you very much for that answer. When it comes to there not being as much cross-border activity in television, and that could mean that there is too much emphasis perhaps on national champions, would you say that was really because of the linguistic problems? I just wanted to ask another question about the Roaming

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Regulation. Would you see that as perhaps an intervention by the Commission that would tend to be very unusual because there was some thinking when it was in the process of being developed that this could be anti-competitive because it was not allowing the market to sort itself out? I know that it had been given time to sort itself out but it did not succeed quickly enough and there was obviously quite a lot of pressure. Would you see this as perhaps an unusual need to intervene in something that should have been left to the market to sort out for itself?

*Mr Scott:* I think in general the Roaming Regulation should be seen as a little bit special. It is not usual for the Commission to get involved in setting retail prices. The roaming market is a rather strange market in that it is not under the control of a single regulator in a single country, it relies on co-operation between regulators, and it is difficult to achieve that level of co-operation without some external influence. That is why over the years the individual national regulators on their own were not able to address the problem of high roaming charges and why the Commission eventually felt it was necessary to step in and give a considerable warning to the operators.

**Q207 Baroness Eccles of Moulton:** Would you see in the future better co-operation between the national regulators, so again this sort of intervention would cease to be needed?

*Mr Scott:* What we have seen in telecoms is while the regulators can talk to each other and co-operate with each other, if they do not have the means of implementing their agreed policy, a way to make a collective decision binding on all their members, they cannot achieve the level of harmonisation, of consistency, that we would like. As long as they are relying on voluntary co-operation between each other there may always be one or two countries that want to break ranks, so there is a problem there which we have identified and we are still looking at possible solutions.

**Chairman:** Shall we move on to financial services.

**Q208 Lord St John of Bletso:** Thank you, my Lord Chairman. In your extremely useful comments you have made so far you have made it quite clear that the success of the Single Market will depend on effective partnership, on more co-operation and greater transparency amongst the Member States. In the Financial Services Action Plan there were three specific objectives: one to create a single EU wholesale market; second, to create an open and secure retail market; and, third, to create state of the art prudential rules and structures of supervision in

the financial services market. Whilst we appreciate that we have seen substantial reductions in cross-border transfers and payments, and there has been much more success in the wholesale markets, we have seen far less integration in the EU retail services market. My first question relates to why has integration in the retail markets not progressed as well as the wholesale markets, and what can and should be done to address this failure?

*Mr Stoll:* Thank you very much. The answer to that question, and the best answer, is before addressing the retail end of the market we had to make sure that the wholesale part of the financial services in Europe was up to speed, was put in order because of its importance in its own right, because of its importance as an engine for economic development and because of the very competitive nature of those markets worldwide. It was certainly a priority for the Commission to make sure that Europe could not only keep pace with developments in a very globalised market but, indeed, could develop a state of the art regulatory environment for this particular sector. This has proved to be very successful indeed, as is shown by the fact that some of our major competitors—the United States—have seen that their regulatory framework was less conducive to competitive development of financial services than the European market and are beginning to look at Europe as a possible model or standard setter for some of its approaches. The whole principles based approach to regulation as opposed to a rules based approach is gaining more and more ground worldwide and is inspiring reforms in the US market. That logic was certainly worthwhile and it has established the European Union as a leader in the area of financial services. The retail end of financial services is obviously less well advanced, although I have some examples where we are beginning to see areas where this is moving fast, certainly in the area of payments, and the introduction and adoption of the Single European Payment area as of 2008 will certainly be a positive element in that direction. We are aware that retail financial services need to be given more focus, more attention, and without giving too many secrets about the Single Market Review it is quite clear that retail financial services will feature as one of the next important areas to look at and to be given priority. We know that in the mortgage area, for instance, the markets are beginning to adjust but we are looking at this particular area as we are looking at areas that very directly affect citizens and consumers, for instance the portability of their bank accounts, the transfer of data when they move banks, things which basically make life easier when dealing with financial services at a retail level. The preoccupation behind your question also addresses

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one of the issues that it is more difficult to explain and to bring home the macroeconomic benefits of the internal market, whether in particular sectors or overall and, for instance, the development of the wholesale financial markets are less measurable for the citizens but they have created greater stability of the financial framework which is hugely important for individual consumers. They might not realise this but certainly it is a shock when you have a crisis and banks go bankrupt because they have not maintained a sufficient level of provision, et cetera. The whole stability of the financial system is clearly of benefit. We will be looking at the retail end in the context of the Single Market Review and this is going to be a priority for the next couple of areas. There are areas where it will be difficult to make more progress. For instance, in insurance the recent Solvency II proposal will improve the soundness of that particular sector, although bringing this down to the possibility for consumers to access insurance, such as car insurance, across the Union is not going to be easy but we will look at this as well. Finally, the whole aspect of regulation supervision is clearly one that is at the forefront of our minds. We need to put in place sound supervision systems, whether these entail the addition of regulators or not is very much an open question but this is clearly an area of priority identified for the next few years. We are moving from a very successful policy on the wholesale markets and we want to apply the same recipe to the retail market and looking at the supervision side.

**Q209 Lord St John of Bletso:** Thank you. If I could just ask two supplementary questions, one perhaps on regulation supervision. Commissioner McCreevy announced in July last year that the Commission would be initiating a Code of Conduct in preference to a directive. Do you think that the integration of the European Union financial services sector can be better achieved by market-led initiatives as opposed to regulatory developments?

*Mr Stoll:* Again, this is a question of case-by-case analysis. You are referring to the Code of Conduct on Clearing and Settlement and that was one of the areas that was not well advanced. It illustrates an approach that the Commission is probably going to use increasingly, which is to look first and foremost at the possibilities that the markets themselves can be encouraged or guided towards taking certain solutions themselves. If that proves too difficult or takes too long then the Commission will reserve its right to propose legislation to deal with this particular problem. In the case of roaming this was a good example. The market had been given notice that it was expected to behave in a certain way and it did not, so a directive or regulation, legislative

instrument, was deemed necessary. In the area of clearing and settlement there was a broad consensus that guidance, a code of conduct that was business-led, could deliver what was expected and, indeed, the first experience has been positive. The first instalment of the Code of Conduct was delivered on time last December and we now see more transparency, for instance in the operations of clearing and settlement. Of course, there are two more legs to be accomplished and we will have to judge whether this was the right approach and if not then think about legislation. So far we believe this is a good way to do it. We have to look in the context of better regulation for each particular sector, each particular problem, what is the best mix of action, and it could be a combination of a code of conduct, infringements sometimes, more persuasion and, ultimately, legislation.

**Q210 Lord St John of Bletso:** Just one final brief question. On small and medium-sized enterprises we have heard and seen a lot of initiatives and a lot of the advantages to the Single Market, however from the coalface a lot of SMEs are experiencing problems in trading across the European Union. What can be done to improve the communication and the incentives for SMEs to more effectively operate across the Union?

*Mr Stoll:* The whole area of SMEs' role in the Single Market would deserve a full chapter and I understand the Commission is going to issue a paper on SMEs in the autumn. The first thing that we have to do is provide a legal framework that is conducive to SMEs to take up business. They must feel confident enough to engage in operations across borders, be it in the very material sense, buying or selling goods, but also and, increasingly, in the virtual, on the Internet, on the services provision through the Internet, so the quality of the regulatory framework is one very important element. The second element which we are looking at is how we can reduce the burdens and complexities for SMEs to operate in a wide internal market. The whole simplification exercise that we are engaging in, for instance, will benefit small and medium-sized enterprises even more than it will benefit big companies. There are a number of issues that we should look at. A Community patent, for instance, would certainly be of more interest to small and medium-sized companies than it would to big companies who are used to dealing with different European patents. Basically we have to think small, as it were, when adopting legislation. We have to measure the impact that this might have on small and medium-sized enterprises and facilitate their work as much as possible. The assistance networks, the administrative co-operation when SMEs encounter

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legal difficulties, they will be more in need of assistance than big companies who can afford the cost of an excellent lawyer to take their matter forward. It is a complete focused look that we have to have on the way the Single Market works to the benefit of small and medium-sized companies. Of course, sector-by-sector there are things that we can be doing, facilitating the provision of accounts, for instance, where there have been measures to lighten the burdens on companies when providing accounts. It would be worthwhile presenting a package of measures that benefit SMEs because there is a lack of visibility still in what is done to benefit SMEs.

**Chairman:** I think Lady Eccles has one supplementary on this point.

**Q211 Baroness Eccles of Moulton:** When the Directive was in the process of being finalised on the service industry there was a big debate about preserving the Country of Origin Principle which was going to affect SMEs particularly. I believe that the final Directive meant that the Country of Origin Principle was considerably weakened. Could you briefly comment on the effect that might have had on SMEs in cross-border activities?

*Mr Stoll:* I think this is very much a question of the glass being half full or half empty. I would certainly say that provided the Member States transpose the Directive properly, put in place the mechanisms for domestic co-operation that are required, the Services Directive will be of benefit to the SMEs because it has quite considerably reduced the areas where Member States can maintain national provisions which can be an obstacles to SMEs who want to provide services across 27 Member States. It has added more transparency in the rules that might continue to apply on a national basis, so there will be an element of legal predictability that will help SMEs. As I say, the whole set-up, the administrative co-operation, the points of single contact, which are the one-stop-shops that will have to be set up in all Member States, will help SMEs do a number of operations in one go without having to address ten different ministries to get ten different administrations and papers that they need to be able to operate. It will definitely facilitate the life of SMEs. That being said, the proof of the pudding will be in the eating and that is why we are watching very closely the transposition of the Services Directive.

**Q212 Baroness Eccles of Moulton:** Will the Commission be able to put pressure on the countries that are very slow about introducing the points of single contact, because that seems to be the backstop for SMEs as they no longer have the COP?

*Mr Stoll:* This issue and a couple of others have been identified already as the more difficult ones and that is why we are tackling them upfront, upstream with the Member States. We are discussing right now with the Member States how they have to go about designing and designating these points of single contact. Increasingly they see it as a modernisation of their own national administration which will benefit not just operators from other Member States but also national operators because what is true for an SME from Germany will also be true for an SME from the UK when they address these one-stop-shops. It is modernisation of national administrations in the context of service provision which is going to take place.

**Q213 Chairman:** May we turn finally to energy and perhaps ask Mr Cabau to bring us up-to-date on the Energy Review and the approach the Commission is taking, and also the timetable for publication.

*Mr Cabau:* On the general approach, as you know the need for reform of the general approach was described in detail in the two Communications the Commission published on 10 January 2007. At the moment what is envisaged is to strengthen the current legislation based on four main pillars. One pillar is that we need stronger rules on unbundling. The current powers do not enable us to have effective unbundling across the Union, to have effective separation of the transport interests with the supply and generation of electricity or the production of gas. There is a need for more structural rules to be implemented in the form either of ownership unbundlings, a complete separation of the network asset and the operation of the network with supply interests, or of an independent system operator which would mean that the network operator would be completely independent from supply activities. That is the first pillar, to implement effective unbundling across the European Union. The second pillar would be to have strong and independent national regulators. We have seen from all the work that we have done, and last summer going to each country doing country reviews and surveys of the actual functioning of the market, in many Member States regulators do not have powers that are strong enough or are not independent from the government, which is not a requirement of the current Directive. Effectively we need to set up independent regulators that have all the powers needed for a proper functioning of the market. The third pillar is we have identified a regulatory gap at the EU level, so a number of cross-border situations cannot be addressed properly by the current legal framework. We need to have a stronger regulatory function at the EU level. What was envisaged in the Communication

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of 10 January was either to have a European regulator or to have stronger co-operation of national regulators either in the existing form or in a stronger, more institutionalised form. Our current thinking is that the middle solution would be the best. We do not need to have a European regulator that will replace national regulators; on the contrary, we still need strong national regulators and the regulatory function at EU level should be there to strengthen the national regulators, not to replace the national regulators. We cannot go with a simple light reinforcement of vague co-operation of national regulators, what we need is a body at European level where the national regulators have an obligation to co-operate together and have the power to adopt any decision that is needed to fill this regulatory gap, so take any decisions that are needed at a cross-border level to make the market work in practice. The fourth pillar arises from the concern that there is a gap at cross-border level and that is TSO co-operation. Transmission network operators need to co-operate at EU level to develop the same technical codes. At the moment technical codes that are needed for electricity transmission, gas transmission, et cetera, are not entirely consistent across the European Union which makes it difficult for suppliers to transport gas or electricity from one Member State to another. Primarily we need a transmission network operator to have a strong obligation to co-operate and to come up with common measures under the control of this European regulatory body and the European Commission. Those would be the four main elements of the package that we are working on. In addition to that we need a set of more technical rules. The main thing is transparency. We need to have a transparent network that has all the information needed for a properly functioning market that should be available to any supplier, so we need to strengthen the current rules on transparency.

These are the main elements. We have an issue on consumer rights. The market opening became a reality for domestic customers on 1 July 2007 and we need to have a set of rules to protect the consumers and DG TREN have been working with DG SANCO, for instance, to have a charter of consumer rights. That is a very important element. As to the timing, at the moment we are working on finalising an impact assessment, which is an obligation for the Commission in any legislative package, so we are working on that and that will frame the final proposal that the Commission will make and it is envisaged to have a Commission decision as soon as possible in the autumn. That is the current timing that we are working on.

**Q214 Chairman:** Thank you very much. I am just going to ask my colleagues if there are any other burning questions in their minds before I ask a final brief question. If not, the European Union Select Committee heard evidence from Mr Murphy, the European Minister, quite recently and the question was has the principle of free and unfettered competition been in any way compromised by the proceedings of the recent Council of Ministers. We were much reassured by his response but perhaps we can have a similarly reassuring response from the Commission.

*Mr Christensen:* This is one of these \$1 million questions. To be totally honest about it, I think the Commission President at the European Council aligned himself with the conclusions that we believe the principle has not been weakened but it is clear that we will have to see ultimately that the texts as they come out of the IGC are drafted in such a manner that we ensure the Commission's objective that it is not weakened.

**Chairman:** I think perhaps we can end on that positive note. Thank you very much indeed, it has been a very helpful hearing. Thank you.

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| Present | Eccles of Moulton, B<br>Freeman, L (Chairman)<br>Haskel, L | Powell of Bayswater, L<br>St John of Bletso, L<br>Whitty, L |
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**Examination of Witness**

Witness: MR DOMINIQUE FOREST, Senior Economic Adviser, BEUC, examined.

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**Chairman:** Mr Forest, thank you very much for coming again. We have met you before. I think we are ready to commence. A warm welcome to Lord Whitty.

**Lord Whitty:** Thank you. I gather you have had a fruitful morning so far, apologies for only doing half of it.

**Q215 Chairman:** Before you introduce yourself, and hopefully make an opening statement and give us some general guidance, would it be useful if we went round the table and explained roughly what our antecedents are?

*Mr Forest:* Yes, please.

**Chairman:** Might we start with Lord St John.

**Lord St John of Bletso:** I am Anthony St John, Crossbench member in the Lords for the last 29 years, not that I deserve to be there!

**Lord Powell of Bayswater:** Charles Powell, Crossbench member of the House of Lords.

**Chairman:** Roger Freeman, former Minister for Better Regulation.

**Lord Haskel:** Simon Haskel, a Labour member of the House of Lords.

**Lord Whitty:** Larry Whitty, Labour member of the House of Lords and Chair of the National Consumer Council.

**Baroness Eccles of Moulton:** Diana Eccles, Conservative member of the House of Lords. Sadly I have only done 17 years.

**Q216 Chairman:** So, Mr Forest?

*Mr Forest:* Thank you very much for having organised this meeting. I have worked for BEUC, the European consumers' organisation, for nine years. I am the Economic Adviser. Basically I am in charge of advocating consumers' views on a range of issues from competition to public activities, trade, financial services, and that includes the Single Market in a way and also the other aspects linked to the internal market, like the euro. What I would like to mention today as the opening is to underline a few priorities from the point of view of consumers. The Single Market Review is a wealth of opportunity to put consumers at the heart of the competition of the internal market. For many consumers in the UK, but also in Europe, it is very difficult to see the concrete benefits of the European internal market. As a

consumer, you tend not to buy cross-border very much. In certain sectors it is one per cent of consumers, as has been told to us, buying cross-border in the field of financial services, for instance. For many consumers it is difficult to see any benefits from the competition in the internal market and, therefore, difficult to see any concrete benefits from Europe. It is key to have a more consumer oriented focus on the review of the internal market. It is important for us that competition is improved, not only in the internal market as such but also at a national level, and that is why we see many benefits from the sectoral inquiries of the European Commission. There has been one in the energy sector and another one in the area of banking. We would like to see some concrete follow-up to these inquiries in terms of best practice, recommendations and binding provisions, if there is a need for binding provisions. Those are clearly what we see as the future priorities for the Commission to make it concrete for consumers in this area. Even if we have better markets, it is also important for consumers to be able to seek redress if they want to buy cross-border. The Equitable Life case was also important for us in terms of underlining the need for better co-ordination between national authorities in terms of supervision and in terms of redress being given to consumers. We see the need for consumer confidence to be strengthened because as long as consumers are not confident in the internal market they will not even think about buying cross-border. That is why redress is very important, as I mentioned. Also there is a need for consumers to enjoy the same level of consumer protection when they buy cross-border as when they buy at home otherwise they will not feel like going cross-border. Consumer confidence is really key. This is what we would like to see from the European Commission because there is too much talk about easy catch-words like, I am sorry to say, better regulation and competitiveness and the need to have a citizen's agenda which sometimes hides the need for efficient regulation—for us better regulation should be efficient regulation—and the need for consumers' needs to be taken on board, that is the need for consultation of stakeholders and also proper impact assessments taking into consideration the impact on consumers, that is consumer impact assessments in

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addition to the normal impact assessments. I will stop there.

**Chairman:** I am going to ask Lord Haskel and then Lord Whitty to start the questioning.

**Q217 Lord Haskel:** Thank you, my Lord Chairman. We have just come from a meeting where much of this was discussed and we certainly welcome what you have to say about strengthening consumer confidence and making the consumer feel that the Single Market does something for them, but of course the paper in the spring of 2007 that the European Council delivered was called *A Single Market for Citizens* and it sees the consumer as a citizen. Do you think that as a citizen the consumer has had benefits, for instance freedom to travel, freedom to education, freedom to shop across borders even though familiarity needs to be increased? Do you think that it is taking too narrow a view looking at the consumer purely as somebody who buys things, surely we should be looking at the consumer as a citizen as well?

**Mr Forest:** I am not working for the citizen so it is difficult for me to take a view on this which would not be biased. Of course, all these aspects are interlinked. Possibly it is much easier for the consumer to actually buy cross-border when travelling, so in a way if it is easier to travel to some extent it is easier to buy cross-border because that might be just the opportunity to benefit from the price differentials between the country you are visiting and your home Member State. At the same time, behind this idea of considering the consumers there is also a reflection of how European integration has been managed in terms of economic integration being a priority as compared to political integration. I am not taking a stance on this, but in my view that is an aspect which needs to be considered. In terms of freedom to travel, freedom to education, of course there have been benefits to the citizens but that is only somehow a small fraction of your life. The other much more important fraction of your life would be dedicated to your work, to your family life and, as such, the economic concrete benefits would be more important to you. It is a bit of an exaggeration to call freedom to travel a fringe benefit but somehow it is a fringe benefit to the Single Market which is more or less dedicated to economic integration.

**Q218 Lord Haskel:** We were told that the benefit to the consumer, if you want to put a number on it, over the last 15 years was €500. I am sure you have seen that paper as well. Where do you think the priority areas need to be to allow consumers to reap the full benefits of the Single Market in general? Where do you think the Commission should concentrate in trying to give the consumer more benefit from the Single Market?

**Mr Forest:** In my view I would say there are two priorities. One is to consider the consumer as somehow being rational, that is you would tend to think about buying cross-border only if you get a benefit from buying cross-border. You would have to consider the costs of buying cross-border even if there is a price differential that is to your benefit. In terms of physically buying cross-border that would be quite limited. The two key areas which need to be prioritised are in terms of e-commerce and trying to improve the confidence of consumers when getting on-line and buying on-line, in terms of the security of payments, the liability of consumers in case of theft, loss or misappropriation of your means of payment, and also in terms of joint liability; what happens if you do not get what you have ordered, you get it but it is damaged or you never get it. All of these aspects will need to be considered. The second key priority is in terms of improving competition in the sense of the way the national markets are functioning, in terms of dealing with market concentration, in terms of unbundling, in terms of trying to build a real Single Market from the wholesale perspective in the area of energy, banking perhaps, so that it is easier for consumers to benefit from the Single Market when staying at home, so to speak, because there is more competition from the Single Market and they can benefit from better offers and more choice.

**Q219 Lord Haskel:** Of course, the euro makes all of this much easier and more transparent. Do you think that the consumers in the non-euro countries are at a disadvantage?

**Mr Forest:** That is a difficult question to answer because the benefits of the euro are meant to be long-term, I would say. There is a very concrete benefit in terms of transparency but what can you get concretely as a consumer from transparency if you cannot buy cross-border because it is too expensive, too burdensome, you do not know anything about your rights and obligations when you buy cross-border. Transparency as such is a benefit but it needs to be accompanied by very concrete measures to make it beneficial to consumers. The euro is basically what a currency is about, trying to put some oil in the economics and making it easier for the different markets to function, but as such it is not dealing with the concrete issues of competition, or lack of competition, and the lack of transparency or the uncertainties about your rights and obligations as a consumer. As such it has some benefits but it is not a panacea.

**Q220 Lord Haskel:** It allows you to compare prices more easily.

**Mr Forest:** In a way, yes, in some sectors, but it is not because you can compare that, you can buy.

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**Chairman:** There is one supplementary from Lord Powell on this point and then Lord Whitty.

**Q221 Lord Powell of Bayswater:** What makes you think that consumers want to buy cross-border? For instance, if you take the example of the United States, if you live in Massachusetts you are unlikely to order a washing machine from Idaho. What matters surely is that if European producers of washing machines want to sell easily in each country of the European Union they can do so. It seems to me the whole issue of consumers wanting to shop cross-border, apart from in those narrow areas where they live right beside the border, is a relatively minor one.

**Mr Forest:** You are quite right about this. Whilst we do not see cross-border purchasing as a priority, what really matters is the concrete benefits to consumers and that could come from providers from other Member States settling in your country and making the home market more competitive. At the same time there can be some instances where, as a consumer, you would like to buy cross-border. For instance, the price differentials in terms of motor vehicles are still quite high across the EU so there would be some benefit for consumers in being able to buy cross-border and acquire a car in Denmark, for instance, as a UK citizen. Although there are limitations to the priority being given to cross-border purchasing there are some instances in which consumers would be better off if they were given the opportunity to buy cross-border.

**Q222 Lord Powell of Bayswater:** Maybe some intrepid British consumers do already purchase their cars in Denmark. If enough of them did so then the price of cars in Britain would come down very smartly.

**Mr Forest:** Yes.

**Q223 Lord Powell of Bayswater:** I quite agree that consumer protection is an important issue generally but cross-border purchasing seems to me to be a very minor aspect of the Single Market and should remain so in future, the important thing is to get rid of the barriers to businesses being able to establish and do business and offer their products and services in all the European Member States.

**Mr Forest:** I think you are quite right but, at the same time, there can be instances in which it is to the benefit of consumers.

**Q224 Lord Whitty:** Taking a slightly different angle on that point, it is certainly true that there must be an inertia amongst consumers to buy goods unless they are travelling or close to the border, but in the developing markets of services and financial services there is no obvious reason why only one per cent of EU citizens should shop cross-border in terms of

financial services or, indeed, any service which is pursued through the Internet, and yet very few do. Would you put this down to the same kind of inertia that Lord Powell was talking about in relation to motorcars where clearly very few would shop cross-border, or would you put it down to different regulatory patterns in each of the national markets, or would you put it down to business inertia whereby if you are ordering something, even a virtual product like a financial service, in Britain you always get referred back to the British provider if you go into the Internet and do not have access to the Germans or Spanish who may be better, or vice versa? What is the balance of the inhibition on cross-border purchases, particularly in the e-commerce field in general terms?

**Mr Forest:** There are two aspects to consider. First of all, there is an element of market segmentation, that is suppliers do not want to sell to you because you are not a national consumer. This can apply in the area of motor vehicles simply because they think you will not come back to them if you need to get your car fixed. This can also work in the area of financial services simply because they think in terms of what they call a global relationship with your banker. It is a bit like marrying your banker. They want you to come to them to get a mortgage, for instance, and stay with them to get consumer credit, insurance, a bank account, whatever, you name it. That is also an obstacle to you being offered these kinds of services. In the area of financial services there is also the very important aspect of lack of consumer confidence. This can be linked to a number of reasons, like in terms of language. I would not try to get a contract from a Greek bank because I do not speak Greek. In terms of taxes, if you get a product from a provider located in your Member State you might benefit from some kind of tax break if you meet certain conditions. All of these concrete aspects have to be considered. Also there is a key element in terms of consumer uncertainty about their rights and obligations even at national level. The level of financial literacy is very limited. By the way, I think there was a survey conducted by the FSA a couple of years ago which showed that 70 per cent of consumers did not know what a percentage was. If you start from this very basic level of financial literacy, or illiteracy, then it is very difficult for consumers to feel confident about contacting a provider which is located in another Member State which means you would fall under a brand new set of rights and obligations whilst you might not even know about the rights and obligations that apply in your Member State. That is why for many financial services consumers tend to go local, to the branch which is closest to their home, because they feel they can have some kind of personal discussion with the banker or the branch manager. That has to be considered also and that is why we would like the priority being given to consumers

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having basically the same level of protection cross-border as compared to their national level so that they can feel confident and also that redress is in place otherwise consumers will not even think about going to—I will not mention a Greek bank—a Spanish bank or a Portuguese bank simply because they do not feel confident and they cannot go back to the branch manager and ask him or her questions whenever they are not certain about meeting their obligations.

**Q225 Lord Whitty:** Yet some of those banks operate as multinational companies right across Europe, they are the same companies, but even within the same large company you will get referred back to your local bank. Before I pass on, can I ask you one other question? A part of what you say is the natural inertia of consumers, part of it is company practice and part of it is different regulatory patterns. If the Commission are looking at greater harmonisation of the regulatory protection of consumers, one of the MEPs told me last week that for every 100 business lobbying efforts he gets, he perhaps gets one from consumers. Do you think that can be rectified? Do you think it should be rectified? Do you think that is an accurate description of the way lobbying pressure is exerted within the EU legislative process?

*Mr Forest:* It is quite an accurate description, yes. Most of the time it is one against 250 or one against 300.

**Q226 Lord Whitty:** It is worse.

*Mr Forest:* It is the nature of the game, so to speak. There is bound to be an imbalance between the representation of business and consumer organisations or NGOs in general. It will be very difficult to redress the imbalance as such in terms of numbers. What needs to be done is to take into consideration the need for this imbalance to be redressed, that is for the Commission and the other institutions to keep in mind the consumer dimension and for this dimension to be reflected in the proposals for directives in terms of the impact assessments that are being conducted, but also the way the consultations are being conducted in terms of giving enough time for consumer organisations to reply to consultation and also having a level playing field. If someone is replying to a consultation there should be very good reasons indeed for this reply not to be published instead of having some kind of blanket exemption: "If you do not want your contribution to be published, it will not be published". That is to the detriment not only of transparency but your ability to reply to arguments which you might not agree with.

**Baroness Eccles of Moulton:** My Lord Chairman, I was going to pursue the question of the personal touch in financial services but you probably want to move on to other questions.

**Chairman:** No, by all means.

**Q227 Baroness Eccles of Moulton:** Certainly nowadays the chance of actually coming face-to-face with a human being when you are talking about financial services is a very rare experience, as is getting a live voice on the end of a telephone, let alone if you are operating through a computer screen where it is about as impersonal as it could be. I would have thought that the tendency would be for people to become much more used to the remote service rather than the personal service. The last time any of us probably confronted our bank manager I should think was 20 years ago. Is there not a tendency now for it not to be, as it were, direct human contact?

*Mr Forest:* Yes and no. The situation might vary from one Member State to another. There is a tendency for financial services to become more and more virtual services. I do not want to generalise too much because I am not speaking on behalf of the banking sector but I feel, and it is the feeling from the European Commission, there is a limited willingness from the banking sector to consider the need for cross-border supply of financial services to be facilitated. They have always mentioned the local factor as an element in that respect. Another explanation, apart from the need for some kind of human relationship, would be in terms of the marketing from big companies and from banks in particular. If you consider the UK banking sector, one of our member organisations, Which?, launched a campaign, "Switch with Which?", which was quite successful in terms of telling consumers "You will find a better offer for your banking services in another bank" and there were quite a few consumers switching to other banks but it was quite limited still in terms of the overall numbers. That might have to do with the marketing efforts from the big companies, especially because all the banks dominating the UK banking market are the well-established banks with a history in the market. It is very difficult for new entrants to get a share of the market simply because in terms of marketing they have to face huge expenses because there is this history and also because of the limited mobility of consumers. In terms of the opportunity costs they are still very high in terms of switching from one bank to another which means that you would need to come up with a very, very good offer indeed as a new entrant to attract consumers. That would mean on top of these very, very good offers, which need to be recouped with lots of new consumers coming to you, you would need to add all the expenses in terms of marketing which would mean the new entrants would

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have to face very high barriers to entry. This might explain also why there is this tendency for consumers to go to the local supplier, which might not be the better offer but which is easy, it is close to home and it is also the brand name they know best. That might be an explanation for this phenomenon.

**Q228 Baroness Eccles of Moulton:** Does that apply right across the EU or is it particular to the UK?

*Mr Forest:* It applies across the EU with a small disclaimer for Germany because in Germany the level of concentration is more limited, but at the same time you have lots of regional banks there which means that at the regional level it is also very, very concentrated. If you take the whole of Germany it is not so concentrated but at the regional level it is concentrated, so that amounts to the same situation.

**Q229 Lord St John of Bletso:** I am acutely aware that we are almost up in terms of our time with you today. Clearly one of the major failings of the Financial Services Action Plan has been the fact that there has been far less integration amongst the EU retail services market, and you have raised that several times today in the banking sector. I want to ask a supplementary question on banking. I see in your brief résumé that you were involved in several consultative groups relating to banking issues, one of which was the Mortgage Dialogue on the Code of Conduct on pre-contractual information in the area of Home Loans. That is perhaps one area where from the UK there is a tendency for many consumers to move across and acquire properties in other parts of Europe and they cannot necessarily get that facility from their domestic banks. It is a bigger question but I just want to know what is being done to drop the hurdles for helping integration in the retail services market?

*Mr Forest:* In terms of the mortgage market, as you mentioned, there will be a follow-up to this whole exercise of consultation, which is very welcome. What needs to be acknowledged is the fact that it is a really complex area. It is an area in which there are very different traditions from one Member State to another. Here, again, the cross-border dimension might be limited somehow. It is easier when you buy a house in Spain just to go to the Spanish bank next door, not necessarily in terms of the knowledge of your rights and obligations but in terms of having the notary involved, the evaluation of the property, all these complex issues that make it even more difficult for cross-border supply to be realistic, at least in the short-term, unless the Commission wants to have full harmonisation across the board of all the regulations related to the housing market. It might not be better regulation. I would say the key priorities in this area

should be to improve the situation at national level and to learn from best practice in other Member States. The difficulty is that some markets are quite competitive, the UK is quite competitive, and other markets are not really competitive, to put it mildly. There is a need to tailor the initiatives to the relative situations in all the specific markets. In terms of improving the situation, and this applies to the whole sector of financial sectors, there is a need for transparency and comparability. That does not mean necessarily that you need more information from the bank, that might mean there is a need for identification of the key features of the product so that you can compare between offers. There is also a need to deal with the obstacles to switching so that you are free to choose and change provider in terms of the early repayment fees, for instance, but also in terms of binding and tie-in because one of the key priorities for the Commission in the framework of the Single Market Review is the field of consumer mobility, at least that is the message they have been sending to us. One needs to deal with the issue of binding and tie-in otherwise as a consumer you are not free to choose your provider and that has an impact on the level of competition. As I mentioned, if you are tied in with a specific provider for 20, 30 or 40 years now, because you have mortgage credits of 40 years' duration on the market, it is to the detriment of competition and new entrants being able to enter the market.

**Q230 Lord St John of Bletso:** I suppose the question I ask is with the increasing requirements on KYC, which is essential in good banking practice, it is going to be difficult for consumers to move providers particularly outside of their normal domicile as it will obviously take time to get to understand and know that particular customer and, therefore, the need for greater co-operation between financial services groups will become more and more essential going forward.

*Mr Forest:* Yes. There is an element of providers being able to offer consumers their services, but the major obstacle would not really be in terms of the assessment of creditworthiness of consumers, for instance, but the ability of consumers to move providers.

**Q231 Lord Whitty:** In terms of the review of the internal market, part of that is a look at the consumer acquis. Do you think there is anything the Committee should take on board as essential for that part of the review of the Single Market to be a success for consumers?

*Mr Forest:* I would not like to deal too much with the details of the Consumer Act, but what is a priority for us is for a concrete approach to be taken in terms of

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not calling into question consumer confidence. We do not see the maximum harmonisation and mutual recognition approach as viable and leading to more consumer confidence. Full harmonisation on the basis of concepts which the Commission has developed, as in the area of consumer credit, does not seem to us to be leading to more clarity or certainty

both for providers and consumers. That might not be the right option either.

**Chairman:** Mr Forest, thank you very much. Your organisation had influence in our report on roaming charges and I think you will probably have some influence in our report on the review of the Single Market. Thank you very much indeed.

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| Present | Eccles of Moulton, B<br>Freeman, L (Chairman)<br>Haskel, L | Powell of Bayswater, L<br>St John of Bletso, L<br>Whitty, L |
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**Examination of Witness**

Witness: MR DAVID HALLDEARN, European Regulators Group for Electricity and Gas, examined.

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**Chairman:** Thank you very much indeed for coming at short notice. We are going to focus on energy regulation. I will just ask my colleagues on the Sub-Committee to briefly introduce themselves.

**Lord St John of Bletso:** Anthony St John, Crossbench member of the House of Lords.

**Lord Powell of Bayswater:** Charles Powell, Crossbench member of the House of Lords.

**Lord Haskel:** Simon Haskel, Labour member of the House of Lords.

**Lord Whitty:** Larry Whitty, Labour member of the House of Lords.

**Baroness Eccles of Moulton:** Diana Eccles, member of the House of Lords sitting on the Conservative benches.

**Q232 Chairman:** Is there anything that you would like to say by way of introduction?

*Mr Halldearn:* Very, very briefly, if I may. First of all I ought to perhaps introduce myself. I am David Halldearn from ERGEG but I work at Ofgem, the British regulator, and I sit for the UK on ERGEG and also on the Council of European Energy Regulators as the representative of the UK. The things I will be saying probably fall into three high level areas. First of all, I want to say that for energy the way events are unfolding demonstrates that we are moving from a world where relying on national policies to provide for security of supply and competition is giving way to more emphasis on pan-European approaches being needed. The second point is that we really need to have the pan-European framework of regulation so that we can meet the needs for this European energy policy that the world is pushing towards us. The third point I will be making is if we are to achieve that there is a rather large mountain to climb for the politicians and a huge amount of political will is needed to fulfil those ambitions.

**Chairman:** We are going to start with Lady Eccles.

**Q233 Baroness Eccles of Moulton:** Thank you very much. My questions very much focus on exactly what you have just been saying. The EU is going to become increasingly dependent on fossil energy supplies coming from the east, from Russia. At the moment, before unbundling becomes properly accepted, it is very difficult to control cross-border transmission

from the east, so assuming that unbundling does take place and, therefore, transmission can be treated as a separate entity, as it were, would you think that there is much chance of the national governments, both from an economic and political point of view, becoming totally EU minded and allowing their systems of transmission to be used equally by both their own country and the countries to which the supply will be passing through, for instance Germany to Portugal? Or do you think that it is not going to be possible for the national regulators to achieve this and, therefore, exceptionally this could be a case for a more centralised form of regulation? I say that with great hesitation personally, not being a believer in central regulation.

*Mr Halldearn:* Maybe I could start with the world as it is today where already, particularly in gas, we see transports of gas in sequence through national transmission networks through Poland, through Germany, through France, and normally those transports happen without incident. The work that we have been doing in Europe up to now has very much been focused on trying to ensure that we get greater visibility of how this process works so that we can ensure that looking forward the networks are up to the challenge the future brings. Of course, we have seen incidents where networks have been used to curtail supplies and that, I think, has been rather a new feature. From the regulatory perspective, regulators can play a role in ensuring that the day-to-day operations of networks are undertaken so that there is sufficient capacity, sufficient transparency and proper new investment, although I will go on to talk about the additional tools that regulators will need to ensure that happens on a pan-European basis. Of course, what regulators cannot do is ensure that the change of mind happens, the cultural shift happens, so that individual Member State governments recognise that security of supply, particularly in gas, is moving from what essentially has been historically more of a national responsibility to something that is really more a pan-European challenge. I am not sure we are quite there yet from my observation. Clearly that goes beyond the remit of regulators.

**Q234 Lord St John of Bletso:** If I could just get on to the issue of regulation. Clearly a hallmark of the success of the Single Market is going to be effective

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partnerships and more transparency between the Member States, but in our previous meeting they were talking about the importance of strong and independent regulators. Could you elaborate on the communication between the various regulators and where you think there are deficiencies in the market, particularly in terms of independent and strong regulators?

*Mr Halldearn:* We do think that independent and strong regulators are an important part of the mix, the regulatory framework, and the reason for that is pretty straightforward. First of all, when companies are operating in this area, particularly when we get to a situation where we have got properly competitive markets and proper unbundling, in order to get people to enter the market they have to have confidence that the market rules are going to be interpreted and applied fairly and if people are putting enormous amounts of money into the network and the infrastructure they have to be pretty confident that the decisions that are going to be taken now and in the future are going to be taken on a fair and independent basis where the criteria for those decisions are known upfront, the sort of regulatory certainty that we have known in the UK for quite a long time now but does not exist everywhere in Europe. That is one of the fundamental things that we are calling for. The fact that it does not exist across Europe today and what we see are regulators that in many Member States are not independent and, in fact, we have seen from time to time at our meetings that a face disappears from the table because the regulator has taken decisions which are not quite as favourable as the government might like, that is not the kind of independence we need. That is bad enough on a national basis but if we start to look at the world in the future where some of these are decisions that simply have to be taken at a European level for infrastructure which is truly of a more European cross-border nature, we have to have the confidence that the regulatory framework is going to provide the referee, if you like, who is going to take decisions in a fair and unbiased way. We think that it is pretty fundamental.

**Q235 Lord Powell of Bayswater:** Following on from that, in our discussion with the Commission they had a sort of menu of possible ways of regulating different sectors ranging from a European regulator, a single figure who might or might not be part of the Commission, down through a system of co-ordinating national regulators through to relying on national regulators. Where do you think it is going to come out on the energy side? There are always concerns about giving too much power to European institutions but, on the other hand, this does seem to be one sector, rather like the competition area, where maybe it will be necessary to have increased powers

at a European level to ram through some of the things which so plainly need to be done.

*Mr Halldearn:* Looking into the far distant future, if we have a single set of networks that is run by a single organisation across Europe with one set of market rules to cover all of Europe in our electricity and gas markets then perhaps there is quite a strong argument for having a single European regulator suitably independent, suitably powerful, to oversee the market. Today that is just not where we are. Today we have what essentially are national markets. In some areas we have markets which are more joined together, such as in Scandinavia. We have something like 38 transmission networks in electricity and many in gas and those are overseen today by national regulators essentially. The immediate future is one where we see national network companies acting in a way where there is more co-ordination and co-operation between what continue to be essentially nationally based network companies to form a European grid and, looking at the other side of the coin, a regulatory framework and regulators which are aimed more at ensuring we have better co-ordination and a capability to take joint European decisions between what continue to be essentially national regulatory bodies. I do not think that in one leap we are saying we should move to a single European regulator. There is another reason for that which I am afraid is just a fact of European life. We have looked quite hard at the Treaty and European case law and the ability to create such an all-powerful European regulator, frankly, would need a change of the Treaty. For those two reasons, the reality is that the market is not yet in a situation where one would say naturally that a single European regulator is the right answer, we see a more evolutionary approach, and we would have to go through that rather tricky thing of changing the Treaty.

**Q236 Lord St John of Bletso:** The Commission are coming forward with proposals both on the energy market and the Single Market more generally in the autumn. Do you get a sense of which way they are moving in the case of the energy market as to how they will structure and strengthen it?

*Mr Halldearn:* We get the sense that they may move towards a regulatory agency which is probably going to be constituted of national regulators. We would like to see this regulatory agency being given proper authority to be able to take decisions, as far as we can within the framework of what is possible within European law, so that we have the independent, predictable decision-making that we think is necessary. I want to stress that the sort of model we are putting forward is one that we would call the minimalist model. It is one which still relies on national regulators doing things that national regulators should do, perhaps looking slightly more

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broadly than just at national issues and looking across the border to see how their market interacts with the one next door, but there are some decisions which need to be taken at a European level and that will be done through the regulatory agency.

**Q237 Lord St John of Bletso:** Will the Commission be part of this regulatory agency? Will it chair it or share in it?

*Mr Halldearn:* I think you are starting to touch on the issue of the interaction between the regulators and the other European institutions. We would like to see a position where proper regulatory decisions are taken by the regulatory body and we know that starts to push up in some areas against the boundaries of what is possible and we are fully alert to that. If it means changing the acquis, changing the framework, then clearly the Commission have to have a role in that. Do we think the Commission should be directly involved in the work of this European regulatory agency in the day-to-day business of regulation? I think the answer to that is we prefer not. The reason for that is the way the Commission is constituted means that the people who would be responsible within DG Transport and Energy have a very wide range of objectives to achieve, which change of course with different political demands, and inevitably when they take decisions which are essentially regulatory in nature they would need to bring in these different policies, which in our view does not then lead to the predictable decision-taking in regulation that we think is necessary to give the right framework for a competitive and secure market in Europe.

**Q238 Baroness Eccles of Moulton:** Just a quick supplementary. You talk about the minimalist approach and allowing it to evolve, which is absolutely right and very much to be applauded, but it could be that for two reasons we are facing a galloping situation here which could introduce a sense of urgency. The two are the security of supply that we were talking about earlier and all the political implications in that and how a certain state might be using energy as a bit of hostage for Europe and the other, of course, is climate change where there is a very wide range of views on how threatening this is. If some of the scenarios that are presented to us turn out to be accurate then that surely is another reason why perhaps we cannot do what we would really like to do, which is move quite slowly.

*Mr Halldearn:* I am struggling to answer the question without getting a bit technical, and I do not want to do that really. One of the things that we see as being fundamental to having a successful European market is included within the envelope of what I have called minimalist, which is looking at our networks very hard and the way investment happens and ensuring

that we have a sound framework for that to happen but at a European level. At the moment it is very much a national approach that we have. If we are to achieve that European approach to investment then we would need to have a regulatory body which could take decisions which would ultimately lead to the capital markets being confident about investing in networks and infrastructure. The one thing that the regulatory framework and regulators can bring in response to the issues that you have raised is to ensure that we are able to invest in the infrastructure which can give us access to diverse sources of gas and give the network companies the right incentives so that they can respond flexibly and quickly to the changing demands of developments in renewables, to the climate change targets, to the fact that LNG terminals, liquid gas terminals, can turn up at any point on the coast, not necessarily exactly where the network has been built. We see the thing that regulators can really bring to this debate is to be able to ensure that the networks have access to the funding and the background regulatory framework which means that they can respond to the demands for meeting climate change and also security of supply concerns.

*Chairman:* Lord Haskel.

**Q239 Lord Haskel:** Lady Eccles reflected my thoughts. What we are doing is we are looking at the thinking behind the Single Market and, of course, regulators play a very important role in all of this. You have explained to us about the security, the regulation and competition and the role that regulators play in that, but I wonder whether you could just say a bit more about the role of regulators in reducing the carbon footprint? Do you think regulators have a role in carbon trading and the European-wide work which is going on in that? You have told us about the role regulators have in making sure that there is encouragement to invest in alternative sources of energy, could you enlarge on that?

*Mr Halldearn:* You are asking me to tread a little bit further than I have to say the thinking in ERGEG has gone so far, I have to be completely honest about that. Many ERGEG members do not have explicit responsibilities for sustainability so the debate on what role regulators should play in the climate change challenge, and particularly the carbon market, is something which is an ongoing debate within ERGEG. I can give you some views but I could not ascribe them at this stage to ERGEG's views. What I can say is that the core role of regulators across Europe at the moment is in this issue of network regulation and the promotion of competition. It is of growing concern to ERGEG members in a number of areas and the way market instruments are used, sometimes to good effect and

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sometimes perhaps to not such good effect, in order to meet climate change challenges is something regulators should have views on. At the moment those views are focused on the extent to which these instruments are first of all the most cost-effective means of meeting the targets which are put forward and, secondly, what adverse impacts inadvertently might these market instruments have on the wider energy market and, therefore, on customers. I think regulators are becoming more active in that debate. What is still an open question is whether institutionally energy regulators, which mainly are dealing with ex-ante regulation of energy, principally energy networks, should have their remit enlarged so that they can also look at trading in carbon and, indeed, other forms of derivatives which are based on or around energy. I am afraid I cannot give you more enlightenment on that at the moment.

**Q240 Lord Haskel:** You do not think that the powers of the Commission need to be increased so that they could be more effective in this area?

*Mr Halldearn:* I have a view that as far as anti-competitive practices are concerned we are quite happy that DG Competition has a role to play. As far as the regulation of the carbon market is concerned and, going on from that, the regulation of renewables derivatives, I find it much more problematic. For the same reasons I argue that I have some concerns about the Commission acting as the regulator directly, I think those concerns apply equally in the area of sustainability derivatives.

**Q241 Lord Powell of Bayswater:** Just asking you for a moment to take off your ERGEG hat and to put on your Ofgem hat, do you think British energy companies are seriously disadvantaged in Europe by the present market and regulatory situation? Do you think British consumers are at all disadvantaged vis-à-vis consumers of other European countries, or do you think we are quite nicely placed and should be reasonably content with our lot?

*Mr Halldearn:* I think if you look at our position as an island, if you were to cut away from the rest of Europe I think you could say that the market in Great Britain is working quite effectively at the moment, but if you look a little bit more widely then you see that Britain is quite dependent on imports of gas and, therefore, we are tied partly by pipelines to the sources of the gas which are the other side of Continental Europe. Of course, potentially British consumers are quite badly disadvantaged by events in Europe and, therefore, it is quite important to get the framework in Europe right. As far as the companies are concerned, no doubt you will be asking this question yourself, from my observation companies corporately and the message I get they would like to see more liberal markets in Europe. They are companies that are used to

operating in a liberal environment. Those few that remain in independent ownership would very much like to get access to Continental European markets. I think the answer is that there are clear advantages for British consumers, and British companies as well, in having more liberal European markets.

**Lord Powell of Bayswater:** At the moment we are probably relatively well-placed vis-à-vis others. I absolutely accept your main point, which I agree with.

**Q242 Lord Whitty:** Following on from that, we have moved away from state-owned national providers, although not entirely from that, but certainly not from national champions. Insofar as we have moved, we have moved into relatively few large companies dominating the energy supply market. Whereas you may say that the British competition system works for the consumer in terms of ability to switch and relatively low prices, until recently, actually the market structure is not that competitive, there are relatively few companies across Europe which provide energy. If the regulators are not able or the politics are not right for a European-wide regulatory policy to drive this, do you foresee more mergers in order to get into the markets or do you see possible investment from outside Europe to dominate the energy markets from energy rich countries? If so, do you think that the energy regulators and the competition side are strong enough at the moment?

*Mr Halldearn:* DG Competition, of course, undertook a sectoral inquiry into energy, the results of which were pretty stark in terms of the degree of market concentration, the difficulty of companies being able to get into the market, getting access to gas and areas where the market is essentially foreclosed. Whilst it is impossible to comment on any individual merger case in advance, I think that we would be very concerned if there were further mergers which meant that the market became more concentrated. That is a general concern that we have. We are very supportive of the efforts of DG Competition at the moment to try to address some of those concerns, particularly in the area of contracts. On the question of whether there needs to be more empowerment of regulators, I think that DG Competition does a very good job and I am very pleased that they are now starting to look at energy which is something that is a relatively new thing for them. If I could come back to my home turf, if you like, of ex-ante regulatory authorities, if one looks at the UK where we have a strong independent regulator, our regulator—Ofgem—has managed to act as what you might call a catalyst for promoting competition in our market. Do other regulators have the power to be able to play that role within their own markets or, indeed, perhaps slightly more widely within a European context? Today the answer to that question is pretty much no, they do not have sufficient powers for independence. It would be possible to draw

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up a list of the ways in which regulators are short of the powers they need to be able to do that but in many cases they are either dependent on their ministry to endorse the decisions they take or in other areas in the first place they do not have the powers at all to address some of these concerns.

**Q243 Lord St John of Bletso:** Lord Whitty asked the question I was going to ask.

*Mr Halldearn:* I see. It is moving down the table!

**Q244 Lord St John of Bletso:** It is inevitable that we will see more mergers in the European energy sector. As he has asked that question I will ask another question, which is what role does the European Court of Justice play and is it changing?

*Mr Halldearn:* Of course, the European Court of Justice has played a role and I guess it will play a role in relation to the infringement proceedings for non-implementation of the second package of legislation. It is an interesting question because I rather thought of the European Court of Justice as being a rather, if I may say, ponderous mechanism in order to get decisions. If we were to rely on the more regulatory decisions to be appealed to the European Court of Justice then I think we would end up with a regulatory framework which would be sclerotic. It is not the kind of certainty that one would like to see within an effective regulatory framework and it seems to me, and to ERGEG more widely, if we are to have an effective framework for Europe then having clean decision-making with a quick and effective appeals process with ultimately and inevitably a backstop of the European Court of Justice, which I do not think one can avoid, that would be a better mechanism than relying on the European Court in the first instance.

**Q245 Lord Powell of Bayswater:** This is probably outside the ambit of our inquiry but, out of interest, what do you think would be the view of European energy regulators if major companies outside the European Union waded in to buy energy suppliers within the European Union? I was thinking of Gazprom and others.

*Mr Halldearn:* How can I put this? I think that there would be a serious concern among energy regulators if there were a significant move from upstream players into downstream, a significant concern. That is probably understating it actually. They would be very worried.

**Q246 Lord Powell of Bayswater:** They would be a flurry in the chicken coop?

*Mr Halldearn:* Yes, I think so.

**Q247 Baroness Eccles of Moulton:** When you were talking earlier about how dependent or otherwise we were on the success of the market in Europe, I thought we were going to be pretty independent in the liquid natural gas plants that we were building and we were going to be importing the gas from somewhere like Algeria, which is way away from being dependent on what is coming through Europe from Russia and in that way we were going to be less dependent on supplies coming through Europe than might otherwise have been the case. Is that correct?

*Mr Halldearn:* I think the UK is very well-placed in relation to having terminals which would give Britain access to the liquid natural gas market, which is more a global market. However, the underlying point I was trying to make was that for Europe more widely having access to diverse sources of gas is going to be important and that argument applies to Britain as well. If we have access to piped gas and access to LNG then that must be better for Britain than just having access to LNG and relying on that totally. Although I think that Britain is quite well-placed now in terms of diversity, if we can improve access through our piped gas supplies then that will be better still. For many continental countries they are still very, very heavily dependent on gas coming through the eastern pipes and, therefore, it is to be welcomed that there is a new gas pipe coming from the Caspian and there are proposals for gas coming from Morocco and there is a lot of investment in LNG terminals. Because these events are happening so quickly and the investments are happening now, the whole debate on how one gives certainty to these investors about how secure their investment is, is a really important debate to have now. I am hoping when the Commission present their package of legislation it will have a very clear picture about how the regulatory framework is going to provide that regulatory predictability and certainty that we think is absolutely fundamental.

**Q248 Baroness Eccles of Moulton:** A word that has not been raised at all which has got a lot to do with private sector confidence in investment is nuclear, of course. That is a subject we have not touched on at all and that has to be quite key, does it not?

*Mr Halldearn:* Yes. I find nuclear is such a difficult debate to have around European tables. From the perspective of the regulatory framework, we would be unhappy if there were a framework which discriminated against nuclear or did not provide the same amount of certainty and predictability that investors in nuclear developments need. Of course, for national countries and within the ambit of their own national energy policy they are free to choose how they want to develop their generating capacity.

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We would like to see a framework which would not discriminate.

**Q249 Chairman:** Mr Haldearn, thank you very much indeed. You have answered our questions with great clarity. We will send you the transcript for

correction, although I am sure it will not be needed because you spoke so clearly. Thank you very much indeed. Could you give our regards to Sir John and thank him for his earlier evidence.

*Mr Haldearn:* I will do that, thank you very much indeed.

**Chairman:** Thank you.

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| Present | Eccles of Moulton, B<br>Freeman, L (Chairman)<br>Haskel, L | Powell of Bayswater, L<br>St John of Bletso, L<br>Whitty, L |
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**Examination of Witness**

Witness: Ms FERNANDA FERREIRA DIAS, Single Market, Portuguese Presidency, examined.

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**Chairman:** Why do we not introduce ourselves, starting with Lady Eccles.

**Baroness Eccles of Moulton:** Diana Eccles, member of the House of Lords. I sit on the Conservative benches.

**Lord Powell of Bayswater:** Charles Powell, member of the House of Lords, independent.

**Chairman:** I am Roger Freeman. I sit on the Conservative benches and I am a former minister.

**Lord St John of Bletso:** Anthony St John, also a Crossbench independent member of the House of Lords.

**Lord Haskel:** Simon Haskel, Labour member of the House of Lords.

**Chairman:** My research assistant right at the end is only present for the formal session after which he and our diligent shorthand writer will depart for some intellectual rest.

**Lord Whitty:** Larry Whitty, Labour member of the House of Lords.

**Q250 Chairman:** Thank you very much for joining us. Would you like to introduce your good self?

*Ms Dias:* Yes. My name is Fernanda Dias. I work for the Permanent Representation of Portugal to the EU. I have been working in the Permanent Representation for three years. I deal with competitiveness issues, internal market horizontal issues, that is things related to the Lisbon Strategy horizontally, the Single Market Review, the Services Directive and the package of the free movement of goods. I also deal with consumer protection and tourism policy. Competitiveness, consumer protection and tourism are within my portfolio. I brought a tourist film from Portugal with very beautiful scenes of Portugal. It is a four minute film, so it is quite short, but it is very nice. I would like to give it to you.

**Q251 Chairman:** We will screen it at our next meeting. Thank you very much.

*Ms Dias:* At the beginning!

**Q252 Chairman:** It might help you if I could just give a minute or two on the background and why we are here. Perhaps you would like to give us some initial guidance and then we will ask our questions. We are a Sub-Committee of our main Committee and we deal

with the internal market. We have been engaged for a number of months taking evidence from a variety of sources. We have come for our first visit to Brussels and we will be coming back in November after the Commission produces its review to talk to Commissioners. We are focusing on what needs to be done in terms of further development of the internal market, both from implementation, the policing of the internal market, the emphasis upon trying to improve its accessibility, particularly to small and medium-sized enterprises, and the impact on consumers and citizens. We have three particular foci: one is telecommunications, the other is energy and financial services is the last one. We would appreciate any initial comments you might have as to how the Presidency is approaching the timetable for action up until 31 December. We hope to complete our work by Christmas so that we might be able to publish perhaps in the New Year, January or February. Do any of my colleagues have anything else to add to that? No.

*Ms Dias:* My portfolio does not cover those three areas that you have mentioned. I discussed this with Mr Fassoulas by e-mail. In the Perm Rep there are 150 colleagues, so as you can imagine the internal market is everything, it is the core of the European Union. I focus on the horizontal part of the internal market and I would advise you to contact my colleagues on those detailed questions. I would not dare to intervene in such sensitive issues like energy and telecoms.

**Q253 Chairman:** We are much more interested in hearing from you about the general issues.

*Ms Dias:* Okay. As regards the internal market, as you are well aware there is a Single Market Review that has been taking place since 2006. In the context of that Single Market Review the European Union will evaluate what to do in the 21st century for the internal market that we have, and that is a challenge for us all. It has taken two years to think it over. All stakeholders are involved in this discussion and different meetings have taken place. The Commission should present their final report at the end of October or the beginning of November. This is the latest news from them. As regards the content of this paper, it will be a very political one and it will be accompanied by some legislative and non-legislative proposals. It is

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a kind of action plan, although the Commission does not like to call it that. As far as the Presidency is concerned, the Portuguese Presidency will first organise a workshop on the Single Market Review and this workshop will take place in Brussels on 20 September. It is a workshop that has been organised with the Commission, with DG ECFIN. There were previous workshops with other DGs because this is so wide it involves everyone. This one is being organised with DG ECFIN and it will have the participation of Professor Rodrigues. Professor Rodrigues is the so-called “mother of the Lisbon Strategy”. It was her who created and wrote the text of the Lisbon Strategy in 2000. She will chair one of the panels in this workshop. She will give a very good input. She is presently working for the Prime Minister of Portugal and is the co-ordinator of the Portuguese Presidency in his Cabinet. After the report of the Commission is presented the issue will be submitted to the Council of Ministers which will take place here in Brussels on 22 November, and it is the Competitiveness Council. It will be chaired by our minister of the economy. I cannot tell you at this stage how the issue is going to be submitted to the Competitiveness Council because we are dependent on the Commission's paper. If the Commission presents it in mid-November, because they were telling us end of October and now they are saying the beginning of November, we cannot do much in the lower structures. It will be for a policy debate and exchange of views and we will have some debate in the Competitiveness Council on this issue.

**Q254 Chairman:** We heard this morning in the margins of taking evidence one of the officials saying mid-November.

*Ms Dias:* There are different versions.

**Q255 Chairman:** That rather alarmed me.

*Ms Dias:* I know.

**Q256 Chairman:** Following the Competitiveness Council, presumably if there is major legislation proposed it would have to go to the following Spring Council?

*Ms Dias:* The intention of the Portuguese Presidency is to include a reference to the Single Market Review in the conclusion of the December European Council.

**Q257 Chairman:** As quickly as that? Good.

*Ms Dias:* Not all the proposals will be ready by then because this is a political document that will be accompanied by proposals, it does not necessarily mean that the proposals are going to be ready at the same time the report comes out so it will be scheduled for the Spring Council as well.

**Q258 Lord Powell of Bayswater:** I imagine the prime preoccupation of the Portuguese Presidency will be the amended Treaty and, therefore, all the political energy of the Council, and above all the December Council, will be focused on that. I know you hope to do it before December but I would guess that realistically December will be the earliest target. Are you going to have much time to get into the substance of the Commission's proposals during your Presidency or is this essentially going to be postponed to the Slovenian and French Presidencies to bring through?

*Ms Dias:* The proposals on the content of the Internal Market Review?

**Q259 Lord Powell of Bayswater:** Yes.

*Ms Dias:* Even if the proposals come with the report it will be a bit too late because we will be at the end of November by then.

**Q260 Lord Powell of Bayswater:** Even the political report from the Commission, the main report, to get serious consideration of that in the two weeks, let us say, between the end of November and the beginning of December looks a bit ambitious.

*Ms Dias:* It will be in the December European Council, that is for sure. Professor Rodrigues' idea, who is the person I told you is co-ordinating for the Presidency, is to put it in the December European Council Conclusions. As regards the negotiation of the Treaty, there is an informal Council meeting mid-October and the goal is that point.

**Lord Powell of Bayswater:** I recognise the goal is that.

**Q261 Chairman:** Could you tell us a bit more about the workshops? Who will be invited to participate and will there be any minutes taken or document produced?

*Ms Dias:* Yes, of course. This workshop will have three sessions and one round table at the end. The majority of speakers will be academics, so economists mainly. They will come from different European Member States. They will present works that they have been doing in their universities and the themes essentially deal with the European Monetary Union, the Single Market in a globalised context, so the external dimension, and the problems of governance in the internal market. It will have a wide participation so participants will cover all areas of interest. The institutions are going to be invited, members of the Economic Policy Committee—EPC—are going to be present of course, Permanent Representations will be there, businessmen and other people. I think they envisage including some participants from the consumer side.

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**Q262 Chairman:** The purpose of my question is that we will be in recess, the UK Parliament returns on 8 October, and then we will start our hearings and deliberations again. It would be helpful to receive at least a summary of some of the discussions and presentations. Would you recommend that we go through UKREP, the UK Representation?

*Ms Dias:* Yes, of course.

**Q263 Chairman:** I think that would be very helpful.

*Ms Dias:* We will forward all the papers. Mrs Clelia Uhart from the UK Permanent Representation will probably participate in the workshop as well.

**Chairman:** Thank you.

**Q264 Lord Whitty:** You talked about the horizontal issues, but from the point of view of the Presidency do you have a view which may or may not be the same as the Commission as to what the most important horizontal things to tackle are in this strategic review of the internal market?

*Ms Dias:* I prepared some notes. We do perceive that there are common points. There was a public consultation that began the whole process of the Single Market Review and in that public consultation it was clear what sectors should be tackled and what were the most urgent sectors. Those were the services sector, specifically retail financial services, insurance, transport, energy, taxation and free movement of workers as well as intellectual property rights. Those are the sectors where more needs to be done in the internal market for the 21<sup>st</sup> century. The challenge now is not to complete the internal market because the internal market will never be completed, it is an ongoing process. The opening of this market and the opportunities that it will allow for Europeans, both firms and citizens, is the real challenge for the 21<sup>st</sup> century. In the context of these sectors I have just mentioned, the Commission will present proposals for these sectors in detail, so communications, other initiatives, legislative and non-legislative, will be presented in almost all of these areas.

**Q265 Lord Whitty:** When you talk about "sectors", some of those are sectors in the sense of industrial provider sectors and some of them, like the free movement of labour and intellectual property, can cross several sectors. I thought by horizontal issues you meant more the issues which cover several sectors. If you take intellectual property, what priorities would you have within that area? Intellectual property covers a whole range of different things from music or whatever through to a whole range of innovation and so forth. Within that intellectual property portfolio have you some particular areas of interest?

*Ms Dias:* Yes. As the Portuguese Presidency we have a colleague dealing with intellectual property rights, so he could tell you in more detail what are foreseen to be the main issues to be tackled. When I said horizontally the internal market will have to be adapted to this reality of the 21<sup>st</sup> century, I told you the sectors in which work needs to be done and, you are right, I should have finished by saying the horizontal part of the internal market which is underneath all this is that we should keep better articulating internal market policies with other sectoral ones, like the ones I referred to, and we should improve the mechanisms of assistance and co-operation between Member States because they have proven to be a very good impetus for the internal market, mechanisms like the SOLVIT network for example. I do not know if you are acquainted with that.

**Q266 Lord Whitty:** We have seen the big sign on the side of the Berlaymont.

*Ms Dias:* Exactly, celebrating five years. The SOLVIT network has been a success. It solves problems of businesses and citizens in an informal way. These kinds of proceedings should be developed. Of course, better regulation principles, which are so dear to the UK, should be underneath all the initiatives that the European Union does and also at Member State level. For all of this we have an action plan, which is the Lisbon Strategy. We have had it since 2000. The Lisbon Strategy should be the horizontal plan covering everything that the Union has for its economic development, also covering social and environmental aspects. That is the whole picture.

**Q267 Lord Whitty:** That is pretty broad.

*Ms Dias:* Exactly. It is broad but then you go into the detail. The Lisbon Strategy sets the framework but it goes into detail.

**Q268 Lord Haskel:** Of course the difference that the Presidency can make is the determination with which you can drive a project forward. I was trying to assess from what you were saying how determined the Presidency is to drive this forward. Do you think that what we need is more of the same to achieve the Lisbon agenda, to drive the Lisbon agenda forward, or does the Presidency think that it needs a whole new vision and that we have come to an end of what the Single Market was originally and now we need to perceive it in a different way?

*Ms Dias:* I am glad you mentioned one word there, which was "vision". We are working on more of a vision paper. We need a vision paper, we do not need a mere communication, and that is the expression the Portuguese Presidency, my authorities use when they talk to the Commission. As you may be aware, in

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2008 a new cycle is going to be launched within the context of the Lisbon Strategy and it will cover the period between 2008 and 2010. We are also working in parallel with the Commission on the launching of this new cycle and with Slovenia which will have the Presidency in March 2008. The three of us are working together. This shows how involved Portugal is in this context because the Lisbon Strategy, as I told you, is the global context and the Single Market Review is a piece of it, although there are other parts. It is included in the launching of this new cycle. I can guarantee that our Prime Minister is very concerned with this. We are working very closely not to dramatically change it because the Lisbon Strategy has proved to be the right action plan, but what it needs is some adjustment. It was drawn up in 2000, reviewed in 2005, so midway between 2000 and 2010, and it was decided in 2005 to make a cycle of three years which will end in 2008 to take stock of what has been done and if it needs adjustment or not. It will not change in essence because Member States realise that this is the action plan we need. We are on the right track. You put this into practice but you do not expect the following year to have all of the results. 2007 is the first year since 2000 when all of the instruments will be working for the first time, so it is really the first year when we can see some results. From now on we hope to improve it, of course.

**Q269 Lord Haskel:** So what is the point of a vision paper if you feel that we will achieve it through more of the same, so to speak?

*Ms Dias:* It is not more of the same because, as I told you, it needs some adjustment. It was drawn up in 2000, we are in 2007 and all Member States realise that it needs adjustment mainly in two areas. The external dimension has to be different, the Lisbon Strategy did not take that into account much in 2000, and also the macroeconomic policies have to be drawn and adjusted for the functioning of the whole plan. These two areas will have to be better involved, let us say. These are the adjustments that we are proposing in this vision paper for the new cycle.

**Q270 Baroness Eccles of Moulton:** I want to come on to undistorted competition. The word "undistorted" was taken away as an adjunct to competition at the eleventh and a half hour just as the Treaty was being

agreed. I wonder to what extent the Presidency is concerned about that or whether they see the replacement of it in the protocol is going to give sufficient legal backing to the Single Market being able to exist within an atmosphere of undistorted competition.

*Ms Dias:* That was something that came up at the last minute at the request of one Member State. When our Prime Minister addressed the press the following day he was quite clear that from the European Council in June he has a very clear mandate and Member States made clear their intentions for a new Treaty, so that cannot be changed. As regards this detail you are speaking about, how can it influence this? The internal market is the core of the European Union and it will stay like that, it is not because there is one word missing that that makes a difference. For Portugal, for example, the internal market means a lot. We are good defenders of harmonisation. We defend harmonisation because we feel the way forward has to continue to be like that. You cannot pass harmonisation totally to other kinds of regulation in this regard. You can build on the internal market in non-legislative ways but you cannot forget about harmonising. This will continue to play a very important role and I do not think this detail will make a difference to the internal market in the context of the new Treaty.

**Q271 Baroness Eccles of Moulton:** You do not think it gives greater opportunities for protectionism where a government might want to be protective towards certain markets?

*Ms Dias:* Not really. We have built a lot already and achieved a lot. This year we celebrated 50 years of the Treaty of Rome, as you are aware, so we had very big celebrations during the German Presidency. Do you imagine that Minister Schuman 50 years ago would have imagined that 50 years afterwards there would have been a single currency for most of the Member States or such dense policies and people travelling, living and working in other places in Europe? I do not think so because this was achieved step-by-step. I do not think that this detail will destroy what we have achieved in 50 years.

**Baroness Eccles of Moulton:** Good. Thank you.

**Chairman:** Thank you very much, that concludes the formal session.

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MONDAY 23 JULY 2007

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| Present | Eccles of Moulton, B<br>Freeman, L (Chairman)<br>Haskel, L | Powell of Bayswater, L<br>St John of Bletso, L<br>Whitty, L |
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**Examination of Witness**

*Witnesses:* MR CARLOS ALMARAZ, Senior Adviser in Internal Market and Legal Affairs, and MR VINCENT MCGOVERN, Adviser in Internal Market and Industrial Affairs, BusinessEurope, examined.

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**Chairman:** A very good afternoon to you. Thank you very much for coming. We will introduce ourselves to begin with and then explain very briefly the timetable of our inquiry. Then perhaps you would introduce yourselves and make any general comments and we will open up to questions. If I can ask my colleagues to introduce themselves, starting with Lord St John.

**Lord St John of Bletso:** Anthony St John, Crossbench member of the House of Lords.

**Lord Powell of Bayswater:** Charles Powell, Crossbench member of the House of Lords.

**Baroness Eccles of Moulton:** Diana Eccles, Conservative member of the House of Lords.

**Chairman:** Roger Freeman, the Chairman.

**Lord Haskel:** Simon Haskel, Labour member of the House of Lords.

**Lord Whitty:** Larry Whitty, Labour member of the House of Lords.

**Chairman:** We commenced our inquiry into the future of the Single Market timed to coincide with publishing our report after the Commission has produced its review and, therefore, this is our first visit to Brussels on this inquiry. We plan to come back in November after the Commission produces its report and hopefully in time for serious consideration by not only the European Parliament but by ministers. Today we have talked to Commission representatives who have brought us up-to-date as to where they are. You might be interested to know that estimates of publication range from late October to mid-November, a pretty wide range. I think the Competitiveness Council is slated for 22 November or thereabouts, and then you have the December Council Meeting and then the Spring Council. That is the sort of timeframe. We are working on a review of the market as a whole, where it has got to, where it has got to over the last decades and where it should be going. We appreciate that it does not have finite limits to it, it is constantly changing as economies change and as society's expectations change. We have been looking at implementation, effectiveness and scope in three particular areas as exemplars. One is energy, the other is telecommunications, that is fixed telecommunications in reality, and the last one is financial services, and that principally means retail rather than wholesale. You will appreciate, although I am sure you are well aware of the scope of our inquiry,

we have very general questions that might then lead into something more specific, but if it is outside your field of interest or competence do please say. I am going to ask my colleague, Lord Haskel, to comment in terms of consumers, or whatever you wish to ask.

**Lord Haskel:** The purpose of our work is to see whether the concept of the Single Market has reached a point where we need a new vision, whether it has reached a point where we take for granted the fact that we have a Single Market and the benefits that brings, and to achieve further implementation of the Single Market philosophy we need a whole new vision. We wondered what you felt had been the benefits from BusinessEurope's point of view emanating from the Single Market and what you thought was necessary now to move on and move on further.

**Q272 Chairman:** Perhaps you could say a bit about your organisation and yourselves and then run on to answer the question.

*Mr Almaraz:* Okay. Thank you very much for inviting us today, we are very pleased to be here to speak about the internal market which for European companies is one of the main elements of the European project. My name is Carlos Almaraz and I am from Spain. I am a lawyer in training, I have been working in BusinessEurope for seven years from the beginning on internal market issues, first on consumer policy and now I am working on general issues in the internal market co-ordinating the work that we do and trying to put together general messages on the internal market that are coherent and horizontally relevant. BusinessEurope is the Confederation of European Business. We represent 39 national members covering 33 countries on the European Continent. We have all the members of the European Union who are full members of our organisation but we also have members from other countries which are not yet EU members, some of them are candidates and others are just on the European Continent. Our main mission is to make sure that we have a business friendly Europe so that we can contribute to growth and jobs in Europe and make European wellbeing a sustainable asset in the European Union. One of the main tasks that we perform at European level is social dialogue. We are considered as social partners by the European Treaty, so we negotiate and discuss social issues with ETUC,

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who I understand you will meet later, and in the rest we cover a very full range of issues: international affairs, WTO, all internal market issues, environmental issues, industrial issues and economic issues. It is quite a big range of issues that we follow.

**Q273 Lord Powell of Bayswater:** Just out of interest, how do you relate to UNICE and to the European Union Chambers of Commerce?

*Mr Almaraz:* UNICE was our former name.

**Q274 Lord Powell of Bayswater:** You just changed the name?

*Mr Almaraz:* We changed it in January and for us it is so assimilated we tend to forget. We changed in January. We had been called UNICE for almost 50 years and it was an important decision to become BusinessEurope, something more telling as a name.

**Q275 Lord Powell of Bayswater:** Much better.

*Mr Almaraz:* One of our policies is to maintain a good relationship with the main stakeholders in Europe. We have very regular dialogue with other European organisations representing retailers, like Eurocommerce or the Chambers of Commerce. Our bosses are in constant dialogue. We also have regular contact at the level of policy advisers, either we invite them to our meetings or they invite us to their meetings. We have contacts to see where we have common points, et cetera. Very important for us also is to maintain very good co-ordination with sectoral organisations because normally we only follow horizontal issues but sometimes horizontal issues can be very sectoral, like REACH and other issues that affect a concrete sector of the industry. We seek to have a very good relationship with those European federations that cover specific sectors, be it pharmaceutical, the chemical industry or direct marketing, you name it, it depends on the issue. We put a lot of emphasis on complementing our work. We want to avoid duplication of work, so whenever we see that we try to look for the added value that we can offer as BusinessEurope. That would be my short introduction about BusinessEurope, I do not know whether you want to add anything?

*Mr McGovern:* Just briefly. My name is Vincent McGovern. I have been working at BusinessEurope for four years. Primarily I work on issues relating to the free movement of goods, public procurement, research and innovation and transport, just to give you an idea of the areas I am primarily able to speak on. Carlos works on some others. In case you were not aware of what he said about BusinessEurope, the CBI would be our British member federation, just so that you know where we are coming from.

*Mr Almaraz:* We would be the European CBI. Going back to your question on how we see the internal market, as I said the internal market for us is one of the

main achievements and assets of the European project. It is where European companies live, they operate, and it is at the heart of their systems. We are great supporters of the internal market and that was why we decided quite recently within BusinessEurope to create a new policy committee. Until recently we had six policy committees—industrial affairs, legal affairs, economic affairs, for example—but we thought there was a need and a momentum to rethink a new vision for an internal market so as a sign of stronger commitment from our organisation to the internal market we created a specific policy committee and we have eight working groups belonging to the committee, some of them Vincent just named, to be more coherent, to become more vocal in defending and explaining what the internal market means. This has been running for three years now and it comprises the free movement of goods, free movement of services, financial services, telecommunications, transport and better regulation as well. It is quite a comprehensive policy committee. For us the internal market is a priority, it was and is and will be a priority. As you said, it is an ongoing project. We do not believe we need a new vision, we believe we need important adjustments to the policy and the approach to the internal market that we have, especially at national level. We have divided our message and our policy vis-à-vis the internal market into four strands. The first one would concern the gaps that we still have, so we believe there is a need for continuing the removal of barriers to the four fundamental freedoms: capital, persons, goods and services. That is the one where we foresee more legislative action. The second important strand to which we give special importance is enforcement and what we call the reality of the internal market, how the existing rules, existing standards and other jurisprudence are applied in practice, and are they applied in practice. The third would be what we call the efficiency of the internal market and we mean better regulation and the international dimension of the internal market is very important. For us, better regulation is not only words, it is not paper, it has to be something concrete. For us, the transformation of better regulation happens mainly in the internal market so we keep pushing for the realisation of better regulation objectives when we prepare new rules and consult interested parties and choose the right instrument for harmonisation and convergence and apply the rules. As I said, the international dimension is very important as well. Europe is becoming more and more a standard setter in the global market. We like that the European standards become the global standards, if they are good, so we want the European authorities when they engage in bilateral talks or regulatory dialogue to try to export the good things that we have in Europe so that they become the global standards. That would be efficiency. The last one, which is equally important, is

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information and awareness of the internal market. We have clearly identified that what the internal market means is not sufficiently known by citizens and small companies. We have repeated to the Commission that it is not only about citizens, it is also about small companies that do not know what the internal market means, they do not know how to defend their rights and they need to be informed on that to make it easier for them to exploit the opportunities. There is a lot to be done in terms of showing the beauty of the internal market to small companies and those who are unaware of the internal market. We are promoting these four strands very much and recently organised a seminar on the issue of enforcement, and I think there were some representatives from the UK Permanent Representation there. We have come a long way in the European project, a lot of legislation has been produced but it is not properly enforced. It is not properly enforced for a number of reasons and we have to solve that situation. We have to shift the focus from legislating and producing rules to making what we have work better. We have a number of recommendations to improve that. You have in your folder our most recent publication on enforcement. It is not about creating new rules to improve enforcement, it is a number of different proposals which range from better training of national officials and judges to improving non-judicial systems when there are problems in the internal market, be it SOLVIT, be it arbitration, be it mediation. We also suggest the appointment of a high ranking member of the government as responsible for the compliance of national laws with internal market rules, we believe this is very important. We want to create a greater ownership of Member States in the internal market because for us the Member States are the key to the success of the internal market and the implementation of the rules. This is something that we are working on a lot and trying to steer the debate towards, which is a difficult debate because the Commission has limited powers in enforcement. Part of the infringement procedure is with the Commission and it cannot be the only one in a Europe of 27 members, we believe that the Member States are a big part of the solution so we are trying to convince Member States to become more committed, to spend more resources in implementing and enforcing the internal market laws. In a nutshell that is our position on the internal market.

**Q276 Lord Haskel:** You spoke about the international dimension, for European standards to become global standards. Is that the work of your organisation or do you see that as being part of the work of the Commission and the Single Market?

*Mr Almaraz:* We see it more as the work of the authorities to decide because we do not decide the rules to play in the global market. We believe that when the Commission participates in dialogue with

their trading partners, like the US, China or Japan, they should be the defenders and the promoters of the standards that we design in Europe because our companies are becoming more and more global, they consider the global market as a very important part of their business and that has consequences on the way the internal market works. Of course, we must support the Commission and public authorities in that task but it is more their task to do.

*Mr McGovern:* You asked was it our task or the task of the internal market, I think it is something more linked to the internal market. The idea behind a true internal market is to create a level playing field for companies and consumers across Europe, and one way of doing that is similar standards where applicable. I am not saying that requires harmonisation but where applicable, so that there are commonalities between the businesses, between the companies, and also for consumers across the European Union to apply in the internal market. Where Carlos' point comes from then is for those companies, for those players from outside the internal market who wish to access the internal market. If they wish to access it they have to abide by the standards that are set for the internal market and that is where the international role comes from, an influencing role where if companies, be they American, Chinese or Japanese, whatever, wish to access the internal market, because the internal market introduces a level playing field for all the European companies, those external actors also have to play by those rules. Theoretically that is how it should happen and that is where the standard setting role comes from.

**Q277 Lord Haskel:** You think that really enforcing and making people aware of what is going on in the Single Market and continuing very much as we are, that is what BusinessEurope wants to achieve, you do not want any radical changes, you want to continue as you are and make it more effective?

*Mr Almaraz:* Our members do not think that we need radical changes in the way we have been building up the internal market. We are in a phase of the internal market becoming more national. It is a question of a mindset. Until now it has been more Brussels producing the rules for the internal market to be built but now it is becoming more rooted in the national dimension and for us the role that national authorities has to play is greater and has to be greater. Another element that we believe is essential is better co-operation between national authorities. Recently I had the pleasure—I do not know that you would call it a pleasure—of dealing with the Services Directive and one of the main obstacles in this dossier was the lack of trust between competent authorities, and that lack of trust—

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**Q278 Lord Haskel:** You mean national competent authorities?

*Mr Almaraz:* Yes. That resulted in the introduction of barriers to foreign providers. The system that this service created to enhance co-operation is a very explanatory and very revolutionary methodology to some extent that we want to be seen more often in Europe. More and more they see the cross-border aspects of the internal market are pressing on their daily life and they need that co-operation. They need to know what the internal market means and that is why we say that more training is necessary. We need to break that lack of trust. We believe it will help not to need so much legislation but if there is a need for legislation we are totally okay with that. There is a need for more Member States to become more internal market minded.

**Q279 Lord St John of Bletso:** You mention about the benefits to SMEs of the internal market. Could you perhaps turn that around the other way and talk about the blocks which SMEs have to operating in the internal market?

*Mr Almaraz:* That is probably one of the main challenges. The benefits are there but we believe that many of them have not reached the SMEs. I have a figure from our SME expert which shows that around 60 per cent of SMEs are active only in their home market, which is worrying or something to give some thought to at least. What we see as one of the main obstacles for SMEs doing cross-border activities, which is always more difficult than national for a number of reasons, they are less familiar, there are more actors involved, is SMEs have greater problems in terms of access to information, for example. Big companies can spend more on getting what they need to do cross-border but SMEs do not have the means and if they have to do it themselves they probably do not even consider doing cross-border. They have the legislative, regulatory, divergence factors that sometimes they cannot afford to comply with so they rethink or it is a deterrent for them. Another point we are trying to work on with SMEs is access to finance. It is a problem for SMEs to get the finance they need. It is important for SMEs that it is easy for them to constitute themselves as a company, and that is why we put a lot of emphasis on the creation of the European Private Company Statute and the Commission is now consulting on the added value. It has to be easy for a company to be created and considered as a company within Europe without having to face duplication of legal requirements, as is the case now. This is a problem that we think is going to help SMEs to become European in their business plans. Also, intellectual property rights is something that is very important for SMEs, we need innovative SMEs and protection of intellectual property is something that affects SMEs in particular. Of course,

they have more difficulties dealing with red tape. As I said before, the internal market cannot be too burdensome because if it is the SMEs will turn their backs to the internal market. Another important point that we are asking the Commission to go into more in-depth is administrative facilitation, the creation of points of contact as they are doing in goods, in services, to make the internal market easier for companies, easier for them to get the information they need and to go through the formalities they need to to become a cross-border operator. The benefits are there but they face special difficulties that have to be tackled.

*Mr McGovern:* The federation/associations we represent inform us they represent primarily SMEs. The definition of an SME is a company with anything up to 250 employees working for that company. The figures indicate that is 98 per cent of companies active across Europe in the internal market. For this reason, and this reason alone, we have to make sure that the internal market does help SMEs. The figure my colleague gave a little earlier of 60 per cent of companies focused on a national market makes sense because a lot of companies are small and the barriers that he mentioned, primarily resources, are a problem, in particular when they are SMEs that are small, five or six people in a small company, and then you are talking about site problems, time problems, resource problems, money problems. They contribute to why SMEs are perhaps more focused on the national than internal market, which they are fully entitled to access. It comes back a little to the answer that Carlos gave to Lord Haskel that enforcement and communication are key aspects of future internal market policy. Enforcement so that the rules that are put in place are actually enforced and they are the rules that are understood to exist across the internal market, and communication so that SMEs understand what their rights are, they understand where they can go to get help, they understand what the rules are. Enforcement of the rules and communication of what those rules are and what the opportunities are is not done enough and that is something we think has to happen much, much more. It is something that at the European level the European institutions, whether it is the Commission or the European Parliament and the elected members of the parliament, have to do more of. It is also something which Member State governments have to do because if they want companies within their jurisdictions to really access and benefit from the internal market they have to take it upon themselves to ensure that those companies are equipped to do that.

**Q280 Lord Powell of Bayswater:** You put in an excellent paper in response to the Committee's request for consultation and I think there is a remarkable congruity between what you say and what the

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Commission were telling us this morning, so it sounds as though your points have been made. I have two questions. You put a lot of emphasis on enforcement, implementation and so on, do you think the Commission have adequate powers to do that or do they need new powers? On the whole, business is normally opposed to governments and institutions having more powers but in this case do you think they need some? Secondly, and quite differently, there has been some speculation that the Commission will try to bring health and taxation into the internal market area. Would I be right to assume that businesses would oppose that?

*Mr Almaraz:* On the first question on the powers of the Commission to ensure proper enforcement, what we say is the Commission cannot be the only player in enforcement. The Commission has limited powers. We are not calling for new powers for the Commission, to be honest, what we are saying is what they have at hand should be improved and the bulk of work should come from Member States. The Commission should build a greater partnership with Member States. It cannot be as we have had until now, Member States looking at the Commission as the annoyer, "They are coming again, they are annoying us because we didn't comply with that rule". There has to be a partnership. They have to share responsibilities for the enforcement of the internal market because the internal market does not happen in Brussels, it happens in the UK, in Spain, in Italy, it happens locally. We have to create this new policy in which Member States really believe and invest in their responsibilities of enforcement.

**Q281 Lord Powell of Bayswater:** How do you do that though because quite clearly the Member States have not done this?

*Mr Almaraz:* First of all, and this is something that we have gathered from the many meetings that we have had with the Commission, the Commission knows very little about the national dimension of the internal market, they have very little information about how the internal market rules are applied in the Member States. Okay, they produce scoreboards about transposition but this is very little information. The fact that you tell me that Spain is late in transposing a directive or they did it on time does not say much. Often the officials we met told us, "We don't have a proper system of information, data, figures, some qualitative assessment of how the internal market translates at a national level and we need that in order to be able to decide the right policy". For us that is an area of work.

**Q282 Lord Powell of Bayswater:** So they need additional resources?

*Mr Almaraz:* Yes, additional resources to develop some systematic collection of information about the internal market. The internal market happens not only when the Member States transpose directives but it happens when judges apply European law that may be in national law or not, or directly applicable, and it happens when you lodge complaints at a national level. That information is missing and we need that to be improved. Another area of improvement is the means of redress. When you have a problem in the internal market it is not clear what means a company or a citizen has at the national level to get their rights asserted and respected. We now have SOLVIT which, as you may know, is a free on-line system helping citizens and companies when they have a problem of misapplication of European law by a national authority, but the picture is very different in one country from another. In countries like Sweden they have 14 people in the network and in France we found only one intern, so that cannot be considered as a way to solve problems in the internal market. It is like when you go to a shop. If I go to a shop in a new country, if I have a problem and it is not resolved I am going to say, "I am not coming back". We see the internal market as a little bit like that for small companies and citizens. If you go abroad and you have a problem you probably do not go back to that country and you are going to say to your neighbours, "In Spain, in Italy, in France, or in the UK, the shops are bad or things go bad". We want to have proper systems of information and redress so that people get their rights and they have a good vision of the internal market and Europe based on their experience. The legally binding system that the Commission has, the infringement procedure, has to be improved and we have given some recommendations. The Commission have probably already told you this because they are working on that to set priorities so that the economically important cases are dealt with and they want to introduce fast-track mechanisms to shorten and simplify the procedures. For us that is not the solution, we do not want to get to that point, we want the solutions ex-ante. We do not want to get to a point where you have the Commission fighting a Member State, for us that would be the last resort. We are trying to put the emphasis on—

**Q283 Chairman:** Could you give us some examples over the last five to ten years where enforcement following infringement problems has arisen?

*Mr Almaraz:* Sorry?

**Q284 Chairman:** Can you give us some examples where there has been a problem and the Commission has attempted to rectify it and has been partially successful?

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*Mr Almaraz:* During the debate on the Services Directive we had loads of cases of Member States being brought before the Court. A recent judgment that has been confirmed by the Court was in Spain. The Spanish state was brought to the Court of Justice because they required employees in the private security sector to reside in Spain in order for them to provide the services and there was a problem because if I was a French company and I was organising a fair or an exhibition in Madrid for two weeks and I wanted to bring my security guys with me I could not do that because they did not reside in Spain. That requirement was challenged by the Commission and went before the Court of Justice and it had to be rectified, that law had to be modified. That is an example of how enforcement works.

*Mr McGovern:* If I may offer an example in the broad area of the free movement of goods, which is one of the four freedoms which we believe is the most advanced of the four freedoms and the one which represents the internal market the most. We consider that it works relatively well, but relatively well is not the same as working perfectly, and for this reason in February the Commission brought forward a package of proposals to try and improve how goods move around Europe. The idea behind that is to improve the existing rules and regulations and the proposals that the Commission brought forward focused on mutual recognition, market access surveillance and the marketing of products in other Member States. It focused on improving existing rules as opposed to introducing new rules based on a sustained period of time whereby the Commission and stakeholders were able to observe how goods move around Europe, to see the barriers that tend to exist through lack of enforcement, lack of awareness, things like that, and look to improve that and as a result they have come forward a new package of proposals.

**Q285 Chairman:** Yes, but can you give us any examples?

*Mr McGovern:* Actual examples? I can give you some examples from the mutual recognition side. Mutual recognition applies in the non-harmonised areas. It originates from the *Cassis de Dijon* ruling which the Court of Justice made back in the late 1970s, early 1980s, and as a result of that the movement of goods in the form we have now exists. I have a couple of examples, if you do not mind me reading out of this because they go into some detail. There is an SME company which we know of which encountered difficulties accessing the German market. This difficulty was encountered because additional testing was required on the side of the German authorities. These were tests in addition to what one would expect from mutual recognition. What was interesting about this case was most of the time when SMEs and companies face barriers like this they choose not to

fight it because it takes too long, it costs too much and it is a diversion from what their true purpose is, which is to manufacture and produce goods. This company decided to fight at the same time as modifying the goods which there was a problem with so that it could access the market. This happened around 2001–02. The case took a couple of years to come to a conclusion. They estimated that during the years 2002–03 their turnover from the German market was the equivalent of about €280,000 a year. They estimated that the cost involved in extra testing required to access the German market, travelling expenses, additional stock, legal costs, et cetera, to comply with the additional testing came to roughly €70,000 to €80,000 a year. When you consider that their turnover was €280,000 that was a significant chunk from what they made accessing this market. As it turned out, in 2006 a ruling was made in their favour which showed that they were correct in the first place, but they are a rare example of a company that fights barriers that exist because not even at a national level but at an authority level, whether accreditation authorities, whether authorities that are tasked with implementing standards in the market, et cetera, they decided that products coming from outside have to also meet additional testing to satisfy themselves.

**Q286 Chairman:** I understand that, but can you give examples where the Commission has taken the cudgels up?

*Mr McGovern:* Sorry, the Commission . . .

**Q287 Chairman:** I understand why a small or medium-sized company finds it difficult and expensive to pursue a case but surely the Commission should be championing the rights of SMEs.

*Mr Almaraz:* I could mention another example which is in the field of services. The Commission also brought the Greek state to the Court because in the field of tourism the Greek state obliged tourism businesses to provide their services in Greek and there was a UK company providing tourism services in Greece that only had English clients, so they refused to provide their services in Greek and questioned that requirement. The case ended up in the Court of Justice which did not allow Greece to impose that requirement as a condition to open a tourism establishment in Greece. Again, it was a three or four year process and companies cannot live with that timeframe. This UK company probably left Greece, I do not know what happened. It is the way the Commission performs but it cannot be the main actor, that should be for last resort cases and the market goes much more quickly than that. We have not got much to complain about with what the Commission does, we just say that it is not sufficient.

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*Mr McGovern:* As alluded to earlier on, the Commission also has a resource problem. If we take the field of public procurement, the Commission is responsible for implementing the rules and ensuring that those rules are implemented but, as we understand it, it is down the road as a last resort for DG MARKT, where you were today, to deal with the entire internal market. The Commission has roughly 60 people involved in keeping a check on the rules being implemented, drafting new rules, looking at external issues, so they have a resource problem when it comes to taking Member States and the like to the Court of Justice. If they tend to do it, as Carlos alluded to, it is as a last resort, and it should be as a last resort, it should not be the case that companies should have to go to the Commission if they have a problem accessing the internal market.

**Q288 Baroness Eccles of Moulton:** That is all very interesting and has gone some way to answering my question which has appeared to be increasingly simplistic as you have entered into some of the complexities of the way the Commission can operate. You have talked about achieving a level playing field and I just want to hear your thoughts on the fact that the membership of the EU is now so much greater than it was and presumably the sorts of powers that the Commission has have evolved over the years but have they actually kept up with the disparity that now exists throughout the membership? Is it possible within the existing rules to really try to achieve a level playing field, whatever that is, across such a disparity of membership when maybe it is becoming impossible because there will be so many different reactions, responses, problems, barriers, hurdles, et cetera across the spectrum now that simply did not exist before?

*Mr Almaraz:* This is one of our biggest fears as companies. Although we have to live with it we do not operate in a political world, and we do not want to. For us, the market should be as economical and market driven as possible, but the reality is different. One of the challenges of a Europe of 27 is as you said, the structures that we have and are they equipped, and we believe they are not sufficiently. That is why we are very hopeful that the Single Market Review will bring us some of the responses that we need in order to reinvigorate Europe and the internal market in the new context that we have. It is not only about the 27 Member States, it is about the increasingly globalised market that we live in, the demographic challenges that our societies have to face and the increasing use of new technologies. There are a number of new conditions that need adjustments that we were talking about earlier on so that the machinery works. One of the ingredients in the recipe is the co-operation of

Member States. The Commission alone is not going to make it. It was failing because it does not have the resources and we do not think it is the right way if the Commission is the total guarantor. Member States have to come out and be stronger in defending the internal market and taking up their responsibilities, which are great, and so far they have not been so good in fulfilling those responsibilities. We are now turning to them and telling our companies to demand other national authorities to become more serious about the internal market because the internal market is not about the Commission telling off Member States if they do not do their job, it is about them. As you said, and this is something we believe, legislation has become very difficult, everybody knows that, and when we have something on the table it is very unpredictable how it will end up. Maybe the solution is elsewhere and better implementation, better co-operation between authorities, is the way forward. Legislation is going to become a privilege in the future because it is very uncertain and very difficult in the current structure of the Commission.

**Q289 Lord Powell of Bayswater:** Could you make a very quick comment on my question concerning health and taxation.

*Mr Almaraz:* There is not much I can say on health and taxation. We have not really addressed that or had a discussion in BusinessEurope so far. The competence of the European Union is very limited in health. It is definitely very important because of the economic dimensions of the health systems in the Member States. Although this is more a personal view, we are quite happy with the competence sharing that we have right now. It is still premature that Europe and the European Union get more competence in health.

*Mr McGovern:* On taxation we have some comments. We do not think further tax harmonisation is the route to go. There are rules in place and it is a better use of what is in place that is needed as opposed to further harmonisation.

**Q290 Chairman:** One final question: SOLVIT, page 11 of your submission; will it work?

*Mr McGovern:* It does work where it is known about and where it is possible to access it. On the example Carlos gave earlier on, it takes Member State co-operation between Member States and at the European level to make it work. It will only work if people know about it, if consumers and companies know about it.

**Q291 Chairman:** Can you give us an example of where it is working because we are going to try it out?

*Mr McGovern:* Carlos gave you an example. If you want to know where it is working go to Sweden.

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**Q292 Baroness Eccles of Moulton:** Do not go to France!

*Mr McGovern:* Maybe things are changing in France, and maybe in a few years' time, but at the moment the Scandinavians see the value of the SOLVIT system, they see it as helping their citizens.

**Q293 Chairman:** Is it working in the UK?

*Mr McGovern:* I think I would have to defer that to the CBI to answer your question.

**Q294 Chairman:** Is that a veiled "no"?

*Mr McGovern:* It is working in some places better than it is in other places. I think the UK is one of the more liberalised markets that we have in Europe, so I would assume there are companies who know about it and are taking full advantage of the SOLVIT system. But it is only those companies who know about it and that is the real problem, getting the knowledge of it out there.

**Chairman:** Thank you very much indeed for coming.

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| Present | Eccles of Moulton, B<br>Freeman, L (Chairman) | Powell of Bayswater, L<br>Whitty, L |
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**Examination of Witness**

Witness: MR MARCO CILENTO, Adviser, European Trade Union Confederation, examined.

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**Chairman:** Good afternoon, Mr Cilento. Shall we introduce ourselves. I have already had a chance to explain where we are in the timetable, but after we have introduced ourselves perhaps you would do the same.

**Lord Powell of Bayswater:** Charles Powell, independent member of the House of Lords.

**Baroness Eccles of Moulton:** Diana Eccles, Conservative member of the House of Lords.

**Lord Whitty:** Larry Whitty, Labour member of the House of Lords.

**Q295 Chairman:** Over to your good self, Mr Cilento.  
*Mr Cilento:* My name is Marco Cilento. I am Italian. I work as an Adviser in the European Trade Union Confederation. I started my career in Italy with the Italian union and I have been working for the European Trade Union for six years. I work for the European Trade Union Confederation and you should be aware that ETUC is an association of cross-industry organisation federation unions in Europe. We are also associated with the European Industry Federations, the sector unions at European level. We reproduce at European level the trade union model which has a common background amongst most of the European unions in Europe. We represent about 60 million people, 60 million workers in Europe. ETUC is one of the fundamental partners of the European institutions which are recognised in the European Community Treaty. I was informed that the person sitting here before me was someone from BusinessEurope which is our social partner. Under the umbrella of the EU regulations we are engaged in social dialogue, what we call inter-professional social dialogue, in which we try to help the European Commission to produce policies and implement regulations in the social field. This means that as a Trade Union Confederation we try to make this European integration sustainable in terms of social content adding to the economic and financial integration and the social dimension. Our core business is taking care of the social dimension of the European integration. This means that we deal with many issues, all the aspects of European activities from the internal market issues, as we are going to talk about today, but also other aspects of relationships with multinational companies, promoting corporate social responsibility and

migration policies, et cetera. We try to deal with all of the social relevance dossier.

**Chairman:** That is very helpful.

**Q296 Lord Whitty:** It is claimed on behalf of the internal market that it has benefited consumers in Europe where arguably two or three per cent have real income and that it has created a large number of jobs for European workers. Would you agree with that assessment so far? If not, tell me why not. If you do feel it could go further could you identify what area of the Single Market rules need to be improved or better enforced in terms of your perspective?

*Mr Cilento:* We have always stated that we are in favour of a well-integrated Single Market which is an environment where companies can grow and improve their competitiveness, looking also at changes of globalisation and being competitive not only in the internal market but also outside. We consider that Europe should be a single economic entity in order to compete with the rest of the world. We see the results of that because many companies have found the European Single Market the right environment in which to develop and the results in terms of employment recognise the improvements from the efforts that have been made. From this point of view we recognise that the engagement of all Member States to build an economic area where companies can develop successfully is important. Also, we are keen to see equality of employment and this means we want more jobs but also quality jobs. What we have seen in the last few years with this injection of flexibility in the labour market is that it has widened the gap between different workers and too often this has brought about a decrease in the level of purchasing power of some workers. That is because salaries are under pressure, working conditions are more difficult and the pressure is coming from higher competition in the market. The good side of the internal market is increasing employment but we have also recorded poor working conditions and poor incomes, salaries, et cetera. We think that together with increasing flexibility we should have more protection for workers and more guarantees for workers in Europe. One of the reforms that we should have at the European level is to enforce or to foster in the labour market the increased mobility of workers but under certain conditions of protection and opportunities for workers. One of the

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steps that should be taken now is to improve performance and the opportunities coming from the labour market at the European level.

**Q297 Lord Whitty:** Are you saying that part of the reason why this has not been achieved is because there is not a fully Single Market of labour, in other words there are differential problems across the labour market, or are you saying that there has not been enough European labour protection legislation or other elements of social policy?

*Mr Cilento:* If you ask me in terms of enforcement of the internal market, we consider that the social aspects of the internal market in the last year have not been considered sufficiently. We want the mobility that all the different players in the market have today in Europe that companies and financial actors can benefit from which should go along with higher mobility of labour with certain rules that allow people to move and be protected in these new mobility capacities. That means we want a labour market which is European and is part of the internal market to ensure that there is a full and comprehensive internal market. This European labour market must be built on a clear regulation framework in which employees can be protected, but also in which they can find new opportunities for themselves. If we look at the Lisbon Strategy, for instance, this is considered to be the point to refer to which means we should invest more in terms of training opportunities, creating a skilled workforce, helping people to be mobile and helping families to move with workers to establish themselves in different countries, harmonising protection systems and social security systems. A lot can be done in these fields otherwise the internal market will only be an area of exchange which companies can benefit from but the citizens and workers cannot really benefit from.

**Q298 Lord Whitty:** Leaving aside the question of investment and training, which is obviously an important issue but not quite an internal market issue, there is already a whole range of worker protections on the European statute book. Are you saying that they have gaps or that they are differentially enforced?

*Mr Cilento:* For employee protection?

**Q299 Lord Whitty:** For the protection of workers.

*Mr Cilento:* Yes. ETUC says the problem of the internal market today is the differences in Member States are too different and they bring about social dumping and competition among Member States to attract capital and business only on the basis of social dumping or saving money on their working conditions. We want competition to be enforced on many, many aspects but it cannot be the reason why

the working conditions decrease or get worse. In the beginning the project of the Single Market in the European Community and then the big projects of the political integration were supported by citizens who could see a kind of trust in a good future, but if they lose this trust in the European institutions the internal market will fail and will slowly die. If we only take care of the economic and financial aspects of the market and do not take care of the social aspects of the market then all the projects will fail. We feel that every day. One of the big problems is the national legislation in the social field is not as close as we would like and that creates a temptation to compete on working conditions and creates other effects, like no investment in human resources, we are not creating the best human resources we can in Europe, we are not exploring mobility of workers in Europe and our companies, our businesses, lose out.

**Q300 Lord Powell of Bayswater:** As you know, the Commission are carrying out a major review of the Single Market and they are going to report in October or November. Do you expect them to cover some of these social market issues that you have been talking about? We talked to the Commission this morning and I cannot say that these issues were reflected in their description of what they will report on.

*Mr Cilento:* When we talk about the internal market we try to focus on the social aspects because our core business, our mission, is to try to bring the social aspects into the internal market. We succeeded a lot in the 1990s when the social partners, not only the unions, were able to write the Social Chapter of the Treaty with their own hands. In the 1990s we had a lot of promise but it was not enough, we think in the review of the internal market there is still a lot to be done in the social field to make it sustainable. In the last five years, let us say in the new century, the Commission has not been dealing with these social aspects and the Commission has said openly there is no room for social regulation now. We see the effect of that is that workers and citizens are further from the European institutions than they have ever been in the past. Of course, there are many ways to take care of the social aspects, not only by introducing new legislation but introducing new policies. We are aware that with this institutional setting, with this Treaty, with this number of countries, it is very difficult to build something because there are too many battles, it is too difficult to make policies, and in the Parliament and the Council it is difficult to do everything so it is easier not to do anything than building some policies. This is one of the reasons why we are pessimistic on the capacity of the European Union to produce effective or strong social policies in reviewing the Single Market strategies.

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**Q301 Lord Powell of Bayswater:** Although you would like the Commission to do more on the social dimension in the Single Market you are not expecting them to do so?

*Mr Cilento:* We are not expecting that. The result on the future of the new Treaty will be a key point and everything could change with the new Treaty. Maybe the Commission is going to do something in terms of helping Member States to deliver part of their resources to some social aspects, for instance building modern, new labour markets, investing more on the creation of skills and the creation of new career opportunities, helping the mobility of workers. These are things that can be done but the role of the Commission will be more that of promoting and co-ordinating and not managing real European policies.

**Q302 Chairman:** Could I just ask you to develop a little further your last comment about the potential under a new Treaty, that there might be better "protection" or the introduction of measures to improve the social market. In what ways do you think that might happen? The British press speculated that the alleged removal of the words "free and unfettered competition" from the text of the Treaty that was not accepted, or was not introduced, the potential Treaty that has been remitted to the Intergovernmental Council, might protect employees within a particular country either through the designation of national champions or the prevention of external competition, removing people's jobs. When we had an evidence session with the British Europe Minister and I put that question to him the answer was that the removal of the words from the draft Treaty and into a protocol implied that there was no substantive difference, that the European Union still believed in free and open competition. What is the view of your organisation towards international competition?

*Mr Cilento:* I am sorry, I did not want to interrupt you. Which part of the Treaty has been removed that you are referring to, I did not catch the words?

**Q303 Chairman:** Removed from the former draft Treaty which was not proceeded with were the words "free and unfettered competition". Those words were put into a protocol.

*Mr Cilento:* This is a bit more complicated because in terms of fair competition we are convinced that somehow the European Union needs to have very clear refined points in the Treaty in order to orientate the policies of the European institutions. We think that fair competition will continue to be one of the most important activities to guarantee that the market can really work in a fair way, if I can say that, and will be one of the strategic activities of the European Commission and it will continue to be like

that. We hope that some balances can be introduced in the main rules of the European Treaty and in this way we are aware that competition cannot be a dogma for all aspects of the Single Market, it cannot be the principle we have to refer to in all aspects of the Single Market. If the Treaty is built in a way that can give opportunities to underline some aspects that are more important than competition, where the social welfare of the citizens must be protected, all of these aspects are welcome if the Treaty is built in a way where these aspects will emerge. For instance, we have always considered that some kinds of services are too important to people, what we call the services of general interest, and competition cannot be the way these services are ruled, although there will be some exceptions. This is one chapter. Another issue is that sometimes Member States look at governments' needs for instruments to carry out their industrial policies and they cannot use monetary policies any more specifically in the European area, they cannot use the tax system because there are very strong constraints, they need new tools to produce industrial policy in order to attract business, in order to keep employment. Today these policies are created on services that they can offer to the companies that decide to establish their businesses. I am referring to network services, energy, communication, transport sometimes. We are aware that sometimes Member States, but not only Member States even regions or other local government, want to keep in their hands the way these services are managed. They do not have to be the owner but they want to have a voice in how these services are provided. We are convinced that in this case competition rules cannot always be --- I do not know if that is an answer to your question.

**Q304 Chairman:** That is a very clear answer. For you, if it is to be assumed by the IGC, that would have to manifest itself in some amendment of what was agreed in Germany recently in June because, as I understand it and as the Committee understands it, there is no qualification to the concept of free and unfettered competition. One quite understands the legitimacy of proper protection for a mobile workforce and I wonder if I can ask you a question about that. You talked about protection but can you give us some examples of where you see a mobile workforce in a free internal market needing protection? Is it working hours, social security, for example pensions, health, and housing? I am talking about protection.

*Mr Cilento:* This is one of the biggest challenges that Europe has in front of it because the social system is very complicated and there are many items on the table. From time to time we are obliged to deal with these issues when they arrive on the table. For instance, with the Services Directive we had to deal with the protection of employees in respecting the

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Country of Origin Principle and it meant defending the collective bargaining system in each country and the working conditions. This is one of the main issues when we say social protection, in this case to make sure that workers in the same workplace can enjoy the same working conditions, or workers who are employed within a 200 metre space of one another can have the same protection system. It is a system of respecting the rules of the countries where they are employed or running their work. This is the first thing to do to help people and workers to move to another country or to exploit the opportunities coming from the Single Market. We should get the pension systems closer in order to ensure that the rights that have been gained in one country can be exported to other countries, so if you move from one country to another, spend ten years in one country and move to another country, you can be sure of the pension you will receive. This is another big, big problem. On social security it is very difficult to imagine that countries can facilitate or support workers' mobility if there are too many differences in the way they treat unemployed people. It is very difficult to imagine that the system can continue to have countries ensuring income for dismissed people at 90 per cent of their salary for three years and countries where there are no unemployment benefits. These are distortions that cannot be sustainable in the future. This is just to give you an example of how we consider it to be complicated to create a real labour market in which there is a good degree of mobility of workers.

**Q305 Lord Powell of Bayswater:** Would you then say the solution is levelling up to the highest level?

*Mr Cilentto:* Some policies should be done at European level and all countries should be engaged in implementing this developed protection in order to get the legislation and protection closer in order to have fair competition.

**Q306 Lord Powell of Bayswater:** How is that affordable financially in some of the poorer European countries?

*Mr Cilentto:* When the Commission talked about flexicurity, for example, we criticised the fact that they always talk about flexibility of work but they never give solutions on how to find money for ensuring protection of employees. If they are sincere in suggesting a flexicurity policy to deliver they should be sincere enough or open enough to talk about own resources. I cannot imagine that countries with large debts or weak economies can really afford a flexicurity policy.

**Q307 Baroness Eccles of Moulton:** I have got a few odd questions. You mentioned social dumping earlier on, is it actually happening? Does it happen?

*Mr Cilentto:* We see that every day.

**Q308 Baroness Eccles of Moulton:** Could you give an example?

*Mr Cilentto:* I had a negotiation with a multinational company which was based in the UK and the company decided to close down two factories in Italy and France, to move them to Eastern Europe, even if the two factories were profitable just because, thanks to the cost of the work in these Eastern European countries, they could earn more than they earned in Italy and France. Why is the work cheaper in Eastern European countries? Not only the amounts paid for the salaries but—it is difficult to say—they are free not to respect certain rules in terms of collective agreements, for instance, or they do not have any structure or organised workers to negotiate with so they can do it on an individual basis instead of a collective basis. This gives a big advantage to them. If you consider the increase of real wages in the Eastern European countries, they increase slower than in the other countries even if the nominal value is increasing more than in the Western countries and it makes the work in those countries more profitable.

**Q309 Baroness Eccles of Moulton:** Is this a relatively new phenomenon since the membership grew, since the EU got bigger? It is the new Member States that have made this possible, is it?

*Mr Cilentto:* No. The idea that we are supporting is that it is possible to do it even moving factories and production outside the European Union. The fact that the ten new Member States have such different economic situations as a part of the European Union make it easier but at least we now hope their situation will improve.

**Q310 Baroness Eccles of Moulton:** It is catch-up, is it not?

*Mr Cilentto:* Absolutely. That is why we are supporting the enlargement of the European Union but not under these conditions. The enlargement caused a lot of problems but in economic terms it makes it easier to locate the activities in business and we hope that these countries will grow fast. We have had some good experiences with the previous enlargements but the problem exists.

**Q311 Baroness Eccles of Moulton:** Is this not something that in a way has to be lived with while the economies of the new Member States catch up and it is not something you can prevent while this improvement in the economic state of the new Member States improves?

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*Mr Cilentto:* Could you say that again, please?

**Q312 Baroness Eccles of Moulton:** This particular transfer from a Member State that has a higher economic level to a new Member State that has a lower economic level is something that cannot be prevented while the new Member States are actually catching up and reaching a higher economic level after which there is no advantage in doing it.

*Mr Cilentto:* Indeed. When the situation is more balanced the countries can compete on the quality of the workforce they can provide and this is what we are looking for. We want to oblige countries to invest in their own human resource infrastructure but not to have competition in relation to lower conditions. We consider companies have the need to have their facilities in Europe because it is an important market and it is important to be here. We do not believe that all of the production will move outside Europe, there are some sectors which suffer from the globalised market but many other sectors can survive in Europe. We want to be sure that the Single Market can be well-balanced and perceived by people as an opportunity for everybody, not to have a bad reaction so that people reject the European project. In this game there are only losers, no winners. If they can manage to have a short-term return today exploiting big differences among different national systems in the long-term then they are going to destroy this and there is no value in that. That is why we consider that the Single Market today needs stronger social dialogue.

**Q313 Baroness Eccles of Moulton:** You said at the beginning in your introduction that there are 60 million members of the trades unions within the EU, more or less. Obviously that includes the new members as well. Is it known at all how those 60 million are distributed between the public sectors and the private sectors across the Member States? Presumably there will not be too many who are working in the informal sector because then they would not really have access to trades union membership, I would not imagine, but maybe one should include the informal sector as well.

*Mr Cilentto:* We have a mission to represent the interests of all workers, members or non-members. In an organisation like ETUC with democratic rules and such a large membership we are not able to discriminate between individual situations. We are aware of the dimension of the formal economy in Europe and we consider the solution is to push countries to make this economy emerge. As an Italian I can say this because a big part of our economy is an undeclared economy and we know how difficult this can be and it will be a big challenge. I am convinced in this case that Europe can do a lot and the trades unions as part of the social dialogue and with the

capacity to promote social legislation or social policy we can do a lot, as we have demonstrated in Italy. We are not discriminating because we are not able to discriminate between members and non-members, formal and informal, we are a full legal situation where rights can be exploited.

**Q314 Baroness Eccles of Moulton:** Are unemployment levels very uneven across the 27 Member States or on the whole is pretty well everybody enjoying high employment levels?

*Mr Cilentto:* I would focus on the regions of Europe. There are regions of Europe where there are very difficult situations in terms of employment. We have regions with full employment and regions with 50 per cent unemployment. This is one of the reasons why I was saying it is very difficult to talk about fostering the internal market, renewing the Single Market, without considering different social situations in different areas of Europe. If we really want to have an effective and more integrated Single Market we should deal with this aspect otherwise the project will not work. We are aware of these differences.

**Q315 Lord Whitty:** I understand what you are saying about the pressures on employment standards that have taken place over the last few years across Europe, but do you think that much of this is primarily—this partly goes to Lady Eccles' first question—because of the lack of effective social provision at European level or in the enforcement of it? Does it not reflect more the internal pressure of having enlargement with a low paid, relatively unprotected workforce in the accession countries internally and then externally the pressure of globalisation? Is that not what has undermined what up until the mid-1990s was pressure for better protection standards for European workers? In other words, it is an economic problem, not a legislative problem.

*Mr Cilentto:* It is not only an economic problem. I do not consider this is the result of an economic process that cannot be avoided. If we decide that companies must compete on certain aspects of their activities they will do it, but we should be able to exclude some items from the competition, for instance labour and some of the social aspects, and not only workers' protection but also consumer protection. We consider that some aspects are not part of the competition: health and safety, health protection of consumers and certain other aspects. We decided that on these issues there is no competition. We are not to be swayed by the economic processes but to have a grip on the economic processes. The results that some countries have had in terms of competitiveness and keeping their social systems demonstrate that this is possible. It is possible to follow the economic processes connected to globalisation and stronger

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competition while keeping the social equation. Keeping the social equation means having stronger companies because in many, many countries when people work in companies they are very motivated, they are very close to the company and that means they are able to keep up with demands in certain periods. This has created a situation which is more creative and is oriented to the competition, to the system not only the single company.

**Q316 Lord Whitty:** I suppose what I am trying to say is the reason labour standards and social standards have been undermined is because of an excess of labour supply. This is true whether it is in China or making goods which previously were produced in Europe or internally with an increase in the number of workers available from Eastern Europe. It seems to me that you are putting too much weight, in other words, on the lack of formal social protection, or advances in formal social protection, and not enough on the external crude, if you like, economic pressures on the labour market.

*Mr Cilento:* You mean there are too many potential workers. For me it is the effectiveness of the labour market. Today the labour market is not as effective as it could be. I see the capacity of the business to exploit the opportunities of the markets in Europe but also

the global market to be higher than the capacity of workers to benefit from this. I do not think this is a question of quantity of people in the labour market or pressure from the other side of the world, but it is how we organise the labour market. The capacity of the workers to exploit the opportunities of the labour market is not well-developed today because they do not feel able to change work, they do not feel they have the resources to be mobile or to be proactive in the labour market, they do not have the hope that they will improve their positions. For instance, for one company it is very easy to analyse the situations in other regions of Europe or of the world, to assess the benefits and costs of localisation, and they have resources to do that, but for workers it is very difficult to say what the future will be if they go to another place or change job. If we do not invest in increasing this capacity for people to exploit the opportunities in the market it is very difficult to measure whether this system can work.

**Chairman:** That is extremely helpful. I am afraid we have run out of time, we must return by train. Thank you very much indeed for very clear and comprehensive answers to our questions and, frankly, for making us think about the different dimensions of this issue of improving the internal market. Thank you very much indeed.

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MONDAY 15 OCTOBER 2007

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| Present | Dykes, L<br>Freeman, L (Chairman)<br>Geddes, L | Haskel, L<br>St John of Bletso, L<br>Whitty, L |
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**Examination of Witness**

Witness: MR PETER D SUTHERLAND, examined.

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**Q317 Chairman:** Good afternoon. Mr Sutherland, thank you for coming here today. I believe you have an opening statement to make.

*Mr Sutherland:* First of all, thank for the opportunity to speak to this Committee. Secondly, I intend to make a brief opening statement which probably goes beyond the specific remit of this discussion but pertains to Britain and its place in Europe. When I joined the Commission in 1985 it was already ordained that the Single Market would be the major objective of that first Delors Commission and the United Kingdom had played a significant role in creating that dynamic. It was sustained when I was Commissioner for Competition which I suppose was the second leg to the Internal Market driver, the main one in my view being led by Lord Cockfield. The objective was supported by the United Kingdom throughout. However, it became apparent to me during that time that the ambivalences of the United Kingdom about Europe which I believe have undermined the legitimate objectives was self-evident. I recall in the period of about 1988 when we used for the first time a provision—Article 90 of the old Treaty of Rome, which allowed us to take on national monopolies which were obstructing competition—we brought our first case which was really a test case on the issue of telecoms to stop the then prohibitive laws in a number of Member States which stopped the selling of terminals and modems in shops other than those run by the national PTTs. We issued a directive (that is about the only case apart from one agricultural instance I think where the Commission itself issued a directive) prohibiting this. We were immediately turned on by a number of Member States, prominent amongst whom, if I recall correctly, were the Germans and the French who issued proceedings against me and other members of the Commission. I remember coming to London and speaking to the relevant minister here. He started the meeting by congratulating me on what we had done, an objective of British policy he said. I said, “Thank you very much, I take it you will be coming to the European Court to support us in what we did”. He said he would have to think about that. He thought about it for about a week or a fortnight and then he came back to me and said, “We cannot”. I asked, “Why not?” and said “We would be supporting the Commission”. I said, “Who do you think is doing this

business of creating an Internal Market except the Commission and how do you think it can be enforced other than through the law?” Walter Hallstein, the first of two the great presidents of the European Commission, once made the point that we do not have divisions, all we have is the rule of law. I said, “If you do not stand for the rule of law how can you get to the objective?” He said, “There you are”. So we were sued. I would not be telling you this story were it not for the fact that three years later we won the case anyway. You would not be talking about much of the Internal Market if we had not won the case. We might have been greatly assisted had the United Kingdom lived up to the position that it has so fervently and genuinely articulated, being the only major member state of the European Union that has consistently believed in the liberalisation of the Internal Market. However, words and deeds sometimes part company. To me the current debate about the Reform Treaty is indicative of this ambivalence. I find it very hard to understand how, for example in the Reform Treaty, that the United Kingdom of all countries wanted the deletion of a provision that signalled the supremacy of European law. Are we living in a world of make-believe? Surely Britain which in many instances through utterances by the law lords and others have recognised that supremacy of European law would wish to have this clearly included in the law of every country in the European Union. Of course we were told that it already is so we do not care that it is out. Of course we also know why it was taken out: pure cosmetics, that is why it was taken out, because of fear of a debate that people simply are not conducting on the basis of realities but rather on the basis of using the Reform Treaty as a surrogate for an attack on the whole European Union. They are using the Reform Treaty because they are afraid—as some of your witnesses might be afraid—to context membership itself of the European Union. Incidentally, one thing that is now permitted expressly by the provisions of the Reform Treaty itself, is the withdrawal and renegotiation. I find it terrible that the United Kingdom's role and responsibility, which has been so crucial in developing the most essential element of the dynamic of the European integration process in recent years, has been damaged by an ambivalence about the basic institutional mechanisms which are

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necessary to make it work. I can understand saying that we do not want foreign policy. I think it is wrong, but I can understand it at least. I can understand even saying that we do not want Justice and Home Affairs; I do not agree with that either but I can understand it. But to undermine the very legal provisions that are at the essence of the one policy that everybody in this House as I understand it basically agrees with, and to do it in such an overt manner and a manner which has not been criticised as far as I can very much publicly (for example, in removing that provision) is to me something that is very difficult to understand. As an Irishman I find it difficult to be so critical in a parliament to which I hold great esteem and which has been a home of democracy and support for principles of the liberal market economy that I greatly believe in, I find this very depressing. I wanted to say that at the outset. I find this debate and the hectoring stridency of the debate which is currently taking place also very depressing because the Single Market which, as I say, the United Kingdom was the first and main propounder of, has been an enormous success. It is not perfect—we have issues and energy—but we have largely driven (since 1989 in the teeth of ferocious opposition from most countries other than the UK which had already done the deeds which were necessary to achieve the functioning of the Internal Market) from a situation where virtually every country in the European Union had, as its major utilities, nationalised companies with national monopolies. We have moved to a situation where virtually everywhere—airlines, telecoms—there is competition fully reigning across borders; banks all over the European Union denationalised. The Landesbank in recent years, one of the last redoubts of the banking system which was going through a constant battle, fought against by various people that I admire like Helmut Kohl and the Commission tried to do something about it, but the Commission drove it through and the Landesbank and so on, like everywhere else, have become part of a competitive system which has been remarkably successful. To me, therefore, we have achieved a situation which is truly remarkable. The Single Market, obviously has now move from mass manufacturing primarily into services far more than it did in the past and clearly there are areas where much more could be done, for example in the energy sector. The unbundling issue is one where I absolutely agree with the view which is being expressed by the Commission. We also have problems clearly in the area of national monopolies in the same sector but to point to that as one of the problems, if one ignored the rest, would be a clear imbalance in the analysis of what has been achieved because what has been achieved, I think, is phenomenal. Any fair analysis of where we have come from and got to proves that to be the case. The key driver behind the creation of the Internal Market

was economic, a recognition that competition was vital if European industry was to have any chance of surviving and I include the UK in this because we work far fewer hours than anybody else, we have a bigger demographic problem than anybody else, we have an issue with productivity against many other parts of the world. The only chance we have is by developing real competition and the best resources and manpower and ability that we have and we can only get that through competition across borders. You will not get that without law. Where we have got to would not have happened without sharing sovereignty. So attacking the very concept of sharing sovereignty or the supranational power of the European Court of Justice is attacking the basic essence of what the European Union is about and has achieved. That to me is the key issue.

**Chairman:** Excellent, thank you. Lord Dykes?

**Q318 Lord Dykes:** From my own point of view I would describe your remarks as a breath of fresh air and I only hope that other people will hear and read what you say on many occasions in the future and take up some of your arguments even more. I remember by the way that when we were talking some time ago at a last meeting the Sutherland Report was published in 1992 about how the European Single Market was going after bringing in by law in the Single Act and what was going to happen. Of course the self-confidence of the Commission was very low in those days because of these unfair attacks. You said by implication that the Commission has done very well in more recent times and indeed we have recently the mobile phone example where they have done very good work, strongly supported by this Committee. Do you feel the situation now is much better or is it still being undermined by the nationalism in some Member States like Britain where governments foolishly put domestic politics as a priority before the real, good interests of ourselves and the rest of Europe? By the way, one of my favourite themes of course is the other tragedy for us in not having joined what is now becoming the most used currency world in the world, the Euro. How do you feel about those things?

*Mr Sutherland:* You had better not start me on the Euro or I am afraid we will never finish. On the question of economic nationalism I would first of all say that it is no flattery to say that the country that one has least criticism of in terms of economic nationalism in my view, of the larger countries, is probably this one. I am not complaining about that. There is evidence of economic nationalism which we can talk about if you would wish to do so in other places, but there is nothing new in that. That economic nationalism has been part and parcel of many European countries' state-ism. I would say that it is evident everywhere but it has changed a little bit

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because even in the articulation of some of the positions in the other larger Member States—I should say in France in particular—the argument about national champions has been couched in phrases which at least recognises the European nature of the champion rather than the national nature of the champion. Whether that is a reflection of the real issue driving the comment in the first instance or not remains to be seen but the debate has moved to being a debate about European champions rather than national champions. However, the issue is a very real one I agree. I do not think it is much worse or much better than it was many years ago. I think in reality it is probably much better because public markets now at the end of the day win. The real world—other than in cases which are a hundred per cent owned by the state which are a diminishing number of industries in Europe—will direct the liberalisation process through the functioning of capital markets and in particular equity capital markets, but also debt markets because the actual cost of raising finance will be dependent.

**Q319 Lord Dykes:** Can you just say a quick word on the Euro?

*Mr Sutherland:* I believe that Britain should have joined the Euro. I think it is something that is not going to happen in foreseeable future. The debate seems to have moved on but I still think it would have been the right decision had Britain joined the Euro and I think interest rates throughout the period between then and now, following the example of comparison between the two, would have been much lower for the average British person. I think it would have been much more interesting from the point of view of inward investment and I think it would have been a better choice to make. However, I think that that debate is probably a debate for another day and perhaps a date some distance into the future.

**Q320 Lord Haskel:** Certainly the biggest triumph of the Single Market has been the Single Market. You say that you think it is the rule of law which is the way to liberalise the market more and to liberalise services. The problem with that is that it takes a long time; it is not very imaginative as far as the public are concerned and it is not very inspirational. Each side has smart lawyers. Do you not think there is another way of doing it? For instance, making sure that everybody in the European Union knows what benefits they have had from the Single Market already; explaining to people how many of the things that they take for granted about the European Union are, in fact, products of the Single Market. I just wonder whether we could not be doing an awful lot more to look at the Single Market in other ways so that we can achieve the objectives of liberalisation

and more prosperity through competition across borders by other than just legal means.

*Mr Sutherland:* I have to agree with you and I agree with you entirely but when you have seven out of every eight newspapers in this country apparently stridently anti-European as far as I can see it is very difficult to see the organ one will find to make this presentation of the positive benefits clear. I just do not see the evidence that that can be done. We have been talking about this for years, we have had reports set out the details of the benefits that would be received. Now I fear that it is difficult to do what you would wish. I am not saying that this should be driven by law because law, after all, can only become law if it is adopted by the Member States themselves. Directives and regulations are part of it and it is a narrowed ground on which to try to foster positive reaction, I agree with you entirely. I am merely saying that it has to be the base on which you build and has to be an essential thing that you believe in. If you do not believe in that then you lose the base which is necessary to support the whole edifice, but I agree with you that it would be much better if we could have a popular tide of support based up a recognition of the full benefits that have been obtained through the Internal Market, and other things. Free movement, for example, the Erasmus programme—I claim no credit for it but I had one year as Education Commissioner and it went through in that year in 1986 thanks to a Welshman, Harold Jones, who had an important role in its creation as my Director General—which enabled millions of students to spend a year abroad since then in different countries in Europe which is again part of the Internal Market free movement and so on. There are a lot of things that could be solved far better than they have been which would never have happened without the European Union.

**Q321 Lord Whitty:** This is partly on the same point, but in terms of public support for the Single Market the citizens do have to see their lives as consumers and as workers improve as a result of the Single Market. You are obviously quite right to say that a lot of benefit has already been achieved, but it has mainly been achieved by the effect of the Single Market liberalising individual national markets, breaking up monopolies and allowing establishment in different markets. As far as the individual consumer is concerned, the markets are still national and the amount of trans-border trading that takes place, except in limited circumstances, is pretty small considering we have been allegedly a Single Market for some time. My first question really is how far do you think the next phase could actually make it easier for consumers to access in various sectors markets outside their national area so they were actually feeling as if they were part of a Single Market as

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distinct from indirectly getting the benefits of it? Secondly, whether in their role as workers you need a stronger social dimension to the market to make it realistic to citizens?

*Mr Sutherland:* First of all the practical economic effects of the Internal Market across borders—not as far as consumers are concerned perhaps and their perception of it—are already self-evident. All you have to do is to look at, for example, the current situation with regards to RBS and ABN AMRO or many others cases. There are national champions and companies across borders or, for that matter, Abbey National and Santander there are cross-border mergers taking place at a rate which would have been inconceivable without the European Union. If the European Union and what it has provided had not been around we would be living in a Balkanised Europe today with protectionist enclaves virtually everywhere. With regards to the benefits and the knowledge of the benefits, I am not trying to score cheap points and go back to what I said at the beginning but if you look, as I did, over the last couple of days, at the Eurobarometer reports over 30 years and the British perception of the benefits received from the European Union, it has been consistently at the bottom. The Dutch are referred to as having rejected the European Treaty recently and yet 84 per cent of the Dutch people take the view that the European Union is a good thing and has brought them benefits. It has not happened here. I must say that the real problem is a more general political problem which is over to you, gentlemen, because it seems to me that either the political facts sell the issue or it is not going to be sold. The fact that you are buying products in shops that have come in because we are part of the European Union may not be as relevant here as it may be in other places because Britain was and is an open economy. I can see that from the outside, but I think the problem about the popularity of the European Union is a much deeper issue than the consumers saying that they get something out of it. On the social dimension of the European Union it seems to me that the social dimension of the European Union of the Single Market has been the provision of a vast number of jobs which I do not think otherwise would have existed because of the integration of the economic activities of different countries. I do not think it has challenged jobs, it has created them. In a sense it is the argument about globalisation in embryo and indeed it is the embryo of globalisation because if there had not been—and I should put this on the record—in my opinion, having been Director General of GATT and the WTO, there would be no WTO and there would be no globalisation as we know it if there was not a European Union not merely because we would never have had an agreement in the Uruguay Round which created the WTO in the first place and there are social

elements included in that, but also because if the Europeans had been negotiating separately there never would have been an agreement. I can name a few that would have blocked the agricultural package from the start off before you went any further.

**Q322 Lord St John of Bletso:** Mr Sutherland, you mentioned the main driver behind the Single Market was economic. I spend a lot of my time in Romania, Bulgaria and Poland, how successful do you believe enlargement has been for the Single Market and on your issue of the enforcement to what degree have the chapters of the *Acquis Communautaire* been enforced that ought to enable joining but one wants to see some continuity of adherence to those chapters?

*Mr Sutherland:* In regard to the enlargement?

**Q323 Lord St John of Bletso:** Yes.

*Mr Sutherland:* I do not think anyone would say that there is perfect compliance in the enlargement restraints. I think a political decision was taken that you could have a very much prolonged negotiation and accession process to reach a more perfect situation and by having a longer process to have a bigger stick with which to induce the conformity with laws or alternatively to move it more rapidly for political reasons. The United Kingdom favoured the latter course and I think on balance they were probably right to do so, but there is another case. One should say that the same argument could be advanced in regard to the whole Turkish accession issue. The second point that one needs to make is that the enlargement countries in aggregate only may up between five and ten per cent of European GDP so we are dealing with something which is marginal in its economic importance to the functioning of the internal Market. I think it has had a more profound effect, actually, in terms of migration and the impacts of migration which I think have been overwhelmingly positive to the countries which have been open to that migration as opposed to those who declined for the interim period. I think that whilst you are absolutely right that the conformity with rules and regulations has not been universally respected as it might have, that there is still evidence, for example of corruption in some quarters, that there was a political choice made and on balance I think it was the right one. I think people knew when that enlargement actually took place that it was not going to work perfectly. The danger of it of course is that if you get breaches of the law you end up in a situation where the law itself can come into disrepute because it is not being applied equally.

**Q324 Lord Geddes:** Mr Sutherland, this may be particularly appropriate for yourself, given the service that you did in Brussels, do you think that the

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original goals of the Single Market have been changed? If so, why and to what extent—if they have been changed or have themselves changed—is that to do with the enlargement?

*Mr Sutherland:* It seems to me that the initial goal of the Single Market, the four freedoms—free movement of goods, capital, services and people—has not changed since the creation of the Single Market, however the environment and the scope in which the Single Market operates has changed dramatically in the interim. The Single Market has moved from being a mass manufacturing market to one which is dominated by services and that is particularly the case in the UK. Enlargement has also fostered a cultural diversity and greater competition, has fostered greater innovation amongst market participants. The scope I think has also changed from national markets to European markets to globalised markets and I think now we have a situation where the change of focus of the Single Market from removing internal borders has now become a focus on how the EU can compete with the rest of the world. It is necessary to get to the final stage to have the first stage. If we do not have internal competition we have no hope for the rest of the world. We have big social issues at the end of the day about this which I do not know how we will ultimately address. Our only chance is by having a competitive market as a base. The big social questions are the ones I have already mentioned, the question about us working probably 25 per cent fewer hours than even the Americans, even fewer than some of our Eastern friends; we have big problems in labour participation amongst women and older people and so on and so forth, much lower than elsewhere. These are legitimate societal choices that we have decided on and we are not prepared to do any more. We are all the same in Europe on these. The last one is the demographic and the demographic ties into the migration. The demographic is the third big challenge. Those are the challenges to Europe. We have to recognise that our competitiveness is enhanced by a functioning Internal Market immeasurably from what it otherwise would be, it gives us some chance. But the other issues are issues which we have to address in our own way. There are differing views about it. The only other point I would make about that is that I do not actually think it is a left/right debate because some of the countries that are most effective and efficient in the competitiveness area of Europe, over a reasonable period of time, are the

Swedes, the Danes and the Finns. They are spending a lot on research, they are doing a lot on the Internal Market, three or four times more PhD students than here or in some other countries in the EU. I am going into a much wider area but that seems to me to be the issue. I may have missed your basic point.

**Q325 Lord Geddes:** You said the four basic premise still stand. One of those of course is the movement of people. Do you think that within the EU it was foreseen what “problems” the enlargement would have vis-à-vis the movement of people?

*Mr Sutherland:* I think it was. For an example let me take Turkey and the Turkish enlargement. The political involvement in Europe, the Commission, Council, Parliament and so on is one thing. The other issue is 71 million people with a GDP per capita at X as opposed to Y as the average. I am in favour of enlargement and in favour of dealing with the difficult issues of migration that follow from it, but if you are going to have a debate about it you have to accept that that is part of the debate. You cannot debate enlargement whether it is to Turkey or to Romania or anywhere else and ignore that implication and say, “This is all a problem about Islam and Christianity or NATO or something else”. Whether they knew it or they did not, I think that there were some politicians who actually wanted to enlarge to dilute and possibly to destroy. I think that there were others who wanted to enlarge because they felt, as I feel, that there is a certain moral obligation to those who are separated through no fault of their own from democratic Western Europe and that we should move and take the risks and the problems, including migration. There were some who deliberately did not discuss the migration issue and therefore if it comes as a surprise to people now it was because they were not properly informed. It was evident that it had to happen. We had a situation after all where the difference in GDP per capita between some parts of the newly enlarged Europe and the old were so dramatic that it inevitably meant that there would be a greater flow of people. I think it has greatly enhanced our society, at least in my experience of it here in London and in my own home country. I find them enlivening, positive and the diversity is something I enjoy.

**Chairman:** Mr Sutherland, thank you very much indeed for your evidence. We said we would finish at 4.30, it is now 4.30 and this part of the hearing is closed. Thank you.

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### Examination of Witnesses

Witness: Ms RUTH LEA, Director Global Vision, examined.

**Q326 Chairman:** Thank you very much indeed for coming; it is very kind of you. I think you have a few opening comments to make and then I am going to go round the Committee. I am sure questions will arise naturally. As you know, we are expecting to produce our report some time in the middle of January, commenting on the work the Commission has done in reviewing the Single Market. We are half way through our evidence taking session and we look forward to your guidance.

*Ms Lea:* Thank you very much; I am very pleased to be here. The first thing I would say is that I was actually a DTI civil servant in the mid to late 1980s. I was in the Invest in Britain Bureau and when we were talking about the Single Market we were talking with great enthusiasm. This was really going to open up the markets for Europe; it was going to be a tremendous thing for developing trade and attracting foreign investment. I very much believed it at the time but I have been somewhat disappointed to see how the Single Market has developed. Sure enough there are benefits; there is no doubt there have been benefits to the Single Market—we can talk about the figures later if we need to—but I am afraid that with the Single Market has come a lot of regulatory costs and according to Gunter Verheugen, who is the Enterprise Commissioner, these costs actually appear to be outweighing the benefits. This leads me to question what is going wrong with the Single Market as it has currently developed. I think we have to look at the Single Market model now based on legislation, harmonising regulations, gap-filling if you like, and ask if it is really delivering what we want it to deliver. I would suggest that it is actually under-performing. I think the whole way we have approached the Single Market needs to be re-thought in an age of rapid technological and global change and I think we need a fresher and more flexible approach to how we go around the Single Market, something that is based perhaps less on the traditional model of regulation and heavy legislation to something that is more focussed on key industries that will actually deliver the biggest bang for your bucks and also looking at a wider range of tools, not least of all competition policy.

**Q327 Lord St John of Bletso:** Thank you very much for that rigorous introduction. We have had a lot of evidence over the years about the escalating amount of regulation in the European market, the red tape. I have two questions if I may, the first is: what is the scope for de-regulation and secondly, clearly one of the main key drivers behind the Single Market has been the economic benefits. I have spent a lot of my time in Eastern Europe where there is a lot of scepticism as to whether those benefits have been

delivered. Could you perhaps comment on the other drivers other than economic of the Single Market?

*Ms Lea:* I think that is true. Certainly when I was a DTI civil servant we were looking at the economic and businesses benefits, there is no question about it. That was very much the perception, if I remember, of Lord Cockfield and Mrs Thatcher; that is how they saw the Single Market. However, the British were probably on their own here because as far as a lot of the other key political members of the EEC as it was then, they saw the Single Market not just as an economic end in itself as we did but of course they saw it as another stepping stone to political union. I do not think there is any doubt about that. Jacques Delors who, of course, was the Commission President at the time and scourge of the *Sun* newspaper if I remember correctly, saw the Single Market as a step towards political integration, economic integration and indeed a social Europe. For him the Single Market opened up the door to a lot of the extra regulation that a lot of the British people thought was completely unnecessary. I think there has been a lack of alignment as to how the British saw the Single Market back in the 1980s as purely economic and how a lot of the European continentals saw it as something different, something building up more of a political and economic integration. I think this is the problem why we have so much regulation that is not purely economic; it seems to be much more about building up political and social integration. This is why it has turned out to be so expensive because it is actually aiming to do different things. Could I just quote the figures that Gunter Verheugen was using? He said last year that the total costs of the regulations associated with the Single Market were something like 600 billion euros, which is about 5.5 per cent of EU GDP, the size of the Dutch economy. However, if you look at the benefits, I have here a document from the Treasury and the DTI they are talking about the benefits of about 225 billion euros, in other words almost a third of the costs. Something else is happening; it is not just about the economics, it actually about politics, it is about building up a social Europe as well.

**Q328 Lord St John of Bletso:** Particularly when it comes to Eastern Europe huge amounts have been sidelined with structural and cohesion funds. These countries are finding it extremely difficult to utilise those funds because of all the red tape. Do you see the situation easing, whereby it will be a swifter process for them to gain access to those funds?

*Ms Lea:* I do not know the details of that but it strikes me that there needs to be a much more flexible approach generally towards the Eastern European countries. I think one of the questions that was suggested to me was how are you going to deliver the

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Single Market in 27 countries? The truth is that with different countries—especially with Eastern European countries—you are going to have to take a more relaxed attitude than perhaps has been the case with the EU 15. I do not know the details but I suspect that there needs to be a more flexible approach adopted.

**Q329 Lord Haskel:** The Single Market sets out to deliver four freedoms, freedom of movement, choice, et cetera. How can we deliver those without initially having the regulatory regimes that you have been talking about, without Member States liberalising their internal markets, without all these arrangements being made? Obviously people do not want to forego these freedoms, one wants to improve on them. How would we set about improving on that?

*Ms Lea:* I think there is a certain minimal legislative regime that is required. I would humbly suggest now that we have gone beyond that point. I am not anti the Single Market; I want it work better. I think there are benefits from the Single Market, I would emphasise that again. In the goods and services and the capital and the labour, there have been huge improvements but these wretched costs tend to outweigh the benefits. That is the problem. I think what we need to do is actually say that if we are going to make the Single Market work better, where do we go from here? I actually thought the paper from the Treasury and the DTI (which is called *The Single Market—a Vision for the 21st Century*) got it bang on. Of course I used to work in the DTI and the Treasury so perhaps I have rather too much affection for these two departments, but I think they are absolutely right. They are essentially saying now that we have got to the point where the impact of regulation is to some extent counter-productive. They actually use the phrase that regulation now should be used as a last resort. They talk about regulations and legislation as being inflexible in a very changing world. This is the point they make time and time again but the world is so rapidly changing now. I think if you and I had been talking about the world economy in the late 1980s we would not have discussed China or India; we would not have thought of some of the huge technological advantages that you see now. Now we do and so if you have a lot of hard prescriptive regulation and legislation it actually boxes people in, it is too inflexible. The Treasury's response to this—and no doubt the DTI agree with them—is to look to other things, look to other types of policy and the one they favour hugely is of course competition. Sometimes we tend to think that the only way we can achieve certain goals is to regulate, to force people, to tell them what to do. Being a free market economist I also think the free market has a role here and competition certainly has

a huge role. I think with the Competition Directorate in the European Union I would like to see that particular Directorate have more teeth. You may be surprised to hear me say that some aspects of the EU should have more teeth, but I certainly think that one ought to have more teeth.

**Q330 Lord Haskel:** When we have spoken to the Competition people they say they have enough powers; their problem is implementing their powers, using their powers. Do you not think that a lot of these objectives are very social objectives? Is there not a more social way in which we can have the Single Market achieving the objectives through inspiring society rather than just economic efforts?

*Ms Lea:* The first thing I would say is that I rather challenge the assessment of the Competition Directorate. If they are saying they have enough powers but somehow they are not implementing them, the question is why are they not implementing them? The truth is that some of the Member States do not want to play ball. Of course within the energy markets we have been discussing about liberalising the energy markets for at least ten years now (if my memory serves me correctly). This is a huge area where there could be major advantages if you can open up the energy markets, not least of all for the less well-off in society. We did it, we broke up, we unbundled production from transmission before we actually de-regulated and as you are probably only too aware—more aware than I am—that that is what the Commission is trying to do now but the French have said, “Non” and the Germans have agreed with them. It is quite clear that what the French and the Germans want is national champions, huge companies with huge national power. They are resisting everything that the Commission can do to try to break up the particular energy markets. I am afraid that even though they say they have implementation problems, whatever the reasons are, the truth is that competition policy is perhaps not as effective as it might be and that is very much to the detriment of the consumers throughout the European Union. I think of the social aspects, at the end of the day economics is about consumption. People find this very odd when an economist will say that economies are not about investment, they are not about building huge roads or anything; it is about consumption, it is about people's living standards. In order to achieve better living standards you really do need to focus hard I think on the economic facts of life. Perhaps this might seem rather unromantic, but then again economists were never noted to be terribly romantic people, and this is jobs, growth and it is prosperity. Out of those things I suggest that you will actually find better living standards and a better social Europe.

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**Q331 Lord Geddes:** You waxed vehement and, if I might say so, lyrical on the subject of costs versus benefits and whilst this question is not to get you on the subject of the Euro unless you particularly want to get onto the subject of the Euro, but the Internal Market, the Single Market has managed to develop with lack of uniformity within the EU on the Euro. There are several countries, including the UK, who are outside the Euro. You may think this is a little bit of an unfair question, but you said rather strongly that you thought within the amount of red tape there was a not very thinly veiled motive, a political motive rather than an economic motive. If one got into that situation where within the EU the political motive was throttled back do you think that the Single Market could still work or could indeed work better?

*Ms Lea:* I was not trying to make a clever political point; I was just trying to explain that I thought the British attitude to the Single Market was different from, say Jacques Delors' and I think we ought to be honest about that to start with. To my way of thinking it depends what you mean by Single Market. If you are talking about a Single Market in which you have a reasonable freedom of goods and services and capital and labour I do not think you need a huge political panoply to back that up; I do not think you need a huge regulatory background to back that up. If I may quote Switzerland, which of course is not in the EU but it does have trade relations, it has had free trade in industrial products with the EU since 1972 and of course it has other bi-lateral agreements as well. It is interesting to look at the Swiss economy and how it has integrated and how it functions within Europe, not putting aside the EU for one minute, and comparing it with a lot of the other European countries. There was a very interesting book out recently by Clive Church which goes through all the economic arguments and I was very impressed that Switzerland's economy is much more integrated with the EU on just about every single statistic than any of the big EU countries, which perhaps is not surprising because of course Switzerland is a relatively small country. Ironically it is even more integrated than Denmark and that really did surprise me. I know Denmark is not in the Euro but Denmark is in the EU and has been in the EU since 1973. The Swiss economy is de facto within the Single Market but of course it does not have to take on the acquis, it takes the bits that are sensible for its business relationships. However, it strikes me very forcibly that sometimes when I hear about the political integration that is required for economic prosperity and trade and then you look at Switzerland, it rather sort of sets you back on your heels and makes you realise that perhaps that is not necessarily true. I was going to say you sounded rather coy about dragging me onto the subject of the Euro; I do not feel terribly embarrassed about discussing the Euro at all. I noticed there was

a lot of talk in the late 1990s that we needed to have the Euro to complete the Single Market and indeed British trade would collapse if we were not in the Euro. I remember all these horror stories and yet there was a very fine piece of research last year by the Centre for Economic Policy Research that showed that Britain and Sweden—the two large out-countries—had lost very little by not being in the Euro and the actual trade benefits for the countries that have gone into the Euro at the beginning in 1999 were relatively few. Again I think to myself that when you hear a lot about the political integration and the economic integration that people keep talking about, I increasingly think that this is more about politics than it is actually about economics. That is not necessarily wrong, but I just think that is the conclusion I come to.

**Q332 Lord Geddes:** Do you think the Single Market would work better if there was not this political push?

*Ms Lea:* I certainly think there would be few regulations or at least there would be an opportunity for individual Member States to repeal a few of the regulations. If you talk to a lot of businesses they have put up the flag, quite honestly, especially those businesses that do not trade. This is always another criticism of the Single Market, that it is fine if you are a big company, it is fine if you have a lot of cross-border trade, particularly in Europe, but it is not so great for the majority of businesses that actually do not go in for cross-border trade. If you can minimise the regulatory costs then I think inevitably you help the general competitiveness of business with should help generally the economies of Europe.

**Q333 Lord Whitty:** I still do not quite understand the strategy in relation to regulation. All governments regulate.

*Ms Lea:* Yes.

**Q334 Lord Whitty:** If you did not have European regulation in the field of competence in the European Union then you would have 27 different regulatory frameworks and they would not only regulate in competition policy and opening markets or not and establishment and so on, they would also regulate on the social and environmental, consumer protection and so on. So you would actually be dealing with 27 different regulatory functions. In order to create a Single Market is it not better to harmonise that regulatory framework and then look at the nature of the regulations that you have which is what the Commission are now doing. The Commission are trying to introduce what you might call British approaches to better regulation. Admittedly it is slow, but it is slow here as well, but is that not better that the Union are the prime regulator so that we are all on a level playing field theoretically and then look

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at how Europe improves its regulatory approach rather than saying, "Well, let's get rid of it regulating in all these fields and put that back to national level" because that surely undermines the whole principle of the Single Market.

*Ms Lea:* I think, as I suggested, there is a minimum of regulations that is more positive than negative and I agree with you so far as that is concerned. However, you do get to the point when you actually look at the figures—these are Commission figures, they are not my figures—that when the costs actually outweigh the benefits by three to one something has gone sadly awry. When I said that we have got to the point where regulation or extra legislation should be a matter of last resort—I am actually quoting this Treasury document—they too realise that it actually gets to the point where you think, "No more regulation which is inflexible". It is difficult to change regulation especially when you have 27 countries and actually you do have to back off and look at other forms of improving the Single Market.

**Q335 Lord Whitty:** If there is a change of heart and the Commission decide, for example, that we will repeal aspects of our environmental legislation or social legislation, all that will happen is that the vacuum will be filled by the national governments. Some will be more light touch than others, some will be better regulated than others but it will be counter-productive in terms of gaining a Single Market. How you deal with labour, how you deal with the environment will vary from Luxembourg to Germany and so forth. It is not as if absence of European regulation means absence of regulation full stop; it will not.

*Ms Lea:* No-one is saying absence of regulation, full stop. I am not saying absence of regulation, full stop. I trust I made that clear right at the beginning. It is a matter of balance. Whilst I can only applaud the Commission and I know Gunter Verheugen has said this on many occasions that he wants to make the regulatory regime on businesses more business friendly, he has also said that he finds other commissioners who stand in his way. He got told off

for saying that apparently, but there we go. I think the problem is that if you have EU-wide regulation—now we are dealing with 27 very disparate countries, perhaps it was a different matter when you had just the rich man's club of the EU 15 but it is now a very different world—then you are going to ask how you get to the point where you actually start repealing bits of legislation. The trouble is, if you repeal one bit there is going to be somebody who is probably likely to object. It is very, very difficult to repeal legislation; I suspect it is better not to have it in the first place. I think the second thing I would say, is that I hear what you say about regulations being EU-wide but we know too that they are implemented in different types of ways which in many ways is probably the right thing but some countries are more likely to interpret them in a pro-trade way, not least of all the United Kingdom if I may say so, than some of the other countries who do have tendencies to protectionism. I frankly do not see how you are going to change that but there are several examples of that that have been brought to my attention recently, one of course is the energy issue and the other one is about the Financial Services Action Plan which, to open up the retail services makes an awful lot of sense but there has been some research done by Open Europe which shows that Britain has taken these at face value and it is interpreting them as widely as possible to help cross-border trade. However, other countries that do have protectionist tendencies are not doing that and the problem for Charlie McCreevy is what is he going to do about the countries of the Member States that are less keen on implementing this regulation. No-one is saying that there is an instant solution to all of this; I am not saying that there is an instant solution to all of this. Really my main point is that we have got to a point here where the costs of regulations vastly outweigh the benefits, according to Commission figures. Can this be right? The answer to that for me is "No".

**Chairman:** Thank you very much indeed for the clarity of your evidence. You have helped us as Mr Sutherland has also helped us. The second part of the hearing is now closed.

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MONDAY 22 OCTOBER 2007

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| Present | Dykes, L<br>Eccles of Moulton, B<br>Freeman, L (Chairman)<br>Geddes, L | Haskel, L<br>St John of Bletso, L<br>Whitty, L |
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**Letter from Her Majesty's Treasury and the Department for Trade and Industry**

Thank you for inviting us to respond to your written inquiry. We attach our joint response below.

*What has been the impact of the recent enlargements of the EU on the single market?*

Each successive wave of enlargement has broadened and extended the single market and in turn the scope for gains from trade, investment and competition. As a result of the 2004 and 2007 enlargement rounds, the single market has increased by 104 million consumers (ie adding 20% to the population) and the EU GDP was about 850 billion euros larger in 2007 than it would otherwise have been. These enlargement rounds have therefore provided excellent investment opportunities in the new member states, providing good returns for investors and stimulating growth in the host countries.

UK trade with the eight central and eastern European countries which joined in 2004 was £6.4 billion in 2005, up 151% since 1995. Trade with Romania and Bulgaria was just over £1 billion, up 250% over the same period. The new member states are growing rapidly—over the last five, years growth averaged over 5%—and they are expected to continue to grow by over 6% this year and next. This means we can expect further benefits from trade, investment and competition going forward.

*Are there considerable barriers to firms seeking to offer their goods or services, or to consumers accessing these goods or services, in other Member States of the EU? If so, what are the most important of those barriers? Are small businesses more likely to encounter barriers seeking to offer their goods and services in other Member States? What measures are needed to overcome these barriers?*

The barriers to the Single Market that remain are predominantly in the services sector, where SMEs represent 90% of UK and EU businesses, Whilst some of these gaps will be plugged by implementation of the Services Directive, further measures are needed in key sectors such as energy, telecoms, financial services and postal services, Key barriers include continued existence of protected national monopolies, as well as legislative requirements and burdensome administrative practices. Further market opening of these industries could create up to €95 billion of new wealth and will create 360, 000 new jobs in the EU.

Businesses, in particular SMEs, sometimes face barriers in selling goods that have not been harmonised at EU level (currently around 25% of goods), The UK believes that strengthening of the mutual recognition principle will provide them with greater legal certainty and reduce costs of complying with host country rules and regulations.

Consumers also face barriers to access of goods and services. However, the lack of consumer confidence in cross-border purchasing is in itself a substantial barrier. The Government believes simplifying the consumer legislative framework that providing greater information and empowering consumers will go a long way to overcoming these.

*Do you consider further legislative measures by the Commission to be necessary for the completion of the Single Market? If so, what measures would you consider appropriate?*

The Single Market is an evolving set of markets that will never be complete. The Government believes that to respond to today's challenges a new approach is needed that moves beyond the goal of "completing" the Single Market and is more outcome-focused, more effectively prioritised and which uses a wider range of more flexible policy tools. With much of the legislation required for an effective, well-functioning Single Market now in place, further benefits will depend on more effective implementation and enforcement of existing

commitments and embedding better regulation principles and proactive competition policy into Single Market policy-making. Flexible approaches and alternatives to regulation should be carefully considered.

Further legislative measures may be required in some areas where they can be supported by robust economic evidence. For example in the energy sector we welcome the Commission's proposals for more effective competition through ownership unbundling; in postal services we would like to see agreement of the new proposal to achieve full market opening by 2009.

*Are the current provisions for monitoring market functioning and performance effective? What evidence is there that Member States are honouring their obligations equally?*

Market monitoring should be used to identify inefficient and/or anti-competitive markets and are not delivering consumer benefits. Strong action should follow when this work produces evidence of market imperfection. HMG would like to see the Commission doing more, using market analysis to prioritise its actions and to evaluate the success of its interventions. Market monitoring can point to solutions other than harmonisation of laws to achieve single market objectives—competition enforcement, self regulation and/or regulation might be more effective in some circumstances. The recent sector inquiries into competition in the Financial Services and Energy Sectors were a welcome development of the pro-active use of market monitoring at a European level, and provided evidence of barriers to competition and the effective functioning of markets at a Member State and Community level.

*Is there a need for greater regulatory cooperation between National Regulatory Authorities?*

Yes, Member States have a key role to play in supervising national markets. The Government would like to see greater regulatory cooperation across the EU. A flexible regulatory framework will require greater regulatory coordination and consistency coupled with a robust process for reaching agreement on cross-border issues. Overall the governance will depend crucially on stronger and more independent national regulatory authorities. The Government believes that Member States should commit themselves to greater independence for national competition authorities, and agree to regular independent evaluation, which could be undertaken by the Commission, to benchmark national competition regimes.

*Are the current remedies available to the Commission to enforce single market legislation adequate; and are they used effectively?*

Effective enforcement of existing rules is essential to realising the benefits of the Single Market and building awareness and credibility amongst citizens and businesses. An increased use of competition policy, coupled with a thorough review of enforcement mechanisms will play a central role in strengthening the single market. For example, greater use of market investigations and encouraging a greater role for private actions against anti-competitive behaviour is key to stimulating higher levels of market dynamism. Equally a new system of prioritising investigations into breaches of EU law based on economic impact, concentrating resources where there are major impediments to competition could be introduced to maximise competitiveness gains.

*What is your view of the Country of Origin Principle, whereby a company registered to provide services in one Member State is automatically qualified to provide those services in any other Member State on the basis of home country regulation? Does this Principle constitute the best basis for single market measures? How is cross-border activity by small businesses helped or hindered by the Country of Origin Principles?*

The Government believes that the country of origin principle is an important tool to deliver the free movement of goods and services. The principle is important in providing legal certainty to SMEs, who represent more than 90% of the UK and EU economy, but who are often deterred from trading in other Member States because they have to search for and comply with different rules and regulations, in addition to those of their own Member State, each time they provide a service or sell a product. Increased use of the country of origin principle in single market legislation will help those firms wanting to "test the market" before they set up business in another Member State. The negotiations over the Services Directive show that it is difficult to reach agreement on a pure application of the Country of Origin Principle, but does indicate a way forward.

*Do the concepts of the “national champion” and “economic nationalism” pose a threat to the single market?*

The concept of economic nationalism encapsulates measures to create national champions and protect domestic industries to avoid job losses in response to globalisation, international competition and domestic political pressure. The Government believes that these concepts are directly threatening to open and competitive markets, and will not protect jobs and growth in the long-term. It is only through embracing reform, openness and undistorted competition and rejecting protectionist policies that Europe will be able to realise the full benefits of the Single Market and compete effectively in a globalised world.

*Should there be a greater role for technology and research in facilitating the single market?*

The UK believes that science and technology makes an essential contribution to improving competitiveness and growth. As such, the UK supports the inclusion of research and innovation as a central element in creating jobs and growth, and established this area as a European priority at the Hampton Court summit during the UK presidency. It is through a dynamic and flexible Single Market and the achievement of structural reforms in line with the Lisbon Agenda that Europe can provide the framework economic conditions to allow research and development to flourish. The new 7th EU Framework Programme for research will play an important role by targeting resources and expanding opportunities for UK businesses and researchers.

*What is the significance of the single currency to the operation of the single market?*

The single currency can play a role in strengthening transparency of the single market. The elimination of exchange rate risk and transaction costs under EMU also facilitates the provision of cross border financial services. However the success of the Single Market is not dependent on the single currency. Structural reforms that achieve greater integration in financial markets as well as more flexible product and labour markets, will help to both strengthen the Single Market and ultimately lead to a better functioning currency union. The Government's position on joining the single currency remains as set out by the Chancellor in his statement to the House of Commons in October 1997, and again in the Chancellor's Statement on the five tests assessment in June 2003.

## SECTOR SPECIFIC QUESTIONS

### ENERGY

*Has there been sufficient unbundling of gas and electricity market in all Member States?*

The Commission's recent sectoral inquiry into energy found that the vertical integration of companies is blocking the development of an internal energy market and has proposed that legislation is needed for more effective unbundling. This view was endorsed by Member States at the March Energy Council. We strongly support the Commission's view and believe, like them and many Member States, that the complete separation of transmission network ownership from non-network activities is the best solution for both electricity and gas.

*Is there agreement on the fundamental importance of a genuine single market to support a Common European strategy for energy?*

There has been long standing support from both Member States and the European Parliament for the completion of the internal energy market. It has been a major element in the Lisbon agenda and Heads of State recently confirmed their commitment to delivering a single market at the Spring European Council as part of an integrated Energy policy for Europe.

*What are the implications for the single market of the Commission's commitments on climate change?*

The publication of the Stern Review recently outlined that the costs of action to mitigate dangerous climate change were consistent with continued growth provided the right policies were put in place and co-ordinated action was taken across countries. The EU's ambitious targets on climate change, agreed at the Spring Council, can be achieved through the use of well-designed and cost-effective policies, such as the EU Emissions Trading Scheme. As such a dynamic and flexible Single Market can play an important role in providing the opportunities and incentives for business to respond.

*Should there be a single EU energy regulator?*

The current variations in national regulatory practice make the establishment of a single EU regulatory body impractical without significant changes of practice within Member States. The Government supports greater coordination of national energy regulators to improve cross-border cooperation and the removal of national governments from the operation of national regulators.

#### TELECOMMUNICATIONS

*Is the EU telecommunications market genuinely cross-border at present?*

The current EU regulatory framework has increased competition and investment and has allowed cross-border markets to develop. Most of the problems encountered by UK businesses in other Member States, such as access to the incumbent's network, are to do with inconsistent implementation and application of the current rules across the EU, rather than the rules themselves or the respective roles of the Commission and national regulators.

*Is the current EU regulatory framework for telecommunications sufficiently technology neutral?*

In most cases, yes. We support the Commission's proposals for market-led spectrum management and expect the revised legislation (following negotiations due to begin autumn 2007) to be updated to ensure the Directives that underpin the regulatory framework are technology neutral and future-proof.

*Does this regulatory framework require modernisation?*

Robust implementation of the existing framework will help to remove national policies that adversely affect pan-EU services. Politically and financially independent national regulators, timely completion of market reviews and a strong European Regulators Group (willing and able to achieve harmonisation, where required, and spread best practice) are essential features of a well-functioning single market under the current framework. The UK believes the Commission's review of the Framework legislation should build on the strengths of the current regime (evolution), rather than a complete overhaul of the legislation and the respective roles/powers of the Commission and national regulators (revolution).

#### FINANCIAL SERVICES

*What has been the impact of the implementation of the Financial Services Action Plan as a whole: and in particular the Markets in Financial Instruments Directive?*

The EU Financial Services Action Plan (FSAP) has been the legislative framework for developing the Single Market in financial services, and once fully implemented has the potential to provide significant benefits for the UK financial services sector. Overall, it is too early to give a definitive judgement on the success of the especially as some of the most significant measures have yet to be implemented in the UK. For example, the Markets in Financial Instruments Directive (MiFID) is not due for implementation until November 2007, and so it is too early to judge its overall impact. That said, we would hope that the FSAP as a whole, and MiFID in particular, would have a broad market opening and liberalising effect. Early signs are encouraging; the anticipated market opening that MiFID will deliver has, however, already resulted in the creation of new trading schemes such as Turquoise, Boat and Chi-X that should improve competition.

*Do you support the Commission's Code of Conduct on Clearing and Settlement?*

We welcome the Commission's code of conduct. The Commission's decision to propose a market-based approach as an alternative to a Directive is a good example of better regulation working in practice.

28 June 2007

### Examination of Witnesses

Witnesses: Ms KITTY USSHER, a Member of the House of Commons, Economic Secretary to the Treasury, MR GARETH THOMAS, a Member of the House of Commons, Parliamentary Under-Secretary of State, Department for Business, Enterprise and Regulatory Reform, MR MARK PASKINS, Head of EU Financial Services Strategy, Treasury, MR JULIAN FARREL, Director for Europe, Department for Business, Enterprise and Regulatory Reform, examined.

**Q336 Chairman:** My name is Lord Freeman, the Chairman of the Committee. We are very grateful indeed to both Ministers, Ms Kitty Ussher MP, Economic Secretary to the Treasury, and Mr Gareth Thomas MP, Parliamentary Under-Secretary of State, Department for Business, Enterprise and Regulatory Reform. It is kind of you to come and help us in our inquiry. We are intending to try and publish a report hopefully in January after the Commission has produced its own conclusions on the review of the workings of the Single Market. We have been at this for almost six months and have a few more months to go, including visiting Mr McCreevy and we hope someone from the President's Commission office in Brussels some time in December. We hope that we can keep these proceedings, because you are busy ministers, to about 45 minutes. I have asked my colleagues to ask their questions briefly and we would appreciate a fairly brief response. Are there any opening statements you wish to make or shall we plough straight in?

*Mr Thomas:* I am quite happy to go straight in.

**Q337 Chairman:** We will also refer to Ms Ussher first in terms of giving a response but we would like a response, if appropriate, from both Members to each question. It is entirely up to you if you wish to pass one on. We now have a European Union of 27 Member States. Is it really feasible or practicable to expect the Single Market over the coming years to deliver all the benefits that we have expected with a much smaller group? Does size matter?

*Mr Thomas:* Perhaps I can pick the question up. I think we can expect the Single Market to continue to deliver. We think it has already delivered substantial benefits. Our estimates are that some 225 billion EUR of additional wealth have been created and some 2.75 million new jobs. We think it is right that the review is taking place. The research we have done suggests there are further benefits that can be secured, for example in the liberalisation of the network industries. Some estimates we have carried out suggest that some 95 billion EUR of additional wealth and some 360,000 additional jobs are potentially possible as a result of full liberalisation. The Single Market is delivering but there are additional benefits to come.

*Kitty Ussher:* Since BERR leads on the Single Market our intention was that I should just come in on those questions relating to financial services, unless you

particularly wanted to probe whether there was a wedge between us, which I can assure there is not.

**Q338 Chairman:** Could you clarify, Mr Thomas, whether the mere extension in size is causing insuperable or difficult problems in terms of creating these benefits?

*Mr Thomas:* I do not think it is creating insuperable problems. Each time the single market has been extended you add enforcement challenges obviously for the Commission but we do not think they are insuperable. We think the reason for the review is not so much just around enforcement issues but also a sense that there are further benefits to be gained from further liberalisation measures within the Single Market, as I have described, in terms of energy for instance but also a recognition that there are new players internationally, China and India obviously, and we need to continue to strengthen our markets in Europe to deal with those other global competitors.

**Q339 Lord Geddes:** To an extent my first question is a follow-up and that is to probe with you what institutional—and I emphasise institutional—constraints exist on delivering the Single Market. Has that been exacerbated by the enlargement process? Depending on your answer to that, does the Commission, in your opinion, have the right tools for delivering the Single Market? Can it get over those institutional constraints if there are any?

*Mr Thomas:* I do not think there are huge institutional constraints. As I said in answer to Lord Freeman, when you extend the market to new countries, as has happened, you have additional enforcement challenges but I would not have said they are insuperable. We want to see a strengthening of the Single Market across all 27, not just those countries to whom the Single Market has been extended. In a sense, there is a role there for making sure that Member States and the Commission, as well as the Parliament, are continuing to work to the same objective. I will give one example, if I may, to demonstrate that point and that is in the implementation of directives where the Member States, through the Council, have now agreed that the transposition deficit should be reduced from 1.5% to 1% in 2009 so that Member states collectively will have to implement 99% of directives on time and the Commission will have to monitor the extent to which that is happening. We see that as a good thing in itself, something that will strengthen the Single

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Market but obviously, as it is over a wider number of States, there is that additional challenge as well.

**Q340 Lord Geddes:** To follow up with my second part of the question, you said the Commission needs to monitor that process. Do you think they have the ability to do so?

*Mr Thomas:* I do. There are a number of Member States that have paid the penalty in terms of heavy fines for not implementing directives in the appropriate way so I think the Commission has demonstrated that it does have teeth. I have no doubt that Commissioners will be in touch with us and with other Member States if they think there are problems. To date we believe they have done a good job and they will be able to continue to do that job as things go forward.

**Q341 Lord Geddes:** My other question is on the role of the single currency. In the evidence that we got in July from the Treasury and the former DTI, there was a not unexpected paragraph about the single currency that, yes, it is important but not vital. I am paraphrasing furiously. Could you expand a bit on that? Has the single currency significantly benefited the Single Market?

*Kitty Ussher:* That is probably one for the Treasury. In terms of the first point, I think it logically follows that if you reduce a barrier to trade it helps more trade to take place and, of course, operating in their different currencies is a barrier to undertaking any kind of transaction but it is by no means the only barrier that exists and not the only area we should be focused on. There are substantial intangible barriers like culture and language, and so on, and other things we can do things about: customs, in terms of labour markets, product markets, capital markets and so on. That was the thought underpinning the written document that you refer to. In terms of the evidence, the answer seems to me to be that it is quite mixed. There was an increase in cross-border trades in goods in the late 1990s. It is still increasing but it seems to have tailed off to a certain extent. If you wanted to look for a direct correlation between increased trade and the existence of the single currency, I am not sure myself that evidence exists in a very clear form. In terms of Britain's position, bringing down barriers to trade encourages more trade to happen but, as the then Chancellor set out in 1997 and then in his assessment in 2003 of his five tests for euro membership, there are significant other factors that we should take into account, notably in terms of sustainable and durable convergence. The Assessment concluded that the benefits do not outweigh the costs for the UK.

**Q342 Lord Geddes:** To ask the question the other way around, the fact we are not a member of the single currency has not impeded our involvement in the Single Market.

*Kitty Ussher:* I think bringing down any barriers to trade encourages more trade to happen but we have a huge amount of trade with the EU even though we are outside the single currency. If the subtext to your question is does that mean we should join, no at this stage. Although there are some benefits, of which bringing down barriers is one, there are also costs and we think that the costs outweigh the benefits at this stage.

**Q343 Lord Haskel:** We all agree that there are a lot more benefits to be derived from the Single Market and one of the purposes of this inquiry is to see how that can best be delivered. Do you think that the best people to deliver it are the Member States or is it a matter for the Commission? How can the enthusiasm for the Single Market be re-invigorated by the Member States? We are agreed that there are economic benefits but are they enough to motivate people to drive the Single Market forward? The corollary to that is there is a rise in economic nationalism. Is this inevitable? How can the benefits of the Single Market be mounted against it? What we are really trying to ask you is how can we drive this project forward in the best possible way.

*Mr Thomas:* The project that we would see would be how do we increase jobs, how do we continue to promote economic growth and prosperity not how do we promote the Single Market in its own right. We see the Single Market as a key tool in helping Britain, and indeed the rest of the European Union, to continue to have high employment rates and high growth rates. To unpick that a little, we think there are both responsibilities for the Commission and indeed for Member States in bringing the Single Market forward, in terms of the role of the Commission and the Commission focusing on those areas such as the network industries, energy, telecoms, the postal services, where there will clear benefits to further liberalisation and a clear role we think for Commission activity. Equally there are responsibilities for Member States obviously to implement the directives and to look at the specific barriers within their own countries. We are both engaging with the Commission, through the European Council, but also looking at what we have to do in-country ourselves to take advantage of the Single Market?

**Q344 Lord Haskel:** Those are the mechanics and I think we would all be agreed on that. Do you not think that to carry the public along there have to be some political considerations or are there some social

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considerations that we need to see that are brought to the fore so people can see they have benefited in the Single Market.

*Mr Thomas:* High rates of employment and high rates of economic growth are as much political objectives as they are economic objectives in that sense. Yes, we need to continue to demonstrate to members of the public, and more generally, the benefits of market opening and we continue to do that. One of the reasons why we have welcomed the opportunity to appear before the Committee is the Committee's work, helping to bring light to some of the additional wealth and some of the additional jobs that have been created as a result of the Single Market, would, in our view, help in a sense to re-invigorate enthusiasm for the benefits that we think a Single Market has brought and will continue to bring.

**Q345 Lord Haskel:** The paper from the Commission refers to the citizen consumers being the objective here. Would you agree with that? From what you have described, you are inclined to see the benefit is for the citizen consumer.

*Mr Thomas:* There are benefits to citizens as consumers and there are benefits to citizens as employees and as would-be employees as well from the Single Market.

**Q346 Lord Haskel:** The European parliament has adopted a report on the Single Market review and it argues that there has to be a social dimension to the Single Market. What role should the social agenda play in the Single Market? You have told us all about the economic benefits. Do you see the social agenda as being part and parcel of the economic benefits or is there a separate agenda there?

*Mr Thomas:* High rates of employment are as much socially desirable as they are economically and politically desirable. If by a social dimension you are making the case for substantial new responsibilities on business, then I think we would hesitate before being enthusiastic about such a prospect because anything that makes it less likely for business to want to invest in Europe is something we would obviously have concerns about. The social benefits from the Single Market are very much in the higher rates of employment that it has helped to generate particularly in Britain but also elsewhere.

**Q347 Lord Haskel:** Do you not think that there are other social benefits? For instance, if you ask young people what are the benefits—and you are young people.

*Mr Thomas:* Thank you very much. It is worth coming along just for that!

**Q348 Lord Haskel:** When asked what are the benefits of the Single Market they speak in terms of freedom to travel, freedom to go and study, freedom to go and work in other countries, freedom to settle and live in other places. Do you not think that too is some sort of an incentive to try and drive the Single Market forward? These benefits have come from the economic advantages but a lot of young people particularly see these as the benefits and they take a lot of the other things for granted.

*Mr Thomas:* I would not want to disagree with you. Coming from the Department for Business and Enterprise I am supposed to take a very hard-headed approach to the business benefits of the Single Market and that is what I have set out to do but I recognise your description of those other benefits that have flowed in the wake of the economic benefits.

**Q349 Lord Haskel:** As an MP would you not see those other benefits as one of the reasons for driving the Single Market forward?

*Mr Thomas:* I would but I would see the economic benefits as being the overriding benefit from the Single Market.

**Q350 Lord Whitty:** Lord Haskel has somewhat broadened the agenda but I will go back to the institutional. The Department of Business Enterprise and Regulatory Reform also in the business of the department looks after both consumers and employees so there is built into the departmental agenda a wider remit. It has been put to us that the focus for this institutionally should be on the national regulators, both in general and in relation to the three particular sectors, rather than the Commission or planned European bodies or indeed national governments as such. First of all, would you agree with that? Secondly, it is also known that the performance and remit of independence of the national regulators varies considerably and their sensitivity to issues of competition, consumers, and wider issues, small firms for example, varies quite considerably as indeed does their independence. How far do you think the functioning of the Single Market and the extension of the Single Market is inhibited by the differential performance of the national regulators?

*Mr Thomas:* In reference to your first point, there quite clearly have been substantial benefits for consumers from the Single Market in helping, through the greater competition, to keep prices as low as possible. We would see that of continuing benefit in that way going forward. Coming to your point about national regulatory authorities, yes there have been some problems with inconsistencies between the performance of regulators across the

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European Union. We point to energy as being a particular area where there have been problems and where we are particularly enthusiastic as a result about the liberalisation proposals for the energy market that have been brought forward by the Commission.

**Q351 Lord Whitty:** In another context I might not be quite as enthusiastic about the role of Ofgem but in this context clearly Ofgem is a paragon of virtue compared to some of the regulatory authorities which exist in other Member States. Until we address that issue are we really going to get a genuinely liberalised energy market? That certainly applies to financial services as well as certainly many other sectors.

*Mr Thomas:* We welcome the fact that the Ofgem model appears to be what the Commission have based their proposals for further liberalisation of the energy market on. Yes, there have to be, in our view, improvements in the performance of energy regulators, for example, across the Union if we are to see the full benefits of liberalisation achieved. It is one of the points we are continuing to press in the discussions that are ongoing about the Commission's proposals.

**Q352 Baroness Eccles of Moulton:** This is a question later on when we get into the three specifics, energy, telecommunications and financial services, but there is the alternative to full legal unbundling which is the independent system operator model. Which do you think would enable integration of the market?

*Mr Thomas:* Both could do a job of work in terms of helping entrants wanting to come into the market to get proper access. Our instinct is that the independent system operator has the disadvantage of requiring fairly continuous and intrusive regulation so we very much prefer the unbundling proposal but we have not it ruled out. As I have described, the ISO route could achieve the purpose.

**Q353 Baroness Eccles of Moulton:** For all intents and purposes we are unbundled and it is not going to be such a big mountain to climb as some of the other countries.

*Mr Thomas:* Indeed.

**Q354 Baroness Eccles of Moulton:** Is there not quite a lot of pressure on Europe as a whole to be much more co-operative about energy because of where the sources of fossil energy will be coming from in the future? This is a political question.

*Mr Thomas:* There is a recognition that Europe, in a sense, needs to work together and that liberalising the energy market, albeit that it poses particular challenges for particular countries, is the right way to

go. There is no secret there is a robust debate as to how to take this forward. I take your point that given the energy security issues Europe does need to stick together, in that sense, to work these issues through and it is indeed doing so. I come back to the point I made to Lord Whitty, that has not stopped the Commission starting to take infringement proceedings against a number of Member States but I think everybody recognises we have to work together.

**Q355 Lord St John of Bletso:** We have spoken about strengthening the Single Market and in many ways my question is an extension of Lady Eccles question and that is that many would argue that the efficiency, and potential efficiency, of the Single Market has been impeded by over-regulation. Certainly evidence suggests there is little appetite for new legislation to be introduced to enhance the functioning of the Single Market. What non-legislative approaches do you think offer the best alternative route for further integration?

*Mr Thomas:* Perhaps I can take that point. I would not accept your proposition that all legislative options are unattractive. I have described the energy, telecoms and postal services where there is certainly appetite for legislation but I do take your point that there are a series of other non-legislative options that are attractive: for example, use of the better regulation principles is one attractive route to go down, the use of impact assessments, efforts to simplify and codify existing legislation, getting rid of obsolete legislation, more use of the mutual recognition principle. Those types of non-legislative options are attractive we think and there is a lot of potential there that we want, with the Commission and in Member States directly, people to take advantage of.

**Q356 Lord St John of Bletso:** I take your point about the need for legislation but what lead has Her Majesty's Government taken in the whole process of trying to simplify the process and to look to deregulate where we have over-regulation in some of the sectors we are referring to?

*Mr Thomas:* We have been pushing the Commission to look at what it can do to simplify in a whole series of areas. The Commission has identified 13 areas where it believes it can simplify EU legislation with the aim of a 25% cut in the admin burden for business by 2010. Company law and public procurement are just two of the areas that are being considered. We have also been encouraging the Commission to think about the particular impact on small and medium enterprises of legislation. The Commission is bringing back to the Competitiveness Council in November the progress it has made in what will be

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the midway point of a five-year programme to do just that.

**Q357 Lord St John of Bletso:** I was going to move on to SMEs but I will keep that for the next question. If I could now revert to the financial services action plan. Of course the plan is not yet complete and there have been calls for a regulatory pause. One of the major hurdles has been integrating the retail sector. The barriers to integration in retail financial services appear to be cultural rather than commercial. What realistic prospect is there for integration in this sector?

*Kitty Ussher:* I do not think it is realistic to expect ordinary retail consumers to use financial services markets in the same way as larger business or wholesale consumers do. That is not to say we should not be pursuing a more effective Single Market in financial retail services. There is obviously a small proportion of our consumers who would find it very useful if they operate cross-border but I also do not see that we have particularly anything to lose from so doing. We do not know what the economic effect will be except that it is likely to be positive. We need to recognise that retail financial services is a slightly different market where there are strong national preferences but that is not to say that it is not worth trying to bring down barriers in cross border trade in this area, indeed in any other, so consumers have greater choice and there is greater competitive pressure to bring down prices and expand the options that are available.

**Q358 Lord St John of Bletso:** Would you agree with the premise that one of the major barriers is more cultural than commercial?

*Kitty Ussher:* There are very strong cultural barriers but there are commercial barriers as well. It is in the interests of our industry, since we have the largest financial services centre in EU here in London, that we should seek to break down those barriers. As to quantifying the relative size of culture and commercial barriers, I am not sure that is an exercise I want to undertake.

**Q359 Baroness Eccles of Moulton:** As you say in your evidence, the SMEs represent 90% of UK and EU business in the services sector. Liberalising the Single Market is obviously as important to SMEs as to any other part of the whole market but they probably need a bit more help. The question is what assistance is your department able to offer them, particularly in the light of the diluting of the country of origin principle, the provision for the single points of contact, which is meant to help them over the complications of operating under another country's legal systems. This seems to apply to temporary

registration, companies operating under a temporary licence to trade in another country. At what stage does temporary registration convert into permanent when these particular problems cease to affect small and medium-sized businesses to the same extent?

*Mr Thomas:* First of all, one needs to think through the reasons why SMEs cannot or do not take advantage of all the different opportunities there are under the Single Market. Sometimes it is as basic as a simple unawareness of what the markets are across the Single Market. There obviously UK Trade and Investment has a role to play. Where there is particular advice that is necessary about access to finance, which can be a constraint on occasion, then there is the whole Business Link network with the national help line, the on-line portal, the network of business advisers, able to step in and help. There is then obviously the role that we play as a Department, in a sense, in lobbying for directives to be as friendly to small and medium enterprises as I have tried to describe in answer to Lord St John. There are a series of other steps that we are seeking to take. You mentioned the point of single contact and that is obviously going to be particularly helpful to small and medium enterprises. We are pushing for further ideas to be developed by the Commission in terms of the better regulation agenda, better use of impact assessment, the type of things that we have done here in the UK, to generally positive response, but not done necessarily quite as well across, in our view, the Commission or other Member States. Increasingly we are beginning to see those impact assessments being done in the sustained way that we seek to do them in the UK.

**Q360 Baroness Eccles of Moulton:** How good are we being at developing single points of contact?

*Mr Thomas:* We would like to think we are not too bad. Let me bring Mr Farrel in to give you some more detailed information.

*Mr Farrel:* We are just in the process of launching a consultation on the implementation of the EU services directive. The key element of that, as you mentioned, is for SMEs the point of single contact. That is a very substantial consultation document that is just in the process of going out and we are looking forward to getting a good response to that.

**Q361 Baroness Eccles of Moulton:** How much do we know about the progress that is being made in other countries which, of course, affect our SMEs trading?

*Mr Thomas:* On that we have had a series of conversations between our officials working on the point of single contact with officials in other countries to share best practice. Other countries have sought to come across to the UK to learn from us about implementation of the point of contact and through

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the discussions that we have been having we have an opportunity to learn from what other countries are doing.

**Q362 Baroness Eccles of Moulton:** The diluting of the country of origin principle you think can be considerably assisted by other types of support that other SMEs can receive?

*Mr Thomas:* There are a whole series of ways that we seek to support small and medium enterprises as I have described. We think, in a sense, we have a particular responsibility to push the case for small and medium enterprises particularly because of the point you make about how many businesses would be in that category and the potential for them to benefit from the markets that are available within the Single Market. I do not think we would ever relax and say we have everything perfect but we try to do as much as we can.

**Q363 Baroness Eccles of Moulton:** It is a double-edged duty: both being a good host and encouraging the other Member States to be as helpful as possible to our businesses that want to go and work in them.

*Mr Thomas:* Yes. There are benefits to the UK from the competition that comes from businesses that are based in overseas countries which helps to keep prices for British consumers low but we want to make sure that the Commission, and indeed Member States, are doing all they can do to make the business environment across the Single Market attractive to British businesses too.

**Q364 Baroness Eccles of Moulton:** This is not an area that will be lost sight of?

*Mr Thomas:* No.

**Q365 Baroness Eccles of Moulton:** There is a difference between a business that is working on a temporary basis, a temporary licence or registration, and at some stage becoming permanent. It seems that its position in the country that it is working in alters in some way; there is a changeover between temporary and permanent.

*Mr Thomas:* There are no set rules. The European Court, through some of the decisions that it has taken, has in a sense given us some case law, I suppose you would describe it, but there are not at the moment any set rules. It is something we keep under review.

**Q366 Lord Dykes:** I apologise for the delay in arriving because of the Government's EU Lisbon statement in the House. My apologies to the Ministers and their colleagues as well. Particularly with the events earlier in the year, quite dramatic events, on mobile phones and other aspects of

telecommunications, there is now this likelihood the Commission will bring in the proposal for an EU-wide telecommunications regulator. We have made inquiries in this Committee and elsewhere that suggest there is not a lot of support for this, both in this country and elsewhere, but everything is in the formative and transitional stage. What would the Government's position be if these proposals were put forward by the Commission?

*Mr Thomas:* I think we would want to see the detail of the proposals before we gave a completely definitive comment. I suppose at the moment we would prefer to see a strengthening of the individual national regulators as opposed to a creation of a super regulator across the European Union. Our concern would be, could such a super regulator really know the different conditions in each country? We think there would need to be co-operation between regulators but at this stage we do not think the case has yet been put to us clearly enough for such a super regulator.

**Q367 Lord Dykes:** Do you feel confident that such a structure of co-ordination and co-operation could be effective rather than just pretending?

*Mr Thomas:* There is already a European Regulators Group that provides an advisory role to the Commission. You will have to forgive me, we do need to see what the Commission brings forward before we can give a definitive view. If it would help, Lord Freeman, I will write to the Committee once we have seen what the Commission are saying and have had time to digest it. You will forgive me for wanting to allow some room at this stage.

*Kitty Ussher:* In terms of your general points, there are examples from other sectors where co-operation between regulators has proved quite effective. In my own sector we think that the Lamfalussy arrangements to co-ordinate supervision in financial services are the right way to go about it. Once they can be tweaked at the margins we think they are rather effective so it is possible in theory.

**Q368 Lord Geddes:** The current remedies available to enforce Single Market legislation, in the written evidence we have got I was alarmed to read as a remedy: "to encourage a greater role for private actions against anti-competitive behaviour is key to stimulating higher levels of market dynamism." I absolutely agree but how on earth can an SME afford to do it?

*Mr Thomas:* SMEs may have the resources to want to go down that particular route. The key thing is for us to establish such a process to make it easier for SMEs, or any business, to take out private actions for damages. That is what we are seeking to do both here in the UK and across the European Union. As part of

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the process of doing that, we obviously discuss with SMEs what the results of legislation in that area would mean, and the costs of bringing an action would be one of the things we would expect to discuss.

**Q369 Lord Geddes:** You might discuss it but who would pay for it at the end of the day?

*Mr Thomas:* One of the things you need to do in the discussion is understand how small and medium enterprises would see the cost of bringing such an action. There are a variety of other tools that we can use, or small medium enterprises can use, to get redress. One of the most effective ways at the moment is the so-called SOLVIT process. I know of one example where a British company has been helped to

secure some 98,000 EUR by way of a VAT return from Spanish authorities as a result of that process. I do not think you should see private actions on their own. They would be part of a series of measures that SMEs, and indeed other businesses, might use to get redress.

**Chairman:** I hope the Committee will take evidence from SOLVIT on our second visit in December. We were impressed with the theory and want to see how it operates in practice. Thank you very much indeed. This has been a very workman-like session but may I compliment you, without being in any way patronising, on the clarity and directness of your answers which is much appreciated. We look forward to producing our report in due course and we hope it will be helpful.

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**Examination of Witnesses**

Witnesses: Ms ARLENE McCARTHY, Member of the European Parliament, and MR JACQUES TOUBON, Member of the European Parliament, examined.

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**Q370 Chairman:** First of all, a very, very warm welcome to you both. For the shorthand record, it is Arlene McCarthy, MEP, and Jacques Toubon, MEP, who have very kindly agreed to come and help us with our inquiry. For the benefit of our two witnesses, this is an all-party committee. We have been working on a report to report to the House on the review that the Commission is making of the working of the internal market. We have already been to Brussels and are going back to Brussels. We hope to produce a report in January in good time for the summit which, I believe, is in March. Obviously it will be after the Commission has produced its own report on the Review of the Internal Market. I hope that both witnesses have got an opening series of comments to make and then we will go straight into questions. In due course I am going to ask Lord Haskel to open the batting for us. Arlene?

*Ms McCarthy:* Could I thank you for inviting us, myself, obviously, as Chair of the Internal Market and Consumer Protection Committee, and Jacques Toubon is our rapporteur on what, I think, is a very important issue on our agenda and, indeed, on the agenda of the whole of the EU. My Lord Chairman, first of all, could I say how very much we welcome the work by this Committee. We find your reports extremely useful, we often use them as reference tools and manuals in trying to shed some light on what the view is of national Member States. I often say that I would be very pleased if the House of Commons could follow the quality of your work. Of course, we did not follow you on the issue of mobile roaming and phone calls, I think we had a very different view on that, but that is something which may come up in our question session. I think it is important at the outset to say that this Single Market Review has been billed as a more fundamental review which aims to strengthen the internal market in the face of a range of new challenges, enlargement to a range of obviously poorer countries that have come in and globalisation. I have travelled to India and I went to Mumbai to have a look at some of the issues around outsourcing, so it is quite clear to us the challenges are significant. What we are certainly trying to achieve in our committee is to argue for an open and flexible Europe which will create the economic conditions that are necessary to enable our citizens and business to prosper and succeed in a competitive

and dynamic Single Market, which now, of course, consists of some 495 million consumers. We also want to ensure that competitive markets reward effort, creativity and entrepreneurship and so that is why, as I said, we are trying to push—and you will see that in Mr Toubon's report—for a modern and flexible approach to the Single Market, perhaps with less focus on legislation, more on competition, trying to reduce some of the regulatory burdens and at the same time encourage innovation. Certainly we do not think the fundamental task or objectives of the internal market have changed, but we still think that we need to bring down barriers, simplify existing rules and help EU citizens, consumers and businesses to reap the benefits of a direct market access to 27 Member States with nearly half a billion people. We do not think the cornerstones have changed, we think the four freedoms are still fundamental, free movement of people, goods, services and capital, but we do want to make sure that our citizens who have the right to work, live and study in another EU country have choices and benefit from increasing competition, lower prices, have equal levels of protection and our businesses have easier access to those markets. You probably will be aware, my Lords, that the previous reviews that we have had have been three-year action plans and generally they have been legislative action plans. As I said, we think that this is a more fundamental review which will probably be a mix of policy initiatives and non-legislative actions as well. Certainly that is what we are expecting when Commissioner McCreevy comes to present to us on 21 November. Certainly we have seen from 1992 to 2006 the benefits of an enlarged internal market. We have seen that with 25 Member States the GDP and employment levels rose, those are estimated at around 2.2% gain in GDP and about 1.4% rise in employment. We were very pleased to receive the Commission's Communication in May 2006 which talked about and very squarely put citizens at the heart of the internal market. The questions that were raised for us, which led on to the report that Mr Toubon prepared for my committee as an own-initiative report—it was not at that time a legislative report but we took it on board as an own-initiative report—were how do we build on the achievements, what are the gaps, what are the challenges of the future and what are the best

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mechanisms for delivery, I think the very questions that you are addressing in your work. Of course, we were concerned to ensure that there was an extensive public consultation with stakeholders. The interim report that was presented to the Spring Council in 2007 was a report on which my committee based its work. We adopted Mr Toubon's report in a resolution in July 2007 in committee and we strove to adopt it then in September so that we could be in advance of the work that the Commission is currently preparing, both for the presentation of its Communication and, indeed, the discussion at the Spring Council and, as I said, that is why we wanted to make sure we had our input. Certainly Mr Toubon will give you this in detail, in our report we give a key message to the Commission and the Member States. We want to see an internal market that improves citizens' confidence, to reduce administrative burdens and the Single Market to help make us fit for globalisation. We clearly said we wanted to see more opening of the network industries and, of course, we also said that we wanted to strengthen IPR rights in terms of urging Member States in the Community to tackle piracy and counterfeiting and to protect innovation in the EU Member States, which is particularly important for the UK and France as the biggest producers of innovation and the creative industries. Of course, we also argued for the Community patent which I am sure, my Lords, you will know has been a very tortuous process over the previous years and one in which I was very actively involved as a member of the Legal Affairs Committee. Mr Toubon's proposal was backed by an overwhelming majority of the full European Parliament, with 534 votes in favour, only 119 against and 27 abstentions. We had an informal meeting with Commissioner McCreevy in the week that we voted it through Parliament and he promised to take on board many of our recommendations in the review that he is now engaged in and the report that will be coming forward. As I said, we do not expect it to be a shopping list of new legislative actions; we do expect it will be a major re-positioning reviewing by policy area and a mix of legislative and non-legislative initiatives. We expect it to better equip us in the area of governance, so we do not think that Brussels alone can act in these areas, Brussels needs to work very closely with the Member States. We think that some of these challenges we face can be addressed by soft law options, it does not have to be a legislative approach and certainly we want to see an improvement in communication with Member States. My Lords, you may be interested to know that we proposed putting the Single Market Review on the agenda for an early meeting between the European Parliament and national parliaments in 2008, that was one of our priorities in our report. I am going to stop there because I think I have given you

the context in which our work is being carried out and you can ask our rapporteur, Mr Toubon, to explain some of the issues that were addressed by the committee and the full Parliament in the Internal Market Review process.

*Mr Toubon:* My Lord Chairman, Lords, ladies and gentlemen, first, let me apologise for my English, which is far from being fluent, but I am French! I am deeply honoured to have the privilege of appearing before this Select Committee in the House of Lords. As Arlene said, the work of your House is very useful for MEPs on a lot of issues. I was the draftsman of this own-initiative report in the IMCO and I will briefly make an introductory statement to the report. My own-initiative report was adopted, as Arlene said, by a majority of more than two-thirds of the European Parliament. On such an issue, that is not very common because the Single Market and all these economic issues are very often divisive between left and right inside our European Parliament. There was a common view in our committee first and then in the Plenary. This report has been established as an input to the European Commission's current strategic review on the future of the Single Market, what the Commission called, "The Single Market for the 21<sup>st</sup> century". The Single Market is at the heart of the European project and it is probably its biggest success. Almost 15 years since its beginnings, the EU Single Market remains a work in progress. Our Parliament has insisted on the importance of adopting a political approach during this period of European "malaise". The deepening of the Single Market clashes with the skepticism and an hostile European public opinion which often considers the Single Market, and in particular competition, to be at the origin of social problems, unemployment and poverty. Every strategy of the Single Market must, therefore, try to transform this mistrust by underlying the advantages of the Single Market and by pursuing at the same time two main objectives, the opening up of competition and the social cohesion with its different components, environment, employment and culture. Our contribution endeavours to find this balance and emphasise the fact that it will be impossible from now on to develop the Single Market if our citizens do not support it. In particular, the European Parliament has identified three axes to re-enforce the Single Market: increase the confidence of all those involved in the Single Market, consumers, producers, all our fellow citizens; keep an eye on the reduction of administrative costs in businesses; and taking into account the external dimension of the Single Market. Within these three axes MEPs agreed on a number of areas where room for improvement is visible and reform necessary. I will take some examples from our proposals. First, strengthen the working relationship with national parliaments so that the issues and benefits of the Single Market become clearer to

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representatives of citizens in the Member States; and that is why it is important that the Single Market Review will be on the agenda of the next forum between national parliaments and the European Parliament. Secondly, the need to complete the opening of network industries, such as transport, telecommunications, postal services, energy and transport. The European Parliament believes that greater harmonisation may be necessary in certain areas, in particular in retail and financial services and in the functioning of tax systems which need the Commission to push ahead with proposals on a common, consolidated corporate tax base; that will be a controversial issue but important for Europe. MEPs urge the Commission to adopt a global strategy concerning intellectual property rights. Arlene has said the importance of establishing a Community patent and a Community way to judge the litigations on this patent issue. We encourage free movement of workers within the internal market. Our house shares the view that tackling climate change and ensuring sustainable development are of paramount importance and can be achieved only with a balanced energy mix. We appeal to improve public procurement rules, so that public contracts can more easily be accessed by SMEs. Better promote innovation while responding to environmental and social concerns, and providing accessibility for disabled people is of ultimate importance for the European Parliament. The European Parliament has also asked the Commission to clarify the legal situation of public services by using the mandate given to the Inter-Governmental Conference to write a protocol annexed to the Treaty regarding SGIs, Services of General Interest, and SGEIs, Services of General Economic Interest. Our Parliament calls on the Commission to incorporate an internal market test into the Better Regulation mechanisms to ensure that regulators always take into account the implications of their actions on the four freedoms of the Single Market. MEPs emphasise that better is not necessarily less regulation. MEPs urge the Commission to consolidate and simplify legislation. To this aim, MEPs share the Commission's view that co-regulation and self-regulation can be tools which may complement legislative initiatives in some areas. My Lord Chairman, my Lords, those were the essential guidelines of the road map we addressed to the European Commission. Joining the fundamental strength of the Single Market with the commitment of citizens, producers and consumers will form, in our point of view, a real force for growth and employment and set up a major continental player to bring the European values into economic globalisation.

**Q371 Chairman:** Thank you very much indeed. May I commence by, first of all, thanking you not only for your evidence but, if I might on behalf of the

Committee, say how much we found your report very clear and very helpful. May I ask a question on paragraph six, which says that the committee regrets that Member States do not feel enough ownership of the Single Market on a practical level. Could you just develop that comment a little further, just give it perhaps further definition and depth.

*Ms McCarthy:* I think one of the concerns that we have in terms of the general approach by Member States to internal market legislation is a lack of commitment in terms of transposition and implementation. We receive on a six-monthly basis the internal market score board and, while sometimes we find improvements, we find this process of naming and shaming those Member States who are not taking their commitments seriously as useful for us to then follow up on why is it the case that there are failures in this area. We do think that this requires a stronger political will by Member States and part of the Better Regulation agenda is not just about how we regulate, but it is about effective enforcement. There are two innovations we think that are going to be very useful in terms of getting a better buy-in from the Member States, or at least following up on transposition and implementation. First is the Solvit system, which I am sure you are aware of, which my committee particularly gives the Commission a lot of support on because we believe it is the front desk of the European Commission, a front desk where a citizen or business can take a complaint in terms of where a piece of legislation is not working for them. We often find that the Solvit offices in the 27 Member States can solve that problem and it may result in a Member State being told that they are not in compliance and need to look at their transposition or implementation of that piece of legislation. The other issue is the internal market information system, which came out of the discussion around the Services Directive, or would strengthen the discussion around how we would deliver on the Services Directive, and we are expecting Commissioner McCreevy and his staff to come and present to us on how that will work. Of course, that is about the whole issue of administrative co-operation between Member States, so setting up effective organisational bodies—in our case it probably will sit within the DTI—where you will be able to have a proper and effective exchange in terms of implementation of legislation. I think one of the two test areas—and my staff member will correct me if I am wrong—is on the mutual recognition of professional qualifications. That is fundamentally important to the movement of labour across the EU and we want to make sure that all Member States are following up the commitment to recognise people's professional qualifications to be able to work in other EU Member States. The Services Directive will be the other test ground for these two systems. We do have a concern, as reflected

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in Mr Toubon's report, about this issue of ownership, but we are trying to find mechanisms to ensure that Member States do face up to their commitments and responsibilities in terms of implementing legislation and following through to deliver for citizens, businesses and individuals as well.

**Q372 Chairman:** Do you think that we can go further than simply naming and shaming in terms of implementation? I know there is now a target of 1% as opposed to 1.5% in terms of the number of regulations that are not implemented within a certain period of time. Do you think we can go further in terms of requiring rather than shaming Member States to implement faster?

*Ms McCarthy:* I think there have been some improvements to this mechanism, but what we have argued is perhaps this has to be dealt with upstream, that in a sense naming and shaming is a last resort. What we should seek to do is when we sign off a piece of legislation, they then need to be more proactive in what they currently do, which is a *tour des capitales*, to talk to every administrative system and every department asking, "How are you implementing these?", so they can check in advance whether there may be any weaknesses in the system or interpretations that move away from the spirit of the legislation. In our case, of course, we would be very concerned if that sought to introduce a protectionist element when it was quite clear we were opening a particular area, for example the Services Directive. Yes, naming and shaming is one element, but we would like the Commission to continue with its new approach which is to sit down, to have a discussion in advance, let us see how you are implementing and assist you with that, technical assistance where necessary, but further down the line, before there are infringement proceedings to the European Court, to sit down and see if they can work out where the problems are and, again, assist the Member States to have a better transposition and implementation rate.

*Mr Toubon:* My Lord, there are three levels of answers. First, at the institutional level, the Commission has the accurate tools, I think, but that is not enough. Naming and shaming is a good way for the media but I am not sure it is very efficient for the people from the "bureaux" in the capitals or the other civil servants, I think they are not very impressed by all that. On this point, 1%, or less than 1%, is a rather good result because in the process of transposition and implementation there is very often a lot of technical problems, they are not political or ideological problems but technical problems, that is the second level of response. As Arlene said, it is very important that the Commission should help the Member States and I will give an example of that. For the Services Directive, the Commission had issued a handbook to the Member States on a number of

issues they needed to take on board when transposing the Directive. This included, for instance, the manner of how to put in place the famous Points of Single Contact, administrative co-operation, and I think that was a good way to give an hand to the national administrations. The third level is a political one and, I would say, the electoral one. If citizens support the Single Market, the Member States and the Member States' governments will support it, but if the citizens are against, for electoral reasons the governments and the parliamentarians are against it too. That is why our report aims to get a new strategy to take on board citizens in this Single Market strategy for the future and avoid the situation where our fellow citizens are viewing the European bodies making their own policies on their own paths besides all the citizens' needs or aspirations.

**Q373 Lord Geddes:** If I may, I would just like two follow-up questions to Arlene McCarthy. You mentioned just now the importance of Solvit and the IMI and in your paper you produced a third body, which I certainly was not aware of before and I am not sure how many of my colleagues were, the European Consumer Centres Network. Could you tell us a bit more about that and perhaps it would help if I asked my second question at the same time. You also mentioned the importance of recognition of professional qualifications and you were polite enough to say in your opening remarks how much you enjoyed reading our reports. You will, therefore, have read our report on the Services Directive and our views on the Country of Origin Principle and I think, with respect, the European Parliament did not totally agree with what we said in that report. Could you expand on that a bit and perhaps we will come back to it because I am going to concentrate on SMEs later on with my questions. Maybe you might want to duck that Country of Origin Principle question until we get on to SMEs, I leave that entirely up to you. First, on this European Consumer Centres Network, what is it?

*Mr Toubon:* Yes, it is paragraph 28 in the report.

**Q374 Lord Geddes:** Indeed, what is it?

*Ms McCarthy:* My committee is the Committee for Internal Markets and Consumer Protection. Solvit deals with problems where the internal market is not working on behalf of the citizens and consumers or business and the European Consumer Centres, a network of centres across 27 Member States, are again the front desk for consumer complaints. Just to give you an example, our European Consumer Network was within the CAB network in Manchester, so that was where you went practically to have your problem solved, we had the same office, in fact the DTI minister launched the ECC in that office and it made sense to combine those two

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together. Again, just to give some examples, we are currently reviewing the Time Share Directive which, again, I hope that your Committee will look at in some detail, and the European Consumer Centres have been extremely useful in bringing to us the complaints they have taken from consumers. Of course, the benefit we have is that they liaise with each other, so the Spanish European Consumer Centre in Madrid will talk to the Manchester or London centre, so we then understand a little bit of the problems that are ongoing and sometimes we can resolve issues. We had an excellent report, again, which I will commend to you, from the European Consumer Centre on problems that our consumers are currently experiencing with cross-border Internet purchasing. We had very good figures on what the problems were and a very good read-out of what the real issue was and, in fact, in virtually every Member State the real issue was delivery, people were not having their goods delivered. I think it is a very good innovation which deals with the practical aspects of where consumers have a problem and how do they get redress. The European Consumer Centres work together with each other to try and resolve those issues, sometimes they can be resolved simply, and they refer to us issues for us to look at in terms of the need to review certain directives, like the Time Share Directive.

**Q375 Lord Geddes:** How long have they been in operation, roughly?

*Ms McCarthy:* 2002, maybe five years. We will check that for you.

*Mr Toubon:* A short answer to your second question on the Country of Origin Principle. I was one of the main protagonists in this discussion. In summer 2004, I was a brand new deputy in the European Parliament, but I understood that at the political level this text was a major, major issue and that it was a bomb. With Arlene, with the left side, Evelyne Gebhardt was the draftsman and Malcolm Harbour, my co-ordinator, I was one of the men behind the agreement in February 2006 and I was amazed on this issue by how far the Commission was from the social and economic reality on the ground. On this question of the Country of Origin Principle, what we have try to find a balance between what is necessary to open the market for services, Article 16.1 and 2 and, on the other hand, what is necessary to protect all the social acquis, specially labor law, and that is the third paragraph of Article 16 in the Directive. I think that in my report on the Single Market Review I was always inspired by the will of trying to get this balance between the two sides of our work, opening the market, opening up the competition, that is the best we can do for all the people but, on the other hand, to protect some rules, some social acquis, that is very important for our

fellow citizens and for the equilibrium of our societies in Britain, France and Germany. That was for me very inspiring for this report. That is why I do not regret the true and pure Country of Origin Principle, I think we have got a balance which is a good one.

*Ms McCarthy:* Could I perhaps add to that. It is very interesting that, as a neutral chairwoman, whichever side of the political fence you sit on, some people believe we have the Country of Origin Principle with protections and some people believe we have the Country of Destination Principle. I think it is a very important question because the proof will be in the implementation. Mr Toubon is quite right to say that the Country of Origin Principle is there with some modifications in paragraph three or four of Article 16 and that was the issue which involved a lot of discussion and negotiations by the rapporteurs in the shadows but, of course, it says very clearly that there are some derogations on public policy grounds—and you know this because you looked at it in detail—which are justifiable. We have asked the Commission—it is a question you may wish to raise with Commissioner McCreevy—that they will produce the report and they will be the watchdog on what is justifiable, so we do not end up with public policy being protectionism or legitimate public policy objectives being protectionism.

*Mr Toubon:* General interest is not protectionism. General interest could be used as protectionism but in the Principle it is not protectionism.

**Chairman:** Some would say amen!

**Lord Geddes:** I think I started a hare running there, Lord Chairman.

**Q376 Lord Haskel:** We have spoken a lot about the economic benefits of the Single Market, about globalisation, competition, jobs and consumers and, yes, it has been successful but Eurobarometer tells us that citizens, in spite of this, do not really love the Single Market. Mr Toubon, in his excellent English, told us that we really have to have the support from the citizens. In your document, Mr Toubon, at the beginning of number eight you talk about increasing stakeholders' confidence in the Single Market and you speak about the importance of boosting citizens' confidence by promoting social and environmental objectives and about social cohesion. My question is this: what are the arguments for this social dimension in the Single Market? Is the Single Market really the right vehicle for achieving these non-economic objectives, such as social cohesion?

*Mr Toubon:* You know I am from the right side but from my point of view, social cohesion could be an economic objective because social cohesion is one of the bases of economic development. Experience of the new Members, the former Communist states, which were just up and down in the 1990s, is a signal that social cohesion is necessary for economic

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development because when we have such a gap between a few people richer and richer and a mass of people poorer and poorer, it is impossible to achieve development. A good example is Spain. The economic development of Spain was made on a kind of social model but with a lot of freedom, a very good tax policy, and that is a model for me. On the other hand, I think that in the Lisbon Strategy social cohesion, social dimension, is highlighted. In the 2001 economic strategy for Europe, the Lisbon Strategy, the social dimension had a greater role and the social and territorial cohesion was one of the components of the Single Market. The Single Market is not made only to provide a kind of empty territory, empty table, it is made to provide more and more integration and that means territorial and social cohesion. The final purpose for the European building is integration in a lot of economic, social and cultural issues, and integration that means more and more cohesion. In my view, there is no opposition between the two, social and economics, and I think that social cohesion part of the Single Market and that Single Market has to combine in an effective way competition and protection of general interest, for instance, some equality or perequation between the territories inside a nation. That is why if you want to get the support of the citizens, you have to say that the Single Market could be a factor, the Single Market could be a medium for social cohesion and not the enemy of social cohesion as a lot of people now believe.

**Ms McCarthy:** Could I perhaps give a nuance of difference to that. I think there are some different approaches. We agree, in a sense, that social cohesion is a key element of the drive in the internal market, but I would demur from the question that says the Single Market objective is not to achieve social cohesion, social cohesion is a flanking measure which will make the internal market work. It is precisely the point that Mr Toubon said, that if it is to work, citizens and consumers have to have the confidence that this means in the end they do not lose their job or their livelihood or their standard of living does not drop. I refer, my Lord, to the letter that the Prime Minister, Gordon Brown, wrote to Barroso just before the Lisbon Summit. What we are really talking about is a modern version of social cohesion which combines flexibility with fairness with a sense really that we want to put modern social policies at the forefront, so flexibility is clearly an aspect of our response to the challenges of globalisation. People need to be allowed to make the most of opportunities in terms of skills, we need to raise the level of skills, so it is a proactive social policy, not a protectionist social policy that, unfortunately, still exists in some Member States. We need to help people to adapt to change, to help them to have employability skills and obviously that goes to a whole range of issues. I think it is useful to recall that when

Ireland joined the European Union, it was indeed Ireland that forced the European Union to have a European regional policy with all the cohesion policies that we see in terms of the social fund and regional development funds. They argued that many of their regions and many of their poorer people would not benefit from this Single Market, so if we are to get some benefit from the market, we need to have a countervailing force in terms of flanking measures and regional and social policy so they both go hand in hand. If you look at the Irish economy as an example of where that has led to, clearly they have benefited from regional funds but they also are a very key economic player in the internal market and one of our motor economies to drive the EU forward.

**Q377 Lord Haskel:** Our Chairman will remember this. When John Smith was leader of the Labour Party he started what we came to call "New Labour" when we were working on this by saying that the strong economy and the fair society were the same side of the coin, they had to go together. I am sure this is part of what you were saying and I entirely agree with you.

**Mr Toubon:** I agree with John Smith and with Arlene McCarthy, my chairwoman!

**Q378 Lord Haskel:** What we are trying to really see is can this be enough to reinvigorate the enthusiasm of people for the Single Market, because somehow we have to persuade people that the Single Market is good for them socially and economically. We are trying to see if there is some sort of vision, some sort of idea, some sort of ideal which can motivate people. At the moment the Single Market is not particularly appreciated, Eurobarometer shows us that all the time, we are trying to see is there some way in which this can be rectified.

**Mr Toubon:** Yes, you are right. That is the purpose of my report and, I hope, of the new strategy of the Commission, to give people and the governing bodies in our Member States the feeling that when they serve Single Market policy, Single Market orientation, they serve people and on ideology and on economic theory or the business only, and probably big business more than small business. That is why it is very important to explain what the benefits of the Single Market are. Europe would not be what it is now without the Single Market, it is true. See the story between the six Members during the 1960s and Britain. There were two very different economic evolutions and probably one of the main factors was that the six were members of a common market and Britain was alone and that is why it was of great interest for Britain to join the six to make a Community of nine. I think that the Common Market, and then the Single Market since the beginning of the 1990s, are probably the best

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achievement of the European Union. In social welfare, way of life, a wider range of consumer goods, all of that, we have to explain and to demonstrate to our people. Until now governments have been very reluctant because they think that people do not agree with the Single Market. French government, for instance, right or left, are very cautious to show all the benefits of the Single Market. The second point is that the Parliament has a big role to play to give to this economic strategy some part of human soul and that is all we try to do. That is not a question of left or right, that is not an argument between business or consumers, that is a question that Europe could not exist, could not succeed, if is solely a kind of economic engine. We have to be politicians in the good sense, that means to understand what people want and try to deliver what they want. I think that in this Single Market strategy, in two or three years from now, we will have a lot of main critical issues and I hope that the Commissioners, Mr McCreevy or the others, will be, as Mr McCreevy was on the Services Directive, very clever. He said, "Why try to pass the Commission's proposal when nobody wants the Commission's proposal? That is silly", so he said, "I am a politician, I was ten years a minister in my country so I accept the proposals of the Parliament, they are politically wise". I think that is the spirit we have to keep on these issues for the future.

**Chairman:** We will come back to Lord Geddes' on SMEs but in the meantime, Lord St John.

**Q379 Lord St John of Bletso:** I have no doubt that Lord Geddes will be speaking about the benefits of SMEs and the impediments for SMEs, but if I could revert to the whole issue of regulation. You spoke about the whole project to reduce administrative burdens, you also spoke about less emphasis on legislation moving forward and the need for the promotion of innovation and simplifying existing rules. I was interested in Mr Toubon's comments that we are looking at co-regulation and self-regulation. My question really reverts to, in your opinion, talking about effective enforcement, does the Commission have the right tools for the effective enforcement of existing legislation and is there a need for super regulators? Of course, here in the United Kingdom we have Ofcom to regulate the telecommunications and communications sector. We have heard of the potential for a super regulator. What is the scope for co-ordination between national regulators?

**Mr Toubon:** I am not in favour of a super regulator. I think the best solution would be the co-ordination of the national regulators and probably on some European issues, issues which are better handled at European level, a European regulator but not a super regulator; national regulators and on some issues European regulators. For instance, on public health

there are some issues which need to be handled at the European level because people are crossing the frontiers, but generally I am against a super regulator. For instance, on telecoms, I am against the super telecom regulator. Mrs Reding is now preparing a Communication on this question and I am not in favour of Reding's proposal.

**Ms McCarthy:** Could I add to that. I think on the issue of Better Regulation my committee already produced a report which, perhaps, would be useful for you to look at which, in fact, I authored as chair of the committee to ensure that we had a comprehensive and consensual view on how we felt we could improve the legislative experience of our businesses in the internal market and we had a number of recommendations which I think are interesting in that report. Of course, I would say, and you may find the same in the House of Commons and, indeed, the House of Lords, co-regulation or self-regulation does not get a fair wind in Parliament because people believe they are there to legislate. However, I have said frequently if the same objective can be achieved with co-regulation, then that should be tried. Regulation, again, should be something that we use as a last resort, but I think the key issue there is what oversight does Parliament have, any parliament, of a co-regulation process, namely what happens if it does not work? If it goes wrong, do we have a call-back mechanism? Can we then force the industry? We did have an issue originally in the UK around telecoms unbundling of the local loop, if you recall, and of course the industry said they could do it, they did not do it and then we had to legislate. There has to be a mechanism by which we can force the issue if co-regulation or self-regulation does not work and that is an issue which I think is the biggest concern for Parliament. They feel they lose control and they have no oversight or scrutiny and that needs to be addressed. If we can address that issue, then you will find generally the European Parliament will be more amenable to looking at alternative forms of regulation. On the issue of super regulators, I think it is a very interesting question because we had it raised in the context, again, of a report that I prepared on behalf of the committee on public procurement. Public procurement was to be the great hope of the internal market and there was a view that it had not delivered. Therefore, we undertook a report looking at what was not happening, why was public procurement not delivering more and better outcomes. We did think do we need perhaps a super regulator for public procurement because the Commission clearly cannot do the job and they admitted to us that they were not in a position to do that job. Then we looked at it and decided that, in fact, it would be better to have a national regulatory system because we did not think the super regulator system would have enough enforcement power, that

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national Member States probably would not cooperate with a super regulator. Therefore, we thought it better to have a committee, which effectively does currently happen, on public procurement at EU level, the problem is it has no teeth. This kind of committee that currently meets does not have any real enforcement teeth and that is why we had originally thought to go for a bigger super regulatory body. If I can then give you another practical example, given your views on mobile phone roaming. At the time we asked the Commission, because we were very sceptical that we needed legislation in this area, and we put to Commissioner Reding the question, "Is this not a job for the national regulators? Why are we taking on this task at EU level?" The answer that she gave to me—and I have seen a copy of the letter, in fact, which came back from one of the national regulators—was to say, "We do not have the competence to do this. On a cross-border basis, we cannot interfere with the pricing mechanisms on a cross-border level. Therefore, we have no power to do it". In the absence of a super regulator, we went the legislative route and many people have not been happy with the legislative route, but that was the only way which we could redress what was a market failure. Of course, it is a piece of legislation that has a three-year lifespan by which time, we believe, the market will have caught up with the issues, but the only way for us to redress market failure was with regulation in the absence of a super regulator given the fact that national regulators informed the Commission by letter—I have seen the letter—that they did not have the competence to do this.

**Q380 Lord St John of Bletso:** Could I ask a supplementary question on the whole issue of effective enforcement. If I could now speak to the whole project of enlargement, of course we have seen the whole process whereby the accession countries have needed to comply with the *Acquis Communautaire*. Many would have argued that there was somewhat of a fudge on many chapters of the *Acquis Communautaire*. To what extent is the Commission able to enforce those chapters of the *Acquis Communautaire*? You have mentioned naming and shaming, but what is the follow-on process to ensure that there is compliance with the *Acquis Communautaire*, particularly of those new accession countries?

*Mr Toubon:* Two answers, but first a general comment. For the Single Market the accession of the 12 new Members since 2004 is a challenge. It could give to the Single Market what I would call a "challenging dynamism", dynamism but challenging. Why? Five hundred million people, the strongest economic area in the world, new opportunities because these nations, these people, are often very

well skilled and they have an industrial culture. I took the example of Spain. I would not say that Poland, Slovakia or Hungary would be other Spains in ten years from now, but they have changed and are open. That is challenging because with the enlargement there are bigger differences between Member States and it is more difficult to get common rules and common behaviour between such different countries. That is my answer on the *Acquis*. Just a personal anecdote: I was Culture minister in my country between 1993 and 1995 and then minister for justice between 1995 and 1997. That was the moment when the western countries, Germany, France, Britain, tried to help the eastern countries to prepare their accession processes. On the two levels, culture and justice, but especially justice, I launched for my government and in the frame of the European programmes, a lot of co-operation with these countries, Poland, for instance, or Romania. My impression, at this moment and now after the accession, is that these countries, with one or two exceptions, have integrated the *Acquis Communautaire* in an amazing way. I would say that they were 100 years behind us after the Communist experience and between the two world wars' experience and they integrated the *Acquis Communautaire* with a speed which, in my point of view, has to be admired. There are one or two exceptions. There are problems like corruption in, for instance, Romania, but on the legal they are really at a very, very good level of integrating the *Acquis Communautaire*. For me it was amazing because I saw this country in the beginning of the 1990s, for instance, the justice system in some of these countries. Ten of 15 years ago they made great progress. We have to say that because on the western side we are always despairing about this enlargement and enlargement countries: "Oh, they are very far and there are a lot of problems", but I think they have done a very good job during these 10 last years.

*Ms McCarthy:* I want to add to that really that I think the principle has been made that accession for Eastern Europe was a catalyst for reform of their economic policies and they really have prepared because the accession was so important for them, they made the preparations long in advance. If you look at the recent score boards, you will see, in fact, that Hungary had one of the best transposition and implementation records, whereas of the old 15 Member States, some of those were at the bottom of the pile. On the point of corruption, of course you will find corruption in Southern Italy, it is not just an Eastern European phenomenon, I think it is something that is a factor in other EU Member States. Your question about what can the Commission do, of course it comes back again to the Better Regulation agenda in that we would like really to deal with these problems upstream so we do not

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have infringement problems but, of course, where there is an infringement case, the Commission can go to the European Court and ask for financial penalties and those sanctions in terms of financial penalties can apply on a daily basis until that country puts its house in order. They are very extreme powers and I think, therefore, the Commission is often reluctant to go down that route and, as I said, what we would prefer to do in the Better Regulation agenda is to try and avoid that by a Better Regulation process. I have to say with the support of my very good members in the committee, as a committee, we are taking our Better Regulation responsibilities very seriously. We have signed up to the inter-institutional agreement, we have a budget for research and a budget for experts and we have a panel of permanent experts that we keep available for us. In fact, Mr Toubon's report on pre-packed products was one of the first pieces of legislation where we carried out our own impact assessment on our own amendments, which was a first in Parliament. In fact, the expert independent study told us we were right to put forward those amendments, we were in disagreement with the Commission but we could stand up and say that, because we had had an impact assessment taken out on those amendments, we were not providing irresponsible amendments without knowing what the consequence were. We are determined, certainly for as long as I am Chair of that committee, to make sure that we do undertake studies and impact assessments where it is possible for us to do that with the finance available to us.

*Mr Toubon:* May I say with some irony that, for instance, on the pension system reform some eastern countries are much more advanced than France!

**Chairman:** We will conclude with Lord Geddes.

**Q381 Lord Geddes:** I will try and shorten this up, Lord Chairman, if I may, because this has been such a fascinating bit of evidence. On the overall subject of SMEs, it is interesting that your excellent paper specifically mentioned SMEs in five out of the 46 paragraphs and, even more interesting to me, was in paragraph five SMEs are the second specific point mentioned. I take that as indicating the importance you put on SMEs. You then go on, on the other specific ones, just very quickly, you talk about the situation of SMEs in the electronic commerce marketplace, you want to encourage Member States to improve access for SMEs to public procurement contracts and you talk about ensuring that risk capital reaches SMEs properly—

*Mr Toubon:* And innovation.

**Q382 Lord Geddes:** Innovation. You talk about the necessity for transparency, targeted particularly at SMEs. With this wonderful catalogue, and it is very

impressive, what more do you think can be done to help SMEs access the Single Market?

*Mr Toubon:* It is one of our main concerns in the European Parliament on both sides because we know that for our countries the big groups, the global companies, are not enough to provide jobs, employment and this social cohesion; for instance, it is very important that e-commerce is not only the thing of the big global companies. We hope that the Commission in the legislative agenda for 2008 will give us a Communication on these issues and on practical measures in favouring SMEs and to favour the access of SMEs to the Single Market. Mr Verheugen is in charge and I think he will present some proposals to our committee and, if you invite Commissioner Verheugen, he could probably present to you some practical measures on this issue. I think it will be one of the duties of next year to establish a kind of new frame. It would not be a Small Business Act. People from SMEs are always asking, "We want a European Small Business Act", that is not possible, but I think that it could be a frame of different measures in favour of SMEs and it will be an issue for next year.

*Ms McCarthy:* Perhaps just to add to that, I think one thing that we would like the Commission to do is we really need some good hard economic research done on the kind of barriers that SMEs are facing because, on the one hand, we have picked out public procurement as an area where there is a sense that SMEs are not getting in on the contracts that are there, yet I am told in discussions I have had with the DTI that there is no evidence to suggest that SMEs aren't, in fact, accessing contracts. I think the first point of departure for us as a committee, again, I said we do not want to regulate without the evidence and evidence-based regulation is we need to have a look, first of all, to see what are the barriers and how we can address those, some of those may not need legislative responses; some of them may be an issue. One example has been should we not be creating SME envoys in every Commission representation in the office, so the Commission office here in Queen's Gate should have an SME envoy in there who is assisting SMEs. That is a non-regulatory approach which may have a good result. Of course, the whole debate around the Small Business Act-type of approach, particularly related to public contracts, came out of a French initiative. In 2007 the Commission has been invited to explore all means of improving SME access to public contracts, but we do not want to go down the route, as Mr Toubon has said, of looking at the US system of reserving 23% of all public contracts only for SMEs because that may not effectively be good for the consumer or competition. I also feel it probably would not sit very easily with the current legislation around public procurement, we probably would not be compliant, so I think clearly there is a need for us to

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try and ensure better SME access. We have been told Commissioner Verheugen will come to us on 28 November and one of the key points that he will talk to us about is how to improve the regulatory environment for SMEs, whether or not that means in some cases SMEs may be excluded from a particular directive because it may not apply to them. To give one example, on the Consumer Credit Directive we argued very fiercely that credit unions should not be included in the Consumer Credit Directive, because simply the regulatory burden was too high for them in terms of the job they were doing at a very local level. It may be that we are arguing in a sense that there are some aspects of legislation which should have a threshold in terms of whether it applies to companies of a certain level.

**Mr Toubon:** For instance, at this moment, after all the arguments on the "Chinese toys", inside Parliament we have a crucial concern on security, on security for consumer goods and user goods. But SMEs emphasize and they are right in one extent that it is very difficult

for small businesses to implement all the security regulations. It is not the same, I think, for big businesses, but we say, "Yes, but the consumer needs to be sure that your product is as safe as the product of the big company". That is the kind of question where it is difficult to divide the business into small and not small, but on other issues I think we can try to get some specific frame, like Arlene said.

**Chairman:** Thank you very much indeed for your help and guidance. We look forward, some of us at least, to participating in meetings with the national parliaments with the European Parliament, not necessarily those around the table. I will ask the clerk to confer with the Select Committee clerk on the timing of that because I am particularly interested in the subject of the internal market. This has been a most valuable session and your kindness in taking one hour and 20 minutes with us, which is much longer than others have been prepared to give us, is much appreciated and we thank you for your evidence.

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MONDAY 10 DECEMBER 2007

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| Present | Freeman, L (Chairman)<br>Dykes, L | James of Blackheath, L<br>Walpole, L |
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**Examination of Witness**

Witness: MR FRÉDÉRIC GRANOTIER, Co-founder and Deputy Managing Director, POWEO, examined by video conference call.

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**Q383 Chairman:** Good afternoon Mr Granotier. Thank you very much indeed for attending this video conference. I have to say that I think this is a first in the history of the British Parliament, where we have taken evidence by video conference.

*Mr Granotier:* Thank you. I am very happy to be with you. I am very honoured that you requested to have POWEO's opinion on your topic; I will be happy to answer your questions. Just a few words of introduction, I am the co-founder of POWEO and I founded the company in early 2002 and I am in charge of the downstream business.

**Q384 Chairman:** Thank you. May I introduce my colleagues sitting around me? Lord James, Lord Dykes, Lord Walpole and my name is Lord Freeman. We also have here clerks and the special advisors. We are due to make a report in February on our views on the Commission's Review of the Internal Market and we are nearing the end of our evidence session, going to Brussels on Thursday to take evidence from, amongst others, Commissioner Charlie McCreevy. When I met your colleague, your co-founder, in London I was struck by the experience your company had had, and is having, seeking to compete in the French market in particular. It would help the Committee if you could first of all describe what POWEO does.

*Mr Granotier:* POWEO is an entrepreneurial company that we founded in early 2002. The initial business model was the business model of a pure retailer of electricity. At this time we anticipated the deregulation process in France and we looked at other similar business models which were already implemented in countries that had already opened their energy market, especially the UK market, and we decided to bring this business model to France through the creation of POWEO. Initially we were just purchasing electricity from producers and on Powernext, the power capacity market, and we would sell this electricity to large industrial customers which were at this time the only ones to be allowed to leave EDF. We rapidly managed to acquire around 30 large customers—large French companies mostly and also some European and international groups—and we also rapidly raised cash to fund our growth and we prepared the company on the stock market. We went public very early in the life of the company,

in February 2004, and we raised the cash mostly through UK based investors, so some big names like Henderson, Gartmore joined our share capital and we prepared the company for the launch of a professional market segment in France in July 2004. In July 2004, 3.7 million professional customers were allowed to leave EDF. We rapidly managed to acquire 80,000 customers through several channels, mostly door-to-door, telesales and also through the net, although that was a less significant part. We also rapidly decided to add a gas supply business to our electricity supply business because of the synergies between both. At this time we saw the oil and gas prices starting their increase in the international markets and we saw electricity prices on wholesale markets going up. We feared the squeeze situation where we would be obliged to purchase electricity at a price higher than the selling price of EDF which is our reference, since we cannot, of course, sell at a more expensive price than EDF. To avoid this risk of squeeze we decided to integrate upstream. As early as November 2004 we decided to integrate upstream, ie to build our own generation capacities. We looked at the French market and, considering the role of nuclear base load capacities, we decided to go for CCGTs (combined cycle gas turbines) which are the most appropriate answers to the expected higher demand in peak loads. We decided to have our own industrial plan to build combined cycle gas turbines. We secured some sites, we looked for a construction partner for the CCGT and we chose Siemens and we have now our first CCGT being built by Siemens which will be operational in a year from now and it is only the first one in an industry plan that will count five CCGTs for a total investment of three billion euros in the next five years. In order to diversify our energy electricity generation we decided to focus also on renewables and so we already have some wind farms in operation and we also have an aggressive industrial plan on renewable energy as we are targeting 600 megawatts of renewable energy by 2012. In order to secure our gas sourcing for our combined cycle gas turbines we decided to bid for the construction of an energy terminal in Normandy, in Le Havre-Antifer, and much to the surprise of our competitors we won this tender offer. So, we are going to build our own energy terminal in Le Havre-Antifer and we have accepted some partners in this

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project which are mostly E.ON Gas and Verbund. In the meantime we also teamed up with Verbund, the national Austrian electricity operator, that took 30% of our share capital and 40% of our generation subsidiary, POWEO Production. Clearly we want to be an integrated player from the upstream to the downstream. In the downstream we also, of course, prepared for the launch of the residential market in France last July. We now have only a few thousand customers (I think you have some questions about that, so I will come into more details later) for several reasons. The market is not really open in the residential area but clearly our goal is in 2010 to have one million customers in France. We are targeting, in the mid-term, 5% of total generation capacities and 5% of total number of customers in France, households and professional customers. We want to be an integrated operator.

**Q385 Chairman:** Thank you. That is very clear and very ambitious. Can you just comment on what you, POWEO, would like to see in terms of further reforms, further liberalisation within the European Union, giving you the chance to access the transmission networks of Gaz de France and Électricité de France in the same way that there is liberalisation here in the United Kingdom? You are trying to build an integrated, private power company in competition with two giants which monopolise the transmission system.

*Mr Granotier:* In France the main hurdle at the present time is, in fact, the co-existence between regulated tariffs for electricity and wholesale market prices. This makes life for new entrants very difficult because of the squeeze risk that we mentioned and the fact that EDF tariffs do not reflect the increase in oil and gas prices at a global level and do not take into account the need for additional reduction of consumption. Since electricity prices are quite low in France this does not encourage customers to make efforts to save energy whereas it should be done, as in any other country. This is the first point, the first hurdle that we have to overcome on the French market. Then in terms of network it is true that if we could obtain the complete separation of the network from incumbents that would of course help competition because we always fear that there exist some cross-subsidies between activities. We saw this in 2004 or 2005 when the regulator pointed out some cross-subsidies between EDF and the EDF grid and also the current transportation tariffs were delayed for this reason in particular. We think it would of course help to have a complete separation in terms of shareholding of the network. Even though we say the situation could be worse we manage to grow our business. I think since France was late to deregulate, the regulator could take time and have a look at, and examine carefully what was done in other countries

and then the regulator could take the lessons of what was successful in other countries and what could be implemented in France. I think we are quite happy with what we have. We can grow our business in such a context but of course it would be better if we could have the further step of deregulation.

**Chairman:** I think you just made a very important point and one of my colleagues would like to ask a question about it, but let me frame what the possible question might be in my mind at least. You have just pointed out that the regulation of tariffs, that is to say state subsidy through EDF to the retail market preventing effectively competition is the first problem.

**Q386 Lord James of Blackheath:** Thank you for the excellent account of what you do but I am a little confused as to what your corporate objective is. Are you effectively there in order to create a profit progressively for your shareholders or are you there to make a contribution to the economic life of Europe by securing, and then enabling, the distribution of energy supplies within an economic structure that is workable for everybody?

*Mr Granotier:* Clearly we have several goals. It is clear that one goal of course is to grow the company and to make profits and to create value for shareholders; that is for sure. Just as important as that is that we want to help French consumers to get additional services. That is why we have been focussing on services for POWEO supplying business since 2004. We want to help them to consume less, to understand better how they consume and to consume less in order to help with the common interest of the French people. This is a very important goal that we have. Considering those goals it is true that if we could make sure that there is no cross-subsidy between EDF's several entities we would be more comfortable. This can indeed go through the creation of a subsidiary for the network or at least more rules and more independency and more control of the independency than exists at the present time even though, as I was pointing out, it could be worse; it could be much worse.

**Q387 Lord James of Blackheath:** We all applaud the need to try to reduce energy demands but are you actively seeking to create reserves of energy sufficient to see the European Community through any crisis of supply by building up reserves, by sourcing externally as an integral part of the European-wide energy policy?

*Mr Granotier:* Our industrial plan is to build additional capacities which will be needed in the short term in France. When we decided to integrate upstream and to bid on the nation's capacities back in 2004, it was not obvious that France would be lacking capacities in the future. The first report from

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the RTE (the high voltage network) dates back to 2005, it was the first report that points out that there is a need for additional capacities. It followed our decision to integrate upstream. By building our CCTGs we want to make sure that France will not be lacking generation capacities, in peak times in particular, in the next few years. It is true that electricity produced by France can be exported to other countries so yes, we are helping the common interests of the European companies at all levels to secure sourcing of electricity.

**Q388 Lord James of Blackheath:** That is very helpful but does it not raise the issue that if the European Community is demanding a process of unbundling between the sourcing and the distribution you will, effectively, not be able to control the whole process. Does the unbundling demand from the Community not create an almost impossible commercial problem for you?

*Mr Granotier:* It depends on how it is organised. At the present time, with the RTE network independent from EDF but still owned by EDF, the system can work. However, we always have a doubt that there can be some cross-subsidies and that is where customers finally subsidise, through the transportation tariffs, other activities of EDF. As long as this system exists we will have this doubt. Of course, we would be happy to move to another system but this one is not too bad.

**Lord James of Blackheath:** Not yet anyway.

**Q389 Lord Dykes:** If you see the UK edition of the *Financial Times* today on page six, one of the senior members of Mr Sarkozy's presidential team, Mr Guaino, was saying that he very much hoped, and the French Government hoped, that the European Commission would emphasise individual countries being freer to make their own decisions. Whilst that would appeal to quite a lot of people in Britain who hesitate about certain EU objectives and priorities, of course it would not apply to the more conservative elements studying the British economic market opportunities if the Single Market itself was affected

by that. There is a feeling that the French Government still wants to promote both what they call European champions European-wide in the Single Market but also French champions. Do you feel that that general background is irrelevant to your own particular plans or does it fit in with your objectives and are you glad to hear what Mr Guaino said today?

*Mr Granotier:* We know very well the position of the French Government. What you have summarised is accurate. We are also doing some lobbying to try to convince the government to go a step further.

**Q390 Chairman:** I have just one final question for clarification. As you know the Commission has proposed either full unbundling as a model for consideration, that is to say the separation of supply, transmission, generation transmission and supply, complete separation of ownership and management but also what they call an ISO model, which is similar to what occurs in Scotland here where the grid network, for example, might be owned by the same company or institution that is the supplier of gas or electricity but someone else manages it, makes decisions about investment and pricing. Do you have a view as to which of the two models is best for France and best for POWEO?

*Mr Granotier:* Personally, I think that the more unbundling we get the better. Things are clearer, more transparent; we are sure there is no conflict of interest and so it is the best situation. For political reasons or historical reasons we can understand that this model of full unbundling may be difficult to implement so I think that we can live with an ISO type of model for a while under the condition that there is a very strict control on the way it works and we avoid any potential risk of conflict of interest or cross-subsidy.

**Q391 Chairman:** Mr Granotier, thank you very much for very clear evidence; you have helped us greatly. We will send you a copy of the transcript. Thank you very much indeed and good night.

*Mr Granotier:* Thank you very much and good night.

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THURSDAY 13 DECEMBER 2007

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| Present | Eccles of Moulton, B.<br>Freeman, L. (Chairman)<br>James of Blackheath, L. | Paul, L.<br>Walpole, L. |
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**Examination of Witnesses**

Witnesses: MR JEAN-CLAUDE THEBAULT, Deputy Head of the Cabinet of the President of the European Commission, MR MICHEL SERVOZ, Director, Better Regulation and Co-ordination, MR MARCEL HAAG, Head of Unit, Strategic Objective Solidarity, Ms JACQUELINE MINOR, Director at DG Internal Market for Directorate B, Horizontal Policy Development, and Ms ELIZABETH GOLBERG, Adviser to the Secretary-General, examined.

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**Q392 Chairman:** Good morning, Mr Thebault, to you and your colleagues. Thank you for agreeing to see us today.

*Mr Thebault:* First of all, I would like to thank you for your visit and to welcome you to the Berlaymont for this meeting. Thank you also for the interest you manifest for the Single Market Review which the Commission adopted a few weeks ago and which is a very important part of our political agenda for this year and the coming years. I will not make a speech because I think you have many questions to ask which we will try to answer as well as possible. First of all we must not forget that the single market has been a huge success but also that Europe and the world are changing and so we must adapt and change the single market at the same time. Much has been done and it is an ongoing process, of course, but we must not be complacent because there is still much untapped potential, especially for consumers and small business and this is what our future single market policy will focus on primarily. We want to make the single market more effective than it is today, and now with 27 Member States ensuring the single market works across the Union presents, of course, new challenges. Clearly we cannot do everything from Brussels, nor has it ever been our intention to do so. We intend to work in partnership with Member States. This is crucial in order to put a more effective system in place. You mentioned this yourselves and you will have a meeting with DG Internal Market this afternoon, but our experience, for instance, with SOLVIT, shows that many problems can be solved at a local level quickly and effectively without having to engage in very heavy procedural claims in Brussels. The fewer claims we have the happier we are because it is not our objective to manage infringements. Just to conclude my introductory remarks, what we have done is primarily to reinforce and give more prominence to consumers and small businesses. We have had very good successes with big business but there is huge potential now for small businesses and citizens, because citizens are not really aware of what the single market is. They know that there are no more frontiers and so on but they do not realise how

the single market benefits them. These are some elements which I wanted to stress at the beginning of our discussion. And now, we are in your hands.

**Q393 Chairman:** First may I thank you for allowing us to come to visit you and your colleagues. It is much appreciated. There are five members of the Committee, our shorthand writer and our two Clerks. We set out on this inquiry a year ago, anticipating the Commission's review, and we intend to conclude our work after Christmas and report in February before the Spring Council and my intention is to seek a debate on the floor of the House of Lords on the report. May I say that, having read the Commission's document, we are strongly in agreement and strongly supportive.

*Mr Thebault:* That is good news.

**Q394 Chairman:** There are one or two nuances of difference but we find ourselves in substantial agreement, which I hope will be helpful. Each of us has a question. May I start by asking about the implementation of directives and regulations, and specifically about the single market? Now we are beginning to call it the Common Market again—I saw the picture on the way in of Ted Heath signing the accession treaty. My question is about implementation. What can we do to make sure that all 27 Member nations, as quickly as possible, with the help perhaps of the Commission and the Parliament, implement the provisions of the single market? We feel in the United Kingdom that we tend to press ahead very quickly. Sometimes the criticism is what we call gold-plating or over-regulating, but at least I hope we have a good record in implementation. How can we ensure that it really is a common market by everyone proceeding at the same pace?

*Mr Thebault:* This is a very broad question with no easy answer. This is one of the main purposes of this paper, to reinforce what we call this partnership with the Member States, because we have a good partnership but it can be improved. What we want is to work with Member States and help Member States

13 December 2007 Mr Jean-Claude Thebault, Mr Michel Servoz, Mr Marcel Haag,  
Ms Jacqueline Minor and Ms Elizabeth Golberg

to improve the way they apply and above all enforce the single market rules. This is an incremental process and we must adopt best practices and first achievements as a mechanism but maybe my colleagues could complement what I say.

*Ms Minor:* We already employ a number of different techniques to try and encourage timely and satisfactory implementation of directives. You will have heard of the single market scoreboard, which is a process of naming and shaming, and we are in the process of preparing the next edition which should be published in January and which is good news on the implementation front because it will show another significant improvement.

**Q395 Chairman:** Can I just ask when in January? Would it be in time for our report in February?

*Ms Minor:* I think so. When is your cut-off date?

**Q396 Chairman:** It may well be 21 January.

*Ms Minor:* I think it will be before then but I am sure we can arrange to provide you with some provisional figures if necessary before publication.

**Q397 Chairman:** That would be helpful.

*Ms Minor:* That, if you like, is an instrument of moral suasion more than anything else. We also produced in 2004 a Council recommendation on best practice in terms of implementation. I think there were 22 separate sub-recommendations, and in the last scoreboard, the one of January last year, we followed up that recommendation and found that there was a very positive correlation between the Member States which had acted upon it and those with the best records in terms of implementation. What we are now looking forward to is a number of things, the first of which is more active co-operation in the implementation process. If one takes the example of the Services Directive, which will be key to the future success of the single market, we are working very closely with Member States in developing common approaches to the difficult questions which arise in the transposition of that directive, for example, the single points of contact which have to be established, so there are bilateral and multilateral meetings to discuss that. We have produced a handbook for the national authorities responsible for transposition and we are also putting at their disposal—and I think this will be more and more the role of the Commission—an IT system which will enable them to exchange, in a structured form, the kind of data that they will need in order to apply the directive, and I see this as a kind of prototype of the way the Commission might behave in the future. Finally, one of the readouts from the Single Market Review is work on this further recommendation which will look at the stage after transposition in the day-to-day

application of Community rules, and we want to work in a similar way to the 2004 recommendation, namely, collection of best practice, or rather good practice (the situation is too diverse to be able to identify best practice) which we can then put into a document which will enable it to be shared and stated and followed up in Member States from the single market point of view.

*Ms Golberg:* My Lord Chairman, you will recall last July when you were here Mr Nymand Christensen mentioned that we were working on a communication on the application of law, and in September the Commission adopted that communication. I do not know if you have had the possibility to look at it, but basically the communication outlines a number of ways in which we will work in partnership with Member States on improving the application of law implementation in general. It takes, shall I say, a lifecycle approach: pre preparing proposals we are committed to doing impact assessments. As you know, we have set up a system of impact assessments and one of the critical features in that process is to look at how laws will be applied down the road, so very much coming in at the early stages to see if we can anticipate implementation issues. Beyond that the communication calls for prevention measures, looking at how we can solve problems rather than having only the legal reflex, if you like. The SOLVIT system is very important for internal market questions of a cross-border nature. What we are suggesting and setting up at the present time is a pilot exercise covering various areas—environment, single market and so on—where 12 Member States who have volunteered for the pilot will set up a single contact point in the Member State. It will be a hands-on pilot. We will test it for a year to see if it works. Of course, if there are infringements of law we will have to go to court but we want to see if we can sort things out before issues develop into legal infringement proceedings. Part of that whole package, and I think this is important, is the exchange of information. We have had a discussion with Member States on what we call correlation tables, seeing how our directives are indeed transposed and applied in the national law, and it is very important not only for us, obviously, but also for citizens to know how the legal frameworks relate one to another. We also think it is important to have more communication on what issues are being raised, where the problems lie and at what stage of the process we, as a public service, either out of court or in court, are in dealing with them, so there is a big transparency information exchange aspect there which I think is important, not just for single market legislation but across the board. I think it will be interesting for the Committee to have a look at that document as well to see how we intend to take forward application of law across the board.

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**Chairman:** We have had a preliminary look at that. All that is very helpful, and what we propose to do in February is have our report sent to colleagues in the European Parliament. They may not agree with us, but where we are supportive (and certainly on implementation from what we have heard we are strongly supportive) it may be helpful.

**Q398 Lord Paul:** The Single Market Review, and you also said this in your opening remarks, refers to a commitment to keep legislation simple and roll back EU intervention where it is no longer necessary. We applaud this commitment. On the other hand, you know, there is a lot of scepticism about whether it is possible. We would like to know how you intend to achieve it.

**Mr Thebault:** This is part of what we call better regulation and this is something which is a priority for this Commission and for President Barroso. It is not just an intention. It is a reality today. We have programmes of simplification and every proposal we do is based on an impact assessment. This was the case in the past but it was not systematic. Now every proposal must be really justified in terms of efficiency, benefits, including environmental, social, economic and so on. It happened that some impact assessments showed that proposals were not necessary, so there is a big change. We are not in a period where we have to issue many directives or regulations. What we have to do is to be really sure that they are well implemented and enforced. This is one of the main issues we have to face. The scoreboard is very important in that way, and I was asking Jackie where we are now. There has been very good progress in Member States on this. This is, I would say, a new culture in the European Commission. We propose legislation where necessary and where really justified but there are other means for achieving our policy, using self-regulation or self-law. When it fails—and sometimes it happens—okay, it is our responsibility to propose something. People who have been around the Commission for many years still have in mind the period when we were building the single market and we had so many directives. Times are changing and sometimes people are not, but we also have to take this into account in our relations, for instance, with the European Parliament because there are other ways in which to work, not just the statutory process. We are convinced that enforcement and implementation are real priorities but there are certainly other ways to develop our policies than just regulatory measures, and we must also explain this. Business, understand this very well but not everybody does, but we will continue. I can assure you that this is our strong intention. I do not know if my colleagues want to add something on this.

**Mr Servoz:** Perhaps I will add one word on the administrative burden where we have a programme to reduce the administrative burden by 25%. We are not doing it alone. We are doing it with Member States and Member States have been asked to set national targets to reduce the administrative burden. This is for existing legislation but it is also for new legislation which means that we try to provide reporting requirements which are done electronically by comparison to reporting on paper and this is meant to help businesses and citizens in their daily task. That is quite important also with a view to having better regulation. If I can make a point about keeping the legislation simple, it is also about making sure that the legislation is implemented properly and there we are monitoring transposition very carefully. In the context of the Lisbon strategy we have an indicator about the transposition deficit, as what we call it, and we monitor how Member States are performing vis-à-vis this transposition deficit and if they do not perform well we issue a recommendation on the specific aspects, which is then submitted to the Council for adoption. There are a number of Member States where we are making such recommendations for the next Spring Council.

**Ms Golberg:** I was just going to add on the simplification programme that this has been a very high priority for this Commission and this President. The Commission has moved ahead and tabled many proposals. Of course, we are in an inter-institutional relationship. We will be tabling within the next couple of months our annual review of better regulation, and one thing we will be calling for is for the Council and the Parliament to try and handle these simplification proposals before the end of the term. The Commission is only one step in the process. To see real results the proposals need to be adopted and implemented on the ground. Certainly the intention is there—it is reflected in the fact that we have the programme. Now the process needs to go further by seeing the adoption of the proposals by the co-legislator. Just to illustrate one area where there has been rough simplification outside the internal market area is the single farm payment, so there I think there has been a real effort to simplify for farmers. I think that in the e-customs area there has been a very strong effort to diminish the administrative burden and make things easier when it comes to customs processing for businesses. It is always more interesting when you can give an example of what it looks like from the SME's point of view and the citizen's point of view, and hopefully we will have more success stories in the next few years as things are implemented, but I think there are a few areas where there are already impacts being seen.

**Lord Paul:** We are delighted to know about this progress because one of the recommendations in our report is likely to be that the first step should be the

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implementation of the present regulation, so if you can get us a little bit more information by January we would love to look at it.

**Q399 Chairman:** Absolutely.

*Mr Thebault:* Of course.

**Q400 Lord James of Blackheath:** We have noted that the Reform Treaty has omitted the words "free and undistorted competition" and that sends a shiver down our spines, I am afraid, because it would seem to us that those very words ought to go to the core of what a single market sets out to be. Why have they gone and how on earth is it going to affect the consequences going forward?

*Mr Thebault:* I can give you a good answer on this because I had the privilege to be at the European Council when we discussed this. We continue to say that it does not change anything. Why? Because this reference was in the Constitutional Treaty but does not exist in the Nice Treaty. It has been introduced there and so today it is not considered as an objective. Some Member States have said that it is not an objective, it is just an instrument, and it is true, a very important one, but the objective is much more the single market and it is an instrument to enable the single market to work. During the discussion we asked our legal service and those of the Council to make sure that it does not change anything and that, of course, competition policy will not be affected by this, and their analyses were very clear. I know that it has been sometimes misunderstood but our competition policy is still there and we use it and where necessary we open proceedings against Member States, so I can reassure you that there is nothing new there. The novelty was in the Constitutional Treaty.

**Q401 Lord James of Blackheath:** You say that it does not alter anything but surely the absence of the words removes a frame of reference within which you could bring to discipline any national governments which allowed a breach of the fairness of competition, or indeed some who might be encouraged to the view that they could go and escape down the route of state aid to assist a favourite business of theirs because it had some national prestige issue attached to it. One thinks, obviously, of airlines where the record of state aid has been seriously disruptive to competition in Europe in the last 20 years, and I speak as somebody who ran an airline for a large part of that time. I would be very concerned about how it would be interpreted locally. You might think it has not changed anything. Others might seek to take the opportunity of making sure it does change something. I am not quite sure what disciplines you are going to be able to control for it.

*Mr Thebault:* No, I do not think that this is the opinion of all Member States and we have some good examples. We have opened a great deal of state aid cases. We are not against national champions, you understand, but it must not be done in a way which is a sort of protectionism. We do not accept this and the competition rules are applied, I can assure you. I would just like to mention also that the words are not there any more and they were not in Article 3, but, of course the competition policy is still in the treaty, so nothing has disappeared. It was a question of presentation but it has not changed anything for us, I can assure you. Maybe my colleague can give some examples.

*Mr Servoz:* I just want to say that indeed it could be seen as a symbol that the words have been removed but the reality is different because the reality is that competition law is implemented every day and it is implemented in the same way as it was before these words were present, so I think there is no change. This is not only the opinion of the Commission; this is also the opinion which was voiced by all Member States.

*Mr Thebault:* One other thing I would say on this is that maybe we have not been as clear as possible in this document. What we must do is explain to citizens but also enterprises that our competition rules are there to protect them against those who do not apply the same rules because in some Member States in particular competition rules are seen as something which is damaging for industry, for people and so on, so we must explain that it is not true. There is no game if there are no rules and so we have more to do and we intend to pursue it in this way.

**Q402 Lord James of Blackheath:** I think I have to leave you with the sense that I am still concerned.

*Mr Thebault:* I am sorry.

**Q403 Lord James of Blackheath:** I hear your words and I thank you for your words.

*Mr Thebault:* But ask, for instance, some Member States what they think about it because there is no change in our policy and in our behaviour, I can assure you.

**Q404 Lord James of Blackheath:** I have suffered greatly from this sort of problem in my career. For example, I never ever seem to be able to do business in the heavy engineering end of plant and equipment supply without coming up against a competitor somewhere who has got a soft loan package from his government, which is not always very easy to detect. It is often quite invisible at the point of sale when you are making the final contract negotiations and this is particularly prevalent in sales out of Europe into the Middle East and the emerging countries. I wonder

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just how you are going to be able to exercise that sort of overview and detailed control to make sure that that sort of abuse of the system does not apply because it almost gives a green light to say, "Yes, you can do it", by removing those words.

*Mr Servoz:* If you look at the Single Market Review, and this is something that Jean-Claude insisted on very much, we made sure we made a very strong statement in favour of competition rules. If you look at the text you will see a very forceful statement from the Commission saying competition is useful, including for citizens and small businesses, so we have tried to make that very clear indeed.

**Q405 Lord Walpole:** We were pleased to see that the Commission's review and our report on the single market are in agreement when it comes to the role of regulators. We both recommend greater independence and powers for national regulators and more co-operation between national regulators. However, we are not really in support of your feeling for "super-regulators". Can you explain why a "super-regulator" is appropriate, say, in the telecommunications industry?

*Mr Thebault:* First of all, I am pleased to note that we are in broad agreement on the national regulators. For financial services and financial markets we have put in place some regulatory committees. This is an issue which is regularly discussed: is there a need for a more centralised regulator or super-regulator or regulatory agency? We say no, but what is important is to be sure, and I come back to what I was saying before, that rules are applied in the same way in all countries, that enforcement and implementation are still done and above all that the rules are applied in a consistent manner among all Member States, so there is a need for co-operation, of course, between regulators and the more integrated a market you have the more co-operation you have at the level of regulators. Concerning the telecommunications sector, maybe my colleagues could say a word on this. I would not say that we wanted to put in place a super-regulator. It is much more a pragmatic approach based on the facts, that there we need to have more co-operation between regulators. We do not call into question the national regulators, but we consider there is a need for improvement and so the message may have been interpreted by some as a tentative effort, as it were, as someone wanting to put in place this super-regulator. No. Our message is to say there is not enough co-operation and we must develop a pragmatic way of doing that.

*Mr Haag:* The term "super-regulation" implies that we are introducing a new level of regulator and that is clearly not the case. As Mr Thebault has already explained, we need a high degree of co-operation in the single market for electronic communications

because our experience is that this has not functioned in an optimal way in the current structures and that is why the Commission had to take a number of decisions where solutions to problems could not be found at a national level. What the Commission is proposing now aims at improving the better functioning of national regulators and improving their co-operation among themselves but also with the Commission which we expect will ultimately allow the national regulators to work better.

**Q406 Lord Walpole:** So basically you are not setting up a super-regulating organisation? You are letting them do it among themselves?

*Mr Haag:* This is a structure that aims at assisting national regulators in improving their regulatory decisions.

*Lord Walpole:* I think that answers that very well.

**Q407 Lord Paul:** Would it not be better, instead of scaring people by having a "super-regulator", to call him a co-ordinator amongst these other regulators?

*Mr Haag:* We have called it the European Regulatory Group so far, which is not a very telling title.

**Q408 Lord Paul:** A "super-regulator" just scares the life out of everybody.

*Mr Haag:* We did not call it a super-regulator; you called it super-regulator.

**Chairman:** We were trying to be a tad provocative, but certainly in the energy fields we are well aware of that co-operation and that is something we strongly favour.

**Q409 Baroness Eccles of Moulton:** Mr Thebault, I do not think my question is provocative at all; I think it is a subject on which we are very close but we have to find solutions, and that is the position of the SMEs in the single market and how this whole move towards becoming a more effective single market does not seem to be having the benefits for the SMEs that have been hoped for. I wonder if you could give us a bit more detail about what measures the Commission might be intending to take in order to rectify this position. I also have one or two detailed questions which might well be answered in your general answer but if they are not I will come back if I may.

*Mr Thebault:* It is our intention to put citizens and SMEs at the heart of this single market review. We fully agree that they have not reaped all the benefits they could have had. There are concrete measures which are proposed. One, we have to develop still, is what we call a European Small Business Act, which is not necessarily what is applied in the United States, for instance, but this is something we have to put in place according to the issue we want to tackle, to solve, and it is something that we will set up. In fact,

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yesterday the Commission adopted the Lisbon Strategy and there we will introduce this, so we will have to work on it. It is not just a question of procurement; it is a process aimed at facilitating small business enterprises to participate in all these bids, which is not always the case. Yes, it is about procurement but it is also about financing, for instance, for start-up enterprises and so on. We want to develop a package for SMEs or even to indicate what existing instruments they can use. There are other measures we would like to have. I will mention one to help small businesses, which is what we call one-stop shop assistance. This is very important and we want each Member State to establish such a one-stop shop to give them all the information and assistance they need and maybe also to help solve issues.

**Q410 Baroness Eccles of Moulton:** How would the Commission go about seeing that there was an effective one-stop shop in every Member State? We talked about SOLVIT earlier in this meeting and they are doing a great job but they are under-resourced, under-staffed and under-funded, and as there seems to be no other place that small businesses can go to for help at the moment in a number of countries SOLVIT can only do as much as it is resourced to do. There is another aspect to this also which has been lightly touched on already, and that is that if you are a small or medium-sized business operating in a Member State you have to understand the framework of the legal system of the country within which you are operating rather than, certainly while you are only temporary, still being under the jurisdiction of your own country. This puts a huge burden on small businesses who have not got the resources that large businesses have and I think one of the effects of this so far has been that small and medium sized businesses are just not being attracted into cross-border activity. It is very good to hear that the Commission is very much in support of one-stop shops but what can you do, because presumably it is up to the Member States to run them in the same way as SOLVIT presumably has to find its own resources to a large extent? What can the Commission do to make these rather wide-ranging support systems for SMEs happen and happen quite quickly?

*Ms Minor:* Without disagreeing at all with anything you have just said about SOLVIT, and I think we are meeting this afternoon to discuss that in more detail, SOLVIT is really only one aspect of the support which is provided to small businesses because it deals with concrete questions which arise in cross-border dealings. There are other networks. There are networks which have just changed name and I cannot remember their name, unfortunately, because it is not run by my part of the Commission, which is a sad

insight. It is the Enterprise Network which used to be called the Euro Info Centres but they have just been given a new and renovated name. There is, I think, a problem that we provide too many sources of information to small businesses and citizens, that there are a great number of resources available to support them but sometimes the difficulty is that they do not know at which door they should be knocking. One of the things we have proposed in the Single Market Review is to create a unified portal, probably a virtual portal in most cases, through which everybody can come and then be directed behind that portal to the appropriate service. When we talk about support for small businesses we are not just talking about solving their problems. We are also talking about assistance in creating a small business, and part of the Lisbon recommendation has been to increase the speed at which you can create a small business and many Member States have acted upon that. It is also about providing them with assistance in acquiring financing and providing them with assistance in moving into new markets, whether they be other Member States or third country markets. I agree, as with SOLVIT, that the Commission can provide some of this resourcing. For example, this network is financed partly out of the Community budget. It works very closely with local chambers of commerce, but there comes a limit to that. In terms of company creation, for example, those are national procedures and that is a matter of Member States deciding to simplify their registration requirements and also to put in the resources, the electronic systems or the people to operate them, that are needed. We can exercise pressure through the Lisbon process again through peer pressure and comparative naming and shaming, but the bottom line is that it is a national budget which will pay for this.

**Q411 Baroness Eccles of Moulton:** That seems to me the rub. It is obviously inevitable that it will be the national budget that has to kick in with a large part of the support, and therefore inevitably the spread of support is going to be uneven; there is no escaping from that, so this presumably is the reason why the ease with which an SME can set up in a Member State should be as simple and straightforward as possible, which is why, coming back to the legal aspects of it, I do not know what the Commission can do to simplify that. It seems that, having abandoned the country of origin principle, it has made the matter more complicated.

*Ms Minor:* We are going to be proposing next year a European private company statute, and the contours of that proposal are still being worked out. We are currently preparing an impact assessment. One of the questions which we will have to address is whether there has to be some cross-border element in order

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for companies to be able to use that form, whether, for example, you have to have shareholders from at least two Member States in order to be eligible to create your company in this way. That would mean you could not have a single shareholder company, which has its drawbacks as well, but we would certainly intend that whatever the final proposal it should be a model for corporate form for smaller businesses and that may offer an alternative form, as has the European trade mark, for example, in a completely different field. The fact that there is a European trade mark has meant that national trade mark offices have had to sharpen up their act in terms of providing a service to their customers. Should there be an alternative European form then presumably national company registries and national legislators would have to think about making sure that the national form survived in the market.

**Q412 Chairman:** I think you have probably given us a suggestion for our next inquiry.

*Ms Minor:* I think you are meeting my Commissioner. Please do not tell him I gave you the idea!

**Q413 Chairman:** I have written it down! My final question is about what the Americans call “the vision thing”. Specifically what can the Commission do to explain to both consumers and employees in the European Union that the single market and the improvements that are being made which we have talked about today really can benefit them? At the moment the concept of the single market is a bit dry, it is a bit economic, it is a bit business, but for the ordinary man and woman in the street how do we make it seem like reality?

*Mr Thebault:* This is a very good question and I fully agree with you, and I said this previously, that for the man and woman in the street the single market is something which is very striking—“What are the benefits for me?”—but they do not realise that they benefit in terms of prices and in terms of choice and jobs. I would say that our credo is the Europe of

results and so we think that if we have concrete results citizens will make the difference. We have some measures that I think will be very important and maybe will help people to have another view of the internal market, in particular in the financial sector and in the retail financial services where we have already taken a measure three or four years ago concerning cross-border payments and this was really appreciated. Now we will come with new elements and I will not go into detail, but for instance we will adopt next week a document on the mortgage credit, something which is very concrete for people when they want to do cross-border business on this, and something also on financial education. I think it is very important because we know that people are not really well informed and able to understand exactly what the banks offer them. We have already mentioned that there is a scoreboard for the internal market, but there will also be a consumer scoreboard which will give visibility and comparability between Member States. This is very important and we will come with this at the beginning of next year, I think we will contribute to developing a better perception of the internal market and its benefits but there is huge work to do there and it is not only for Brussels to do this. Maybe I have forgotten some very important initiative we want to take. This is for us a real concern because what we want is to empower consumers, and we have written this in the paper, that we really want to make them realise that it is not just for big business or something like this; it is a reality for everybody.

**Q414 Chairman:** I think we agree with you very much and it will be one of our key recommendations, and it must be pursued at national level—national press, national parliaments. That is where we come in. Thank you very much indeed. You have been very helpful.

*Mr Thebault:* Thank you very much for the pleasure and we will be very interested to read your findings. It is very important work which is very much appreciated.

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THURSDAY 13 DECEMBER 2007

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| Present | Eccles of Moulton, B.<br>Freeman, L. (Chairman)<br>James of Blackheath, L. | Paul, L.<br>Walpole, L. |
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**Examination of Witnesses**

Witnesses: MR JORGE PEGADO LIZ, President, MR BRYAN CASSIDY, Vice-Chairman, and MR JEAN-PIERRE FAURE, Head of Secretariat, Single Market Observatory, examined.

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**Q415 Chairman:** We are having this meeting over lunch and, on behalf of Sub-Committee B, I would like to welcome Mr Bryan Cassidy, Mr Jorge Pegado Liz and Mr Jean-Pierre Faure to join us as our guests. I would be very grateful if I could turn to you, Bryan, first of all to put developments in a bit of a historical perspective.

*Mr Cassidy:* In a sense the big battles were fought and won some considerable time ago, beginning in 1987 with the Single European Act where the Parliament for the first time got the power to amend the European Commission proposals but then more dramatically with the launching of the single market programme in 1992 with Lord Cockfield as the Commissioner responsible, which achieved a number of giant steps in a relatively short time, taking examples which benefit consumers, the freedom of the skies, the opening up of the telecommunications market and in more recent years the opening up of mobile telecoms, which, of course, in 1992 barely figured in anyone's calculations. Compared with the heady days of 1991 we are now down to much more workaday and detailed things like consideration of the Markets in Financial Instruments Directive (MiFID) or the REACH proposal to do with the assessment of chemical products, which generate a lot of heat by people intimately concerned with those industries, to which I would add also the Services Directive which caused the Parliament a great deal of anxiety, and indeed we ourselves because we have trade union members of our committee.

**Q416 Chairman:** A lot has been achieved. Are we nearing the end of the period of giant directives and regulations on the single market and moving more towards implementation?

*Mr Cassidy:* Yes, and hopefully towards implementation. I cannot think of major unresolved issues except that some of the things that are still on the agenda, which are for the Parliament and the Council, are giant things in their own right, and there are smaller things which are causing a great deal of anxiety, for example, 'in the country which I know best' (which is the great phrase used here) about temporary workers.

**Q417 Chairman:** Thank you. Jean-Pierre, we are all fascinated by the work of the SMO and EESC. Perhaps you would just say a brief word about that. I know Lord James has a specific question for you in just a moment.

*Mr Faure:* The Economic and Social Committee is an organ of the EU that was set up in 1957 alongside the other major institutions. It has a tripartite structure which means that it sees to it that something like interest group pluralism is pumped into this EU system. What we want is a consultative activity which is coherent, organised, visible and transparent simply because it is institutional but which does not exclude extra contacts that the Commission may want to have with interest group lobbies. This is all-inclusive, if you like; one type of consultation does not exclude the other, so what you want is pluralism, because civil society is a pluralistic concept, apart from lobbying. In this respect you allow this kind of qualitative advisory activity into the EU decision-making process. As far as the SMO is concerned, it was set up in 1994 but since 2000 we have focused increasingly on better regulation issues, again, the whole spectrum of items that you may think of in relation to this. The inter-institutional agreement on better law-making in 2003 was in a way a starter to this, but I must say that 2005 was a key year because (a) we had the UK Presidency and one of the priorities of the UK Presidency was better regulation and, indeed, we were very actively involved in this one, as you may remember, Bryan, because we went to Whitehall and our colleagues from Whitehall came to Brussels. That is where I met Clelia and we produced an exploratory opinion at the request of the UK Presidency on better regulation, and at the same time we started mapping self- and co-regulation initiatives. 80% of the initiatives collected in the database are of a self-regulatory nature while 20% fall under co-regulation, so what the SMO (and by way of consequence the committee) is now about to become—and I am just back from Berlin from a conference on regulatory reform in the EU and also outside the EU—is a one-stop shop for information on self-regulation and co-regulation in particular and better regulation in general. Again, this is very important: members of the committee are representative of civil society organisations, that is, people like you, people who are

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active in everyday life and have a say because they know what they are talking about. We have developed a database, which is actually finalised and is up and running and will be launched formally in late February. We draft opinions involving our members, that is, civil society organisations. We organise hearings to dock on people on the ground in the various Member States, including lobbyists, and, of course, we work very closely with the Commission—DG Enterprise, DG Internal Market, the Secretariat-General, and we want to deepen our contacts with the Parliament, especially the IMCO committee and the JURI committees.

**Lord James of Blackheath:** I have expressed concern at the lack of clarity as to the control and direction of internet services provided from within Europe which may go cross-frontier to the point where they cause sociological and potentially other problems, because, and I have been thinking about this as you spoke, it is not just a question of bookmakers; we ought to extend this to the sale of sexual services and pornography as well which I think are coming down with exactly the same problems. I would like the answer to embrace all those aspects please, because I would find it quite incredible if the European authorities were to say, “You cannot ban bookmakers from advertising but you can ban pornography from advertising”. There would be no equity in that arrangement at all, so I would seriously like an opinion from within Europe as to how this can be brought under control because both are sociological problems. Internet trading generally follows from this. There needs to be a code of practice from Europe on internet trading, which seems to be conspicuous by its absence at this time and we would like to know much more about the controls which can be applied nationally from within.

**Q418 Chairman:** It may be appropriate for the Committee to suggest that we remit this question to you.

*Mr Faure:* This is very good.

*Mr Pegado Liz:* Yes.

**Q419 Chairman:** Jorge, perhaps you could comment briefly on the Commission's proposal to introduce some further research and perhaps initiatives in the field of SMEs, and particularly a new European small company initiative.

*Mr Pegado Liz:* I must say that I personally and the committee are studying nowadays the new initiatives of the Commission. We read attentively the new package on the single market and, in general, we found there some new initiatives of the Commission on SMEs and on consumers as well. These new initiatives, and especially a new statute for the SMEs in Europe and perhaps even some immediate new regulations on that aspect and a new policy

approach, will be dealt within an opinion that we are preparing and, of course, we will be very happy to send it to you even in the state of draft because I think it is just being drafted. As soon as it is available we will send it to you.

**Chairman:** Thank you. We will be taking evidence this afternoon and Lady Eccles will be pursuing this.

**Q420 Lord Paul:** The Single Market Review says that they are going to simplify the regulations and make sure that that happens. You have given us a very nice document about improving the EU regulatory framework upstream and downstream of the legislative process, and you have mentioned that this is being done. Are we going to see a real change and also that the old regulations which exist and which are of no more value will not be applied any more?

*Mr Cassidy:* There is an increasing number of directives now that are updating existing directives and in the process of updating them there is a process of consolidation, with which, of course, you are familiar from the way we do things “in the country we know best”. There is an increasing number of these examples where simplification is an element of consolidation. Directives have thus been piled one on top of the other, making life complicated for the end user. Here in Brussels something can be done about the upstream process. We have discovered that a lot of the concern arises from the downstream process, in other words what happens after a draft directive has gone through the Parliament and the Council and then goes to the Member States for implementation. As Roger and I know, going back to the 1990s, the Prime Minister at that time was very concerned about the process of “gold-plating”. It still goes on and the other day in Berlin we had a presentation from someone from Sweden who identified “gold-plating” as one of the problems that the Swedes have to cope with, so “gold-plating” continues to be a problem. Associated with that is the fact that both at the European level and at national level part of the regulatory process is carried on behind closed doors. The Commission and the Parliament have now finally come to an agreement with the Council that the Parliament can have an oversight of something called the “comitology procedure”, the process whereby detailed regulations are drawn up, not by the Commission itself but by national experts or national civil servants, to fill in the gaps in a Framework Directive. I think, Roger, that the same applies with Acts of Parliament, does it not?

**Q421 Chairman:** Certainly.

*Mr Cassidy:* Acts of Parliament establish the broad principle and the statutory instruments fill in the detail. In our case the comitology procedure produces Commission regulations which fill in the

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detail of the Framework Directive. Until recently the Parliament has not had much control over that. Downstream, of course, in Westminster, particularly the House of Commons, huge amounts of European legislation go through as statutory instruments. They are never debated on the floor of the House. I have monitored them quite carefully and I always spot the ones which are supposed to be based on European directives because in the Stationery Office daily list it always says "EC note. This regulation relates to Directive . . ." et cetera. That is still going on and still causing bother, and the final point is that so much regulation in the United Kingdom and elsewhere is done by agencies, the Health and Safety Executive, for example. Another example, which I know politicians complain about is the Electoral Commission, which is nothing to do with Europe. That produces endless regulations that cause problems for active politicians. Similar things happen in other countries, not to do with the

Electoral Commission but the implementation in Member States is a principal source of problems for business.

*Mr Pegado Liz:* If I may add another aspect which is very important, that is impact assessment, not only economic impact assessments but also social impact assessments. We are very keen on this and, by the way, I have seen that the United Kingdom refused to agree to the Consumer Credit Directive on the basis of it lacking an impact assessment.

**Q422 Baroness Eccles of Moulton:** And we have another example with Television Without Frontiers where the rules changed and it needed to have another impact assessment and it was not done.

*Mr Pegado Liz:* Yes, exactly.

**Chairman:** That seems an appropriate moment to conclude the formal session by thanking our guests and we hope very much to see them in the United Kingdom.

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THURSDAY 13 DECEMBER 2007

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| Present | Eccles of Moulton, B.<br>Freeman, L. (Chairman)<br>James of Blackheath, L. | Paul, L.<br>Walpole, L. |
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**Examination of Witnesses**

Witnesses: Ms JACQUELINE MINOR, Director at DG Internal Market for Directorate B, Horizontal Policy Development, and Ms MARIAN GRUBBEN, Team Leader, SOLVIT, examined.

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**Q423 Chairman:** Good afternoon. This is the afternoon session of the Select Committee on the European Union, Sub-Committee B, on the internal market. We have to help us this afternoon Jacqueline Minor, Director at DG Internal Market for Directorate B, Horizontal Policy Development, and Ms Marian Grubben, Team Leader, SOLVIT. I am going to ask you where you are in the organisational structure of the Commission and the European Union, and once that has happened the Committee initially would like to learn more about what SOLVIT does and Lady Eccles will be leading off the questioning.

*Ms Minor:* We both work in DG Internal Market and Services, which is responsible for only part of the single market, it has to be said: financial services, public procurement, intellectual property and free movement of services. My directorate deals with horizontal questions, namely, economic analysis, policy co-ordination and enforcement issues, and that is where the SOLVIT team fits in. We obviously deal with traditional infringement proceedings which you heard about this morning but some years ago we recognised that infringement proceedings were a rather large sledgehammer with which sometimes to crack some small nuts and that what business and citizens needed was a simple, swift, inexpensive, in fact, free way of resolving problems quickly, and that is when SOLVIT was conceived. It celebrated its fifth anniversary this summer and Marian is its very competent and effective Team Leader.

*Ms Grubben:* The SOLVIT team consists of six people, so we are a fairly small team, and the network that we run consists of 30 national SOLVIT centres. SOLVIT was established in 2002. Each EU Member State has its own SOLVIT centre and the three EEA states, Norway, Iceland and Lichtenstein, are also part of the network. All the SOLVIT centres are part of the national administration so they are not some sort of independent organisation but are all based in either a ministry or another part of the administration. This is left to the choice of the Member State. The objective of SOLVIT is to try and solve problems that arise with the application of EU rules, EU single market rules in particular, in the Member States caused by national authorities and to try and solve these problems quickly and free of

charge. The deadline that SOLVIT has set itself is to try and solve problems within ten weeks and over the past years SOLVIT has done quite well in reaching that target because right now the average case handling time is around 50–55 calendar days, so that is not bad, I think, if you look at normal administrative procedures. SOLVIT deals with a very wide range of problems. As Jackie has just told you, DG Internal Market is only concerned with financial services and services in general and the application of the treaty principles, but SOLVIT has a wider span than that. We deal also with problems concerning taxation, social security, employment rights, free movement of persons, residence rights, the market for products, so it really covers the entire internal market, as is set out in the treaty. The strong point of SOLVIT, I think, is the fact that we can operate on a purely informal basis. If you normally have a problem which crosses borders you would have to go via the hierarchy and write formal letters. Member States have a tendency to just defend the position which they have taken in the past and it then becomes really difficult to solve things. SOLVIT was set up from the beginning as an informal network. There is not even a formal legal basis; there is just a Commission recommendation that was endorsed by the Council of Ministers. In a way Member States are just committing to the SOLVIT principles on a purely voluntary basis and so far that has served us very well. In practice it means that in order to solve a problem it is enough for two people within two different Member States at the operational level to contact each other and try and sort out the legal merits of a particular case, to address the authority that has caused the problem and try and convince them to come up with a proper solution. In addition to that, another essential element for SOLVIT is the fact that we have a very powerful IT tool. We work with a database to which all the SOLVIT centres and the Commission are connected, and this database allows us first of all to have a complete file of all the cases that are going on. Of course, because of that it also provides an enormous amount of transparency and with that transparency you see a lot of peer pressure emerging in the network. No SOLVIT centre wants to be at the bottom of the list when it comes to resolution rates or case handling times and

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they can all see what the others are doing. This is one of the things that we have managed to achieve through the database. Another thing is that because we can see the cases that are being processed in the database, we can also keep a good eye on the quality of the solutions that are proposed because sometimes solutions proposed by Member States may not be entirely compatible with EU law and that is where we from the Commission side are often called in to come up with informal legal advice to check whether what is being proposed is really compatible with EU principles. That gives us an important handle on the quality of the system. Finally, the database helps us to ensure that in all Member States a sort of minimum type of procedure is followed and this is about informing the clients about what is going on, about, as I said, the quality of the solution, but also about the contacts between the SOLVIT centres. It is with these elements that we have managed to achieve a fairly impressive resolution rate of around 80%. As I just said, also the average case handling time is quite good with a current average over the past year of around 55 days.

**Q424 Baroness Eccles of Moulton:** That has been a very helpful introduction. Thank you very much. We are building up our corpus of knowledge about SOLVIT and other ways of helping cross-border co-operation. One of the areas that we have been concentrating on, and I think the Commission's review has paid quite a lot of attention to it, is the situation regarding SMEs and the extent to which SOLVIT is involved in the solving of problems that particularly arise for SMEs and whether there are problems in that area which affect SMEs more acutely than other sectors. Could you tell us a bit about that please?

*Ms Grubben:* If we look at the origin of cases in SOLVIT right now, two-thirds are submitted by citizens and one third by businesses. We also last year looked at what types of businesses we normally get in SOLVIT and the vast majority are SMEs because probably the bigger companies have their own ways to address this type of problem. They can afford lawyers and they do not really rely on instruments like SOLVIT. SOLVIT therefore has an important role to play for SMEs and if you look at the types of problems they have submitted over the past few years, many of them concern the provision of services, the terribly complicated procedures they are faced with in other Member States, all sorts of documents they have to provide. It is very difficult sometimes in different languages to provide proof of the fact that a document is genuine. It can cause all sorts of difficulties. Another obvious area is marketing products. Although, according to treaty rules, if your product is marketed in one Member State and complies with EU standards, then you

should be able to market it in all other Member States as well, but the reality quite often is not as rosy as that and companies are quite often faced with demands to do re-testing of their products which can be extremely costly and sometimes even prohibitive. What we also see are a lot of problems in the area of taxation. One recurring problem is late repayment of VAT and this does cause a problem for SMEs because sometimes it concerns very big amounts which for SMEs can be really important in terms of their bookkeeping. In these areas SOLVIT has established quite a record and has become quite competent in finding fast solutions.

**Q425 Baroness Eccles of Moulton:** So within the regulations that exist which businesses need to operate within in the single market is it possible for SOLVIT to identify particular hurdles or problems that SMEs have to contend with and therefore start a process by which improvements can be made within the existing regulations, or is it all now so tightly regulated, as it were, that, apart from giving guidance wherever possible, the situation is so fixed that SMEs are always going to have to struggle?

*Ms Grubben:* Of course SOLVIT in principle only deals with problems when SMEs have already gone through the process of finding out what they can do and what their rights are and then still cannot enforce these rights. In SOLVIT, if you look at the on-line complaints forms that come in, of which only 20% are accepted as SOLVIT cases, and you then look at the other 80%, quite often they are about the impossibility of finding decent information about what the rules are or what they should do to market a product. This is maybe the single most important problem for SMEs, that if you are based in the UK and you then want to sell your product, let us say, in Germany how do you go about finding out what you need to do? Especially if you take the example of Germany, a lot of things are decentralised and you really do not know where to go and what to do first. Apart from the problem-solving which SOLVIT does at the end of this process, there is an enormous need for more user-friendly, targeted information for businesses just about practical things—where do I go to achieve this, what sort of forms do I need to fill in, that sort of thing. We have been looking recently into the information that is provided on the Commission Europa website and I think all services concerned agreed that this information is not up to date, it is not complete and it is not user-friendly. We have also been looking at examples of similar sites that have been done by the Member States and there we have found a couple of examples which are very good. There is a site in the UK called Business Link. You probably know that site. It is excellent. It is a very pragmatic way of informing businesses about what to do and where to go and I think what we should do at

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EU level is take more notice of these very good examples that are around and try to model our own website on these examples.

**Q426 Baroness Eccles of Moulton:** Can SOLVIT do that on its own or does it really have to be done through the Commission?

*Ms Grubben:* This is not something that SOLVIT does at all but it is a problem SOLVIT is confronted with because we have these 80% of queries coming in which are not for us. So, rather than do the signposting for 80% of the incoming complaints it would be much better if the information tools were improved so that we would not get all these requests for information and that is why we were brought into this. There is another initiative which is part of the Single Market Review. I do not know whether that has already been mentioned.

*Ms Minor:* We mentioned it briefly this morning.

*Ms Grubben:* It is an initiative to try and streamline all the services that we now have made available which are still working very much in parallel. The websites certainly are not all that user-friendly and there is enormous scope for improvement.

**Q427 Baroness Eccles of Moulton:** So is that the one-stop shop?

*Ms Grubben:* Yes.

**Q428 Baroness Eccles of Moulton:** Being able to use the internet, presumably you can see ways in which the systems can be improved and life can be made considerably easier for that part of the business world, which is encouraging because that is possible to be done, is it not, and that would mean that the 80% that you tell us about could be better accommodated than they are now, but that is beyond your scope for dealing with?

*Ms Grubben:* Yes.

*Ms Minor:* It is beyond the scope of SOLVIT.

**Q429 Baroness Eccles of Moulton:** Yes, that is what I mean.

*Ms Minor:* It is being addressed, perhaps not as quickly and as vigorously as we might like but it is being addressed as part *inter alia* of the reworking of the specifically enterprise-biased network, and I still cannot remember the name of it.

*Ms Grubben:* It is now Enterprise Europe Network.

**Q430 Baroness Eccles of Moulton:** Where do the points of single contact come in in that arrangement?

*Ms Minor:* For the Services Directive?

**Baroness Eccles of Moulton:** Yes.

**Q431 Chairman:** It is only the Services Directive.

*Ms Minor:* They are only for the Services Directive. I think one of your questions was whether this was being combined with SOLVIT. We take a fairly diffident line, which is to say that we encourage Member States to regroup all of the different contact points, information centres, problem-solving bodies within their administration, ideally in some kind of single market centre—it does not have to be a physical centre—to get the economies of scale and the crossover of expertise of all the people, as they do, for example, in the Czech Republic. They all have offices down the same corridor and then they can talk to each other in the simplest human terms. That is what we are saying, for example, about single points of contact, that Member States might like to consider whether these could be regrouped with the SOLVIT centres. There are also points of contact with free movement of goods and various other networks, but for some Member States it is a very delicate question as to where these different bodies are situated in their national administration, so we have to tread a little carefully.

**Q432 Baroness Eccles of Moulton:** I suppose that the existence of the web must make getting good helpful messages across the 27 Member States easier. Can you imagine life without it?

*Ms Minor:* No, not for many things.

**Q433 Chairman:** Can you tell us a bit more about the Enterprise Europe Network?

*Ms Grubben:* It is a network run by DG Enterprise, so that is probably why they called it that. It is based on a merger of two existing networks. One is the Euro Info Centres; I do not know whether you have heard of them. It is a network of 400 different national centres which are supposed to provide assistance to SMEs and help in finding partnerships across borders and things like that. They have recently been merged with innovation relay centres which also cater for SMEs to help them to turn good ideas into practice using innovative techniques and things like that. As of 1 February, I believe, they will start as a newly merged network called Enterprise Europe Network, but they will very much have the same vocation as the two separate networks had in the past. From the SOLVIT perspective we intend to strengthen our co-operation with this network because it is of crucial importance that all the centres know about SOLVIT and that if SMEs come to them with SOLVIT-able problems they know where to send these people.

**Q434 Chairman:** Could you just give the Committee a couple of examples, without necessarily mentioning confidential information about the names of the applicant or the company, of SOLVIT cases which were solved?

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*Ms Grubben:* The UK helpfully sent me a case which has been solved only this week, I believe. It is an interesting case and it is a very typical case. It is about a UK company that manufactures marine electronics equipment, like VHF radios which are used on vessels, and these things have been tested for the UK market. They have been selling them everywhere. They wanted to expand to Germany and in Germany they were confronted with a request to retest everything. They had been struggling with this request for a year and they could not get past it. On the other hand they could not afford to do the retest and so they were really stuck with this. Apparently SOLVIT UK informed me that they have now solved this together with SOLVIT Germany and the Bundesamt fuer Seeschiffahrt has even decided to change its rules so that from now on this sort of request will no longer be made and they will accept the UK testing results. That is a very upbeat success story, I think, also because the company has estimated that having this problem solved has saved them one million euros; I do not know exactly how much that is in pounds but it is rounder in euros, I guess. This is a typical case. There was another case also relating to a UK hairdresser. He had been running a salon in the UK for ten years and he wanted to move also to Germany, to Berlin, but in order to open his hairdressing salon there he had to prove that he had experience, so he handed over a certificate from the Department for Education and Skills in Sheffield, but the Berlin chamber of commerce said, "We have never seen this type of paper. We cannot accept that. It cannot be true. You have to go to your local chamber of commerce", and this hairdresser said, "That is not the way we do things in the UK and the Department for Education and Skills can deliver this", so he got really stuck; he could not open his hairdressing salon. There again the UK SOLVIT centre stepped in and they explained that there is an EU directive which says that there is an annex which lists all these organisations which can provide these certificates, so it was clarified in that way and then he could open his hairdressing salon. This is a typical SOLVIT story in the sense that many of these problems are just caused by lack of knowledge at a local level about what EU rules are and how to apply them. At many of these local levels of government they only come across cross-border problems every once in a while so they do not have the opportunity to develop an enormous amount of expertise, and that is where many of the problems arise. For SOLVIT it is relatively easy to solve this type of problem, though for the persons involved it is not; they can be stuck with something like this for years.

**Q435 Baroness Eccles of Moulton:** Does protectionism come into it anywhere ever?

*Ms Grubben:* I guess it comes in a lot, but if you look at the 80% of cases that do get solved that would at least suggest that there is also an enormous willingness to be persuaded to apply the rules correctly; otherwise we would not manage to solve so many cases. There is a bit of that, and there certainly is a bit of that when there is a lot of money involved, but so many problems are really small. They are big for the SMEs concerned but they are relatively small, so therefore they are fairly easy to solve provided that you have a system like SOLVIT.

**Q436 Lord James of Blackheath:** Is there any element of the service you provide which effectively becomes a sort of arbitration service? Are you always fact-based rather than opinion-based?

*Ms Grubben:* I guess there is always a bit of both.

*Ms Minor:* There are two ways probably that you could argue that we as the Commission intervene to mediate. The first is that sometimes we provide support to the SOLVIT centres in analysing the problem, in telling them what the rules are, because some of these cases can be very arcane. There are a lot of recognition of diplomas cases, for example, where there are some specific directives, and there are general system directives, and sometimes it helps to have somebody from the Commission saying, "It is this provision of this directive which applies and it gives this result", so we get involved there as specialist advisers, but we also have a residual responsibility to make sure that the solutions which are arrived at by the SOLVIT centres are not too far out of line with Community law because the fear of some of our colleagues, let us be honest about this, initially was that this would become a negotiation between Member States and they would arrive at comfortable solutions for the Member States which were not necessarily solutions compatible with Community law. That fear has not materialised.

*Ms Grubben:* No, certainly not. One of the strengths of SOLVIT is also that SOLVIT centres are really committed to finding solutions. It does sometimes happen, for instance, that there is an ongoing infringement procedure where the Commission has taken a country to court or is about to take the country to court, and then, of course, for the SOLVIT centre the margin in which to come up with an informal solution becomes very narrow. However, even in those cases we have a couple of examples where SOLVIT centres felt that nevertheless they should find a practical solution for the person who was suffering from this problem, so they came up with quite imaginative solutions which might not be entirely compatible with EU law, pending the infringement procedure, but still gave the particular person a very good solution.

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**Q437 Lord James of Blackheath:** Suppose I came to you—and I will not—saying, “I manufacture capacitors and I have an order for a lot of capacitors to be supplied to a Middle Eastern country. Can you tell me whether I need to get an end user certificate for them because they could be used as triggers for a nuclear bomb?”. Would that be the sort of question you would get and could you solve that one?

*Ms Grubben:* No. It concerns the Middle East and we do not do trade with third countries. That is the first thing. Secondly, what you are mentioning now is really a request for information and we would signpost that.

**Q438 Lord James of Blackheath:** I was trying to cast you in the role of how the DTI as it used to be would have provided information on request to ourselves in the UK.

*Ms Minor:* I think the European Enterprise Network would be able to provide you with that kind of information.

**Q439 Lord James of Blackheath:** So that information is available in the system but not from yourselves?

*Ms Minor:* Yes.

**Q440 Lord James of Blackheath:** You could be a post-box to where it goes?

*Ms Grubben:* Yes.

*Ms Minor:* Can I just come back to an earlier question about how much we can influence the regulations? Again, I think there are two levels where SOLVIT can operate to influence the content of the regulations. Most of our cases, as Marian has said, relate to incorrect application as a result of an individual official taking a wrong or ill-informed decision, but there are some cases where the official has given the only answer that he or she is able to give in the light of national rules and we do have a number of instances where, as a result of the problem being brought to light from SOLVIT, national rules have been changed, so we call those SOLVIT-plus cases and Marian can probably talk about one or two examples. The other thing, of course, is that the information feeds back into the Commission, so we know, for example, that there is a big problem with late payment of VAT refunds and we can tell our colleagues who make the policy in DG Tax that this is an area where the rules are not generally working properly and we can look at how to make them work better. That might mean a change in the rules or it might mean some other initiative about clarifying with national administrations how they should work or better training for national officials.

**Q441 Baroness Eccles of Moulton:** How fluid are the policies and the rules? Sometimes you cannot manoeuvre within the regulations and sometimes you can. What sort of feel is there for the amount of manoeuvrability you have got? How flexible are they?

*Ms Minor:* At Commission level?

**Q442 Baroness Eccles of Moulton:** Yes.

*Ms Minor:* For example, there is currently being debated by the Council and the Parliament a package on mutual recognition to facilitate free movement of goods between Member States, and certainly the position that we took in the discussions leading up to making the proposal was in part influenced by our experience on the ground from the SOLVIT centres, so it is one of the many things that feed into the conception of a proposal or a new policy but sometimes it will mean altering the existing rules and altering the existing rules means going through the legislative process, which in the European context is quite lengthy and cumbersome, or can be.

**Q443 Baroness Eccles of Moulton:** And there is only that much space for it anyway?

*Ms Minor:* Yes.

**Q444 Baroness Eccles of Moulton:** So it will depend very much. Anyway, you have got some flexibility.

*Ms Minor:* Yes. For example, in goods package one of the things we felt very strongly about was the need to have nominated contact points again because of this problem that so many people have of not knowing where to go to get a yes or a no, spending a lot of time just wandering around the system trying to get in.

*Ms Grubben:* It is a general problem. Again, if you look at this experience with SOLVIT, many parts of the administration have a mandate to apply the rules as well as they can, so probably the measure of success is the number of files they handle over the course of a year, but SOLVIT has as a mandate to solve problems so they are accountable for solutions and that is a quite different perspective. I think that is why it works and that is why probably if you appoint a single point of contact in general you at least have somebody who is accountable for making sure that SMEs and citizens can exercise these rights. That is fairly crucial.

**Q445 Lord Walpole:** I wish to pick up two words that I heard this morning and find out what SOLVIT has done, if anything. The words “agricultural payments” came up this morning. To say they are being paid well in England is absolute rubbish, is it not? They are being paid in Wales and Scotland and Northern Ireland and they have probably mostly been paid; it starts round about Christmas time, 1

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December. When did we finish paying the people in England last year? I think I got my very last payment about six months ago. That is absolutely disgraceful. Does SOLVIT ever get asked about late payments by a government of EU money, which is what it amounts to?

*Ms Grubben:* No, this is not part of the SOLVIT mandate.

**Q446 Lord Walpole:** You would not be allowed to?  
*Ms Grubben:* No.

**Q447 Lord Walpole:** If you have tax and VAT repayment problems what is the difference between that and money that the government should have paid you because it is EU money?

*Ms Minor:* The remit may seem artificial to you but it is because it is a citizen in one Member State and the government of another Member State, so there is a cross-border element, whereas in the situation which you are talking about it is an English farmer waiting for his payment from the English authorities. That is not something in which SOLVIT gets involved.

*Ms Grubben:* It is seen as a bit of a problem sometimes that SOLVIT can only deal with cross-border problems because there are plenty of problems that arise from bad application of rules which do not have this cross-border element. The Commission is right now setting up a pilot project. Was that mentioned at all?

*Ms Minor:* That was mentioned this morning.

*Ms Grubben:* I will not mention it again then.

**Q448 Lord Walpole:** I feel incensed about this, I really do. I think it is an absolute disgrace. There is no point taking it up with our Government. It is taken up about once every three months in the House. There was just one other phrase that I rather liked you using and that was "intellectual property". Can you tell me a little bit more about that? Perhaps it is a little wide of the mark here but are we looking for pan-European intellectual property rights?

*Ms Minor:* There are pan-European intellectual property rights already.

**Q449 Lord Walpole:** Completely?

*Ms Minor:* At the Community level there are the Community trade mark and the Community design, so there you make a single registration application to the office in Alicante and you acquire intellectual property rights for the whole territory of the European Community. There is also a European patent which is issued from Munich and which is not part of Community law. That is a separate treaty in international law and they give you a bundle of national patents, so you tick the countries for which you want patent protection when you make your application.

**Q450 Lord Walpole:** And when they are infringed do you have to sue each person in each different country?

*Ms Minor:* Indeed. There has been on the table a proposal for a Community patent for about ten years. There was one that was then withdrawn and then there was a second one. The idea has been kicking around for a long time without so far any real prospect of agreement. We came close under the Irish Presidency about six years ago, I think, but that subsequently disintegrated. In terms of intellectual property the focus now is first of all on trying to find affordable, effective and rapid solutions to litigation because your right is only as good as your ability to defend it. One of the proposals we are looking at is how the Community can best assist patent holders in resolving their cross-border problems, and there is already a proposal on the table that comes from the European patent organisation, which is called EPLA, the European Patent Litigation Agreement. Really our question is, should we be trying something separate or should we be trying to bolt on a Community element to that or can that form the basis of a later agreement within the Community, and there are discussions going on around that. Also, next year we will be turning our attention not to the regulatory framework but to more practical questions about, for example, fee structures in national patent offices: can we encourage national patent offices to have lower fees for smaller companies?

**Q451 Lord Walpole:** I was going to say this is very relevant to SMEs, is it not?

*Ms Minor:* Yes. It is also about helping SMEs, for example, to defend their intellectual property in third countries, I know that is something we are looking at, the problem of SMEs which perhaps sub-contract manufacturing of parts, or indeed the whole thing, to one of the larger third country trading blocs and then find that the design or the invention has been copied, and they themselves back in London or back in Berlin find it quite difficult to take action. If we had somebody on the spot who could help them go through the necessary hoops in Beijing or Moscow or wherever it be, would that help? These are the kinds of issues we are looking at, not so much the overarching regulatory framework but what practically can we do to assist small companies first of all in getting ideas to market and getting them protected properly and then, once they are there, making sure that their intellectual property rights are effectively exercised and not abused.

**Lord Walpole:** Thank you. I find that very helpful.

**Q452 Chairman:** Before returning to SOLVIT can we just pursue Lord Walpole's question a bit further? There is a proposal effectively coming out of the new treaty to create an EU intellectual property right.

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*Ms Minor:* This has already been done on the basis of the existing 1957 Treaty. The change in the new treaty will simply make it explicit that this power to agree EU intellectual property rights exists. The trade mark, for example, was done under the existing treaty. The difficulty in agreeing Community property rights is that language arrangements have to be agreed unanimously, and although there are always difficulties with the content the main difficulty does not lie with the content of the right but with the language regime that underpins it.

**Q453 Lord Walpole:** And presumably where you can sue people when they infringe them?

*Ms Minor:* And to a lesser extent the jurisdictional system that is attached to it.

**Q454 Lord Walpole:** That would have to be central though, would it not?

*Ms Minor:* At the apex it would have to be central. I do not think at first instance it has to be central.

**Q455 Chairman:** We took evidence on this on Monday and the talk was about regionalisation. How many languages are used in the present system when you register a European patent? How many languages is it translated into?

*Ms Minor:* This is becoming slightly technical. There is something called the London Protocol which will reduce the number of languages into which it has to be translated. That protocol has now, I think, but I am not a specialist in this field, been ratified by a sufficient number of states to enable it to become operational and therefore you will only have to make your initial deposition in English, French and German.

**Q456 Chairman:** This is for the non-European Union?

*Ms Minor:* This is for the European patent. You would then be called upon to provide translations but of a much smaller part, not the whole file, for the countries where you are seeking protection, so if you are asking to have patent protection in the Benelux countries and the Czech Republic you have to give an abstract. The Community trade mark office, I believe, works in five languages—English, French, German, Italian and Spanish.

**Q457 Chairman:** Could we return to Lady Eccles's question? If you turn to page 24 of scoreboard 16, this is the document EO708B59, it is under tab 4, and it is figure 17, the staffing levels. It shows that in 2006 by GDP size the second largest, third largest and fourth largest countries in the European Union were not paying much attention to SOLVIT at all. I do not know whether the situation has changed but it says "low" and by low staffing levels I assume that means

that the governments were placing less importance and significance on having a centralised staff in the countries to help with incoming and outgoing inquiries about problems with trading across the internal market. When you look at that list you think, "Crikey! The United Kingdom is in the 'adequate', no-one is in the 'high'." Is it working?

*Ms Grubben:* There is no "high" list because that would have got us into too much trouble, I think, deciding who was adequate and who was high, plus the resources on paper do not always tell the whole story. It is true that all the countries in the category "low" are very worrying, and especially in France the situation has been fairly hopeless from the beginning because in France the SOLVIT centre has in practice been run by trainees for the past five years, and however good these trainees are, they tend to disappear after five or six months so there was no continuity, plus the core job of a SOLVIT centre is to try and convince another part of the administration to change their decision. If you give that task to a trainee the results are probably not going to be as good as when you employ people who have a bit more experience in that, so this is a problem and we have been struggling with it for years because it is very difficult for the Commission to go to a Member State and say, "You should employ more people in your SOLVIT centre". Also, some of the SOLVIT centres, like Germany, we think are understaffed but they do come up with very good resolution rates and case handling times and then they tell us, "But we are doing a good job. Why are you telling us that we are understaffed?". The thing is that their method of keeping case flow limited is to try and reject as many cases as they can if they are not strictly within the mandate of SOLVIT. That is more difficult to measure and also more difficult to use as an argument to demonstrate that they do not have enough resources. The only thing we can do about this is produce these annual reports, these scoreboard figures, and put peer pressure on the Member States who are not taking SOLVIT seriously enough. Also, in bilateral meetings at the higher levels, such as Director General, every time they go to a country where we have this type of problem with SOLVIT it is raised in the briefing and it is also raised in practice. We do see some improvement because for the next annual report we can say that for the first time in its history SOLVIT France now has a full-time official and we hope that that will improve the situation. For Germany they have also received some additional resources. For Belgium and Austria there are also improvements so I think the picture we will be able to paint of 2007 is a bit more positive than for last year.

**Q458 Chairman:** Have any of these countries said, "If you will not help an Estonian company trying to expand into France we are not going to accept any

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inquiries from France to expand into Estonia"? All this is voluntary. It is a charity. There is no legal compulsion about this.

*Ms Grubben:* No, that is true, but the way it works in practice is that if a SOLVIT centre is understaffed it does not mean that they will not deal with questions but they will deal with them more slowly or not as well as they could if they had more personnel. Nevertheless, amongst SOLVIT centres there is a large degree of solidarity and team spirit, so the poor trainee who is running SOLVIT France is in a bit of a difficult situation and he or she will try to do the best they can. It is not a tit-for-tat on a case-by-case basis. Of course, SOLVIT centres start to complain to us when they think they do not get good treatment in the other SOLVIT centre and we have seen last summer SOLVIT centres which closed down for six weeks, and that, of course, is not acceptable. There is a bit of that but in general I think the team spirit in the network is something we should preserve and encourage.

**Q459 *Chairman:*** I think that those who served on the old Committee B, like Lady Eccles and myself, were impressed when we heard an initial reference to it nine months ago and then six months ago. When will you have the figures for 2007? Presumably these statistics will be prepared on the same basis, roughly, will they?

*Ms Grubben:* Yes.

**Q460 *Chairman:*** It is very subjective, of course, but we might be able to compare any movement from "low" to "adequate".

*Ms Grubben:* They are not entirely subjective because we ask the SOLVIT centres how many man-months they have devoted to SOLVIT over the past year and we also then ask them, "Was that enough or do you need more resources?", and it is essentially based on that, so probably if their minister had seen their reply they would have vetoed it but since SOLVIT is informal we manage to get away with getting objective information and putting it in the report. We will do the same thing this year. The questionnaire to the SOLVIT centres will go out next week and we normally produce the annual report in April because we also need to take account of all the cases that are still open and they tend to be closed towards March.

**Q461 *Baroness Eccles of Moulton:*** I think you said that standards were affected quite favourably by peer pressure through the internet. Can each SOLVIT centre publish their accounts on the internet, or do they not do that, because that is another way of exerting pressure?

*Ms Grubben:* You mean to publish their own resolution rates and case handling times?

**Q462 *Baroness Eccles of Moulton:*** No. I was thinking more about the actual resourcing, because you need funds to resource, whether it is for staff or whatever, and if there were certain SOLVIT centres that were not being properly resourced by their Member State government then having the income that they had available to spend published on the internet for each one would be another way of exerting pressure for the ones that are not being funded properly to be more properly resourced, because most of their resource has to come from their own government, does it not?

*Ms Grubben:* Yes. SOLVIT is based on a Commission recommendation, so it is not a formal thing and there is no instrument we have to force Member States to be as transparent as that. In addition, the number of man-months is not the whole story because there are also SOLVIT centres where in terms of man-months you would think, "This is okay", but still they leave a lot to be desired in terms of the way they treat cases. It would not be fair just to compare that figure. You should also look at resolution rates, case handling times and general satisfaction within the network.

**Q463 *Baroness Eccles of Moulton:*** It is much more subtle?

*Ms Grubben:* Yes.

**Q464 *Baroness Eccles of Moulton:*** But presumably there need to be ways of bringing the weakest SOLVITs up from the bottom of the list, as it were, so that they are providing a better service to their users. Do you have any ideas for how that can be done, or is that not really up to you?

*Ms Grubben:* I have the impression it is already being done because you can see how it changes over the years, how SOLVIT centres which were not doing a fairly good job three years ago have now shaped up. Apart from this annual report we also do three annual workshops with SOLVIT centres. We bring all these people together and we really have frank discussions about the way things work. There may be a lot of criticism from one SOLVIT centre about others, without mentioning names, so we really discuss these problems and you can see that that has an effect. You can see that over a couple of months SOLVIT centres try to improve these things. One of the other aspects of SOLVIT centres is that they tend to become better the more cases they have, which makes sense because that gives them the opportunity to build a routine and to develop relations with ministries with whom they need to talk frequently to reverse decisions, and you also see that SOLVIT centres which are relatively small find that very difficult. It is also a matter of building the reputation of a SOLVIT centre within your administration because, just imagine, SOLVIT UK is based in --- DTI now has a new name.

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**Q465 Baroness Eccles of Moulton:** Yes, BERR. Do not laugh!

*Ms Grubben:* They have a lot of complaints which are about residence rights and visas, which means that they have to talk to other parts of the administration about solving these. As you will imagine, it is not always easy to do that, because why would BERR be concerned about visa cases? Why are they interfering in this area which is essentially within the competence of another ministry? This is the first thing which every SOLVIT centre has to overcome. They have to establish a working relationship with all the ministries where they will have to handle SOLVIT cases. That is also part of how well or how badly the SOLVIT centre is functioning. Have they managed to create this network? Do they have the political support to do that? What sorts of instruments do they use? The whole picture is more nuanced than just looking at how many people they have there. It is an essential requirement but it does not tell you the whole story.

**Q466 Lord Paul:** The Single Market Review (and we also heard it this morning) says that regulations are being simplified. If that happens do you think your work will go down? Secondly, you mentioned two examples in Germany where you have intervened. Are there any countries where the regulations are more difficult to understand than in other countries?

*Ms Grubben:* On your first question, if things are simplified it does not necessarily mean that it becomes easier to enforce them because it may also mean that there is a lot of margin then for Member States to fill in the details which are missing from this nice, simple legislation. That is what you see with many SOLVIT cases. The legislation may be fairly simple but a lot is delegated to the Member States and then you have 30 different interpretations and it becomes quite difficult, so I am not so sure about that. Simplification in a different sense, that you explicitly forbid Member States to impose requirements in particular areas, of course would help, but that is not how simplification in general is normally understood. It means less Brussels and more Member States. That we often see is the cause

of many problems, so I am not very optimistic about that. Regarding the difficulty of understanding regulations, there certainly are differences between Member States, especially those who have a very decentralised system, which means that just checking at national level does not give you the full story and you just have to invest in finding out what is happening at the lower levels as well.

**Q467 Lord James of Blackheath:** Do you publish any record of the cases you have resolved so that they can be used and followed by others? Do you have a newsheet on that?

*Ms Grubben:* Yes. On the SOLVIT website we have a very long list of our success stories. I sometimes think we should also publish the stories which were not successful because they are sometimes also very informative and then in this annual report, of which I will leave copies for all of you, we have a selection of success stories which will give you examples of cases.

**Q468 Lord James of Blackheath:** Can we be a bit cheeky? We have asked you for examples of cases where you have succeeded. Can you give us an example of a case where you could not find a solution?

*Ms Grubben:* Yes. We have a lot of cases with the UK where we cannot find solutions.

**Q469 Lord James of Blackheath:** That figures. The Government has the same problem.

*Ms Grubben:* There is this ongoing problem with the new Residence Rights Directive which also regulates visas for third country spouses of EU citizens and the UK has its own interpretation of this directive which is not necessarily accepted by the Commission, so there is a procedure ongoing and a lot of cases we get in SOLVIT are complaints from people who try to exercise their EU rights because they have read the directive and they find that in the UK unfortunately this is not possible. This is a very big category of problems which we cannot solve.

**Lord James of Blackheath:** That makes a lot of sense.

**Chairman:** Thank you very much. You have helped us enormously.

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THURSDAY 13 DECEMBER 2007

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| Present | Eccles of Moulton, B.<br>Freeman, L. (Chairman)<br>James of Blackheath, L. | Paul, L.<br>Walpole, L. |
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**Examination of Witness**

Witness: MR CHARLIE MCCREEVY, Commissioner for Internal Market and Services, European Commission, examined.

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**Q470 Chairman:** Thank you very much indeed for giving us some time. Perhaps I should give you some background. As Sub-Committee B, which we represent, we have been working for almost a year on our report, which we hope to publish in February, on the Commission's Review of the Internal Market. We came in July and spoke to a number of Commissioners and we want to publish in February, before the Spring Council. I have to say I think we are largely in agreement with the Commission in terms of aspirations. We had a session this morning where we found ourselves in agreement on a whole number of issues. If I may kick off, my question is about the "vision" thing, about trying to convince customers, citizens, employees, that the common market, the internal market, the single market, however one refers to it, has made great progress. There is a lot more to do and it really has made a difference to you, the citizen, but at the moment we feel that, for jolly good reasons, it is a bit remote as a concept, it is a bit stale, it is a bit economic, it is a bit financial, it is a bit business-like. How can we, for good and solid reasons, convince our electorates that there has been real success and the European Union, the Commission, the Council and the Parliament, are determined to improve it even further?

*Mr McCreevy:* Speaking to an audience of UK people, I live in the nearest adjoining country to you and I am sure we share a lot of commonalities. Trying to convince the UK electorate about the benefits of Europe is something, I am afraid, that the Single Market Review document will not be able to do, no matter how well it is produced, so I think a lot of it is fairly historical, et cetera. You are more conversant with those reasons than even I would be. However, I have always believed that if ordinary folk can see benefits in their way of life or in their pockets, call it what you will, they are more inclined to be more generous to the party or agency or union or federation that they see has brought that about, and consequently that is how politicians try to get elected. The same applies in Europe. If you see and can directly relate that something came as a result of something coming from Europe or some moves made here, I think people would be more inclined to think positively about it. On the other hand, if you are thinking that a lot of things being done coming from

a Brussels law basis has led to your being worse off or discommoded or upset, you are definitely going to think negatively about it. I am not, as those who have followed my political career would know, what would be termed a Europhile. I would classify myself as having a healthy, pragmatic approach to all things coming from Brussels. When I was nominated for this particular job after being a Government minister for a long number of years, those people in Ireland who were very much Europhiliac would have said, "You are sending a fellow out who has maybe mixed views on all things European". Having said that, in the Single Market Review what we try to aim at is consumers and small businesses in order to show that we can really change things. We propose things like what you can do with simple things, like being able to switch bank accounts, et cetera, rather than all the great big stuff and everybody will get a benefit from it. That is what we are intending to do over the next years, and frankly we do not intend to have much more legislation. Definitely I do not; I cannot speak for whoever comes after me, but according to the policy document, the Single Market Review, this is what we are going to concentrate on—effective actions rather than long, deliberative, legislative actions, changing things very slowly, and ending up with a mismatch. The new approach is to let people become more involved and hopefully over a period of time more benefits will flow from this machine here in Brussels, and in the United Kingdom, where the people have a more negative opinion of Europe than probably anywhere else, I think this will improve things there. On the other hand, it is only fair to say that across many of the Member States in Europe, even the ones that have been in it for 50 years, over the years there has been a kind of growing weariness or wariness (or both) of things like that as well. We hope the Single Market Review will show real benefits and allow people to be better off. We would like to point out that having the single market in 1992 through Lord Cockfield, who was here long before me, brought about a change, but then again, as in politics, people take things for granted from the free movement of goods across Europe to low cost aviation. I am hoping the Single Market Review will improve things somewhat.

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Mr Charlie McCreevy

**Chairman:** That is extremely helpful and we are fully sympathetic to that.

**Q471 Lord Walpole:** You did say you did not want any more legislation, which I must say we probably all agree with, but what I want to ask you about is whether we will get better quality legislation by ratification, by simplification, by having as little as possible with good impact assessment and cost benefit analysis, uniform across all countries and with everything being implemented by all countries willingly. I am after something simpler than what has come out in the past.

**Mr McCreevy:** Fortunately or unfortunately, due to the very complex decision-making process that we have here in Europe, it takes a long time to bring into effect. It was difficult enough with six, nine, 15. Now it is doubly difficult with 27. It is not an exponential graph. It has not got that much more difficult with 27 than it was, say, with 15, but consequently we have adopted what we have termed the better regulation agenda, which means that we do consult widely. Some of the time, I have to say, it is the usual suspects that cut up, but the bodies are well clued in. Some bodies are better clued in in some Member States than others but we do consult widely and, I have to say, a little bit to my surprise since I came here, views are strongly taken into account from representative organisations. I would say as a minister for a long time there is always a danger that you become a kind of captive of the people that you are consulting and the problem has always been that with a decision like that you have to make decisions to please. That is a McCreevy view but we do consult widely. It is now part of the process that everything has to go through rigorous impact assessment. Having said that, I think it has improved over the three years we have been here. Four years ago there was not any such thing here. Now there is. We have tried to streamline it somewhat so that it is fairly independent because at the moment the perception is that the same people who prepare the impact analysis impose it. We will probably improve that in time to come without creating another monster. That is the last thing we need out here, another bureaucratic kind of machine for that to happen. We have adopted a programme of simplification under the better regulation agenda and Mr Verheugen, the Vice President, is the person in charge and we all must submit proposals. We have submitted a couple of hundred on cost benefit analysis and impact analysis as well. Impact analysis is wider than just cost benefit analysis. The bigger question is about uniformity and that is one of the reasons why I am a bit negative always about directives. Directives are an overarching type of a framework. They allow Member States a fair degree of flexibility. Most Member States add on rather than subtract and most Member States gold-plate rather

than take away, including particularly the United Kingdom in the financial services area, maybe for good policy reasons, like it or not, and then it is not difficult for some Member States to be able to see where that directive has been transposed into national law, say, in country C because it might be part of a great bill about something else and then the Member State in question might add things (for very good reasons) and then it is a bit hard to identify and inevitably it is gold-plated. The only way to go against gold-plating is to have regulations coming from here. A regulation has the exact same effect in 27 Member States but that is one of the reasons why it is so hard getting a regulation nowadays because Member States are very reluctant to sign up to that type of regulation. Also, may I say that in the negotiation process that we have to go through now most things we do nowadays are in joint decision-making with the European Parliament and the Council of Ministers. The Commission produces; they decide. To get agreement in the Council of Ministers you have to make all types of compromises usually, yet for an agreement in the European Parliament you have to make wider compromises and then there is some time negotiating between the whole lot of us, then we finally get to the end of the process and maybe sometimes it is difficult to recognise the end product from the product that we started out with, and that is after a number of years. Then we usually give at least two years for our Member States to transpose it into national laws and sometimes longer, and then Member States add on to it, so we then end up with a bit of a mish-mash. That is why one of my reasons for being very reluctant to go down the legislative route is that I cannot guarantee what we are getting at the end, but I believe you have to deal with the hand of cards that you are given. That is the process, that is what we have to go through, hoping that the better regulation theme song is taken up, which it is with most Member States. The UK has got a better regulation agency. I read earlier this week where a report came out saying that since the start the *Financial Times* said that they could not identify that as something it had, but all the same I think that each Member State now has that in place. We have set a programme in line and the Commission together with the Member States will lower the administrative burden by 25%, and we must judge things on that basis. So hopefully if every Member State keeps it at the top of their agenda when they are thinking about bringing in new laws—they think of simplification, they think of better regulation—they might be reluctant from the start to bring in laws that impose a greater burden on businesses and other people.

**Q472 Lord Walpole:** Thank you. I think we are probably impressed by that, as long as it is quality and simplification.

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Mr Charlie McCreevy

*Mr McCreevy:* In my early days here I was in Paris and of course I ended that by becoming Commissioner in November 2004, and I used the phrase in a speech “less is more” and that became quality rather than quantity. I will tell you a funny story. I was in the Irish Parliament for 27½ years, I was in the government for a long time, and at the end of the session we used to say, “Here is a list of bills to go through. What have we done?”, and then the following year we would say the same. We did 52 bits of legislation, which is the best record ever, ten times better than the opposition did in the next ten years. The more you could produce the better off you would be and I used to rail against that when I was Minister for Finance and I do not think they do it any more now, that the more pieces of regulation the better off they were. I think quality should become the byword rather than quantity.

**Q473 Baroness Eccles of Moulton:** Mr McCreevy, you have been very reassuring about how there should not be a lot more legislation. The single market has got as far as it has, as we sit here today, and we all know that there are some quite substantial problems still around in order to get it as far as we would like it to be. Would you identify for us what you see as the biggest problems that need to be resolved and maybe even the odd solution?

*Mr McCreevy:* In the area of goods, due to the programme initiated by Lord Cockfield, I think we can say that it is largely complete. You do not have queues at borders with trucks passing up and down. Something like 60,000 different pieces of paper were done away with in that period. I think we have achieved a fair lot there. In the area of goods there are still some problems to do with standardisation, et cetera, but we have made substantial progress there. In the area of services we have not. Services include everything from banking services, financial services to—I could say hairdressing but I do not anticipate that people want to do services for hairdressing in Bratislava and come back every day. That is why we tried the Services Directive. If you were dropped out of the sky from Mars on the planet earth in Europe you would wonder why we had had all the hullabaloo about the Services Directive. Can I just say to you that I thought that Europe was about one of the founding tenets—the free movement of goods, people and services. What are you going on about having a big directive about? The reality was and is that there is not really a totally free movement of goods and services. We have broken it up into two parts. From 1999 there was the services action plan, which had 42 separate initiatives, and many of you will have heard about it, coming from the City of London. But the purpose of it all is to create a truly integrated financial market, which in the wholesale area we have largely done, not so much in the retail

financial services area, but we are trying to do something now in our paper on mortgage credit, which we will produce next week, and other things as well. In other areas we are hoping the Services Directive that we got through the Parliament this time last year is going to do something. The one thing with the Services Directive is this. Member States have until December 2009 to go through every piece of legislation, local and regional and national, to see where they would be conflicting with the Services Directive and the rigour of having to do that analysis will probably show up in Member States. If they do it adequately, anomalies and problems that they should not have and bureaucratic points and so on that cause difficulties, and we would end up with a situation that we should in a few years' time be able to have a pretty reasonable free flow of services in the internal market, not as foreseen with Lord Cockfield's goods in the single market, but you should see a big change. Anything would be an improvement because services now make up nearly 70% of the EU's GDP. It is the reverse of what it was 50 or 60 years ago, so that is where we must gain our grip because Europe is not the cheap place that it was any more to use goods and services. Some are very successful in these markets so we have to go for better things in the area of services.

**Q474 Baroness Eccles of Moulton:** So would you say then that on the whole the goods part of the services is pretty okay and financial wholesale services are not doing too badly?

*Mr McCreevy:* Improving.

**Q475 Baroness Eccles of Moulton:** Retail financial services are yet to be tackled?

*Mr McCreevy:* Yes.

**Q476 Baroness Eccles of Moulton:** But surely the really difficult one is the—

*Mr McCreevy:* Ordinary services.

**Q477 Baroness Eccles of Moulton:** Yes. I was just trying to think of how I could define them. We all know what they are—the rest of the services.

*Mr McCreevy:* Yes.

**Q478 Baroness Eccles of Moulton:** But surely there are some huge problems to be sorted out there, are there not? You say that they are going to have to be transposed.

*Mr McCreevy:* After getting that very difficult directive through, my services produced in July a kind of a handbook which I sent to all Member States as to how all this could be done. We thought about having workshops here in Europe. My services visited Member States and the relevant people to see how they could go about this big job of work.

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Mr Charlie McCreevy

Funnily enough, the new Member States that joined in the last two years, in order to get their laws into line with the *acquis*, had to do a lot of this in any event, so they should be in a better position. But the older members of the Union, such as Ireland and the UK and France and Germany, will have a fair job of work to do, and that will throw up some problems because even though we have to make concessions to get the Services Directive through, otherwise there will be no Services Directive, this work that has been done should make a big difference and you should see a proper market return over a period of time, and yes, probably a future Commission will come back to address some of the anomalies that will still be there. During the debate on the Services Directive we took health out of it, not only the people for expanding health service provision but also those against it, all sides came together and said, "That should go", and it did, but we promised there would be a separate piece of legislation to deal with mobility. That is on the part of my colleague, Mr Cipriano, and it was intended that he would produce the document next week. I do not know if that is going to be possible as we speak but it is imminent in any event, and that will be quite controversial, particularly if you are a minister, but we have these problems the whole time. Gambling was in the Services Directive and it was taken out. We decided not to have it in the Services Directive when we published, so I have about ten cases going on with Member States. Most of the complaints come from companies in the UK with which you will be very familiar. Even though these countries or other countries have big national players themselves, they do not want anyone else playing in the game, as a consequence we have to be going down the route of infringement proceedings. Gambling is never going to be agreed on—sorry; a politician should never use the word "never"—because you could never get agreement on some of these cultural differences throughout the whole of the European Union, and even within Member States it is a very vexed question. We have to pursue it in the law because the Court of Justice has defined that gambling is a service like everything else. You can if you like ban gambling in your Member State totally. That is not a problem, but you cannot discriminate between, say, a home provider and a provider from another Member State. You have the same rules, the same licensing arrangements, public good issues, et cetera. Hopefully we will make progress on some of these other services.

**Q479 Baroness Eccles of Moulton:** So within the existing regulatory framework you would consider that the problems that are thrown up as the directives get absorbed into Member States' own law within the regulatory framework can be resolved?

*Mr McCreevy:* Yes, and I think what gets people resolved is that people are aware of this. I publish a market scoreboard every six months which says everything about the rate of transposition of the directive into national law. People are scoring well below 1%. The UK is pretty okay in that department. Then I publish the infringement list, et cetera, and it might be an infringement of proceedings in country B, but that might be because maybe in those countries people are not so much aware of the European laws. Particularly in the areas like public procurement. I know that if even a technical mistake was made in the public procurement issue in Ireland and the UK, the offending company would be like a shot to the court in the UK or Ireland, whereas in other European countries they are not so much aware of that. Consequently, the fact that you would not have a whole big number of complaints about infringements of laws does not necessarily say that their department is working perfectly there. It is just that the knowledge is not as strong as it would be in others. Hopefully these things we have like SOLVIT centres and the fact that we are going to have a single point of contact in each Member State with the Services Directive will make people more aware. That will not convince people overnight that everything good comes from Brussels. In my view it is good to have a healthy kind of pragmatic approach to things coming from Europe because not everything in Europe is perfect. We are supposed in the EU to allow the principle of subsidiarity, what should be done locally should be done locally. The decision that should be made by your Member State should be done by the Member State rather than in Brussels, and if you can get away from having all the decisions here in Brussels we will be far better off and people will have more respect for us.

**Q480 Lord James of Blackheath:** I wonder if you could give us your opinion of the European Union's reaction (or lack of reaction) to the British Government's intervention to provide a very substantial financing package to the survival of Northern Rock. How does that stack up in the context of the Union's well known attitude towards state aid?

*Mr McCreevy:* That matter was discussed last week and I assume the decision is out. That will come under the writ of my colleague Neelie Kroes who covers competition and state aid. I am more involved in financial services Regulation. Mrs Kroes finally decided, I think last Thursday or Friday, and we were involved in the decision as well, that it was emergency aid. The UK has a period, I think, until March to show that this has to be done in the context of restructuring aid, so at the moment it has not got any difficulty. Can I say, not because I know Mr Mervyn King very well and I have a lot of respect for him, that

13 December 2007

Mr Charlie McCreevy

I cannot see myself what the UK authorities could have done other than what they did. Coming from a position of being a minister before, I cannot see any other way of dealing with it; you have to make a fairly quick decision. The decision that was made last week is all right for the UK, they seem to be okay, but we hope, and it is until the end of March that the UK has got, it will be regarded as restructuring. However, I read it in the press that people are interested in restructuring the Northern Rock institution and hopefully they are correct, so it should be okay but it would not be my decision in any event.

**Q481 Lord James of Blackheath:** By the time we get to March we will have passed through at least two very important rollover dates for the funding of other financial institutions and there may be a recurrence of the same issue having to be addressed. We have had in the last 24 hours the announcement of this five central-bank package raising £50 billion to support a rescue fund. Would there be any advantage for Europe in actively seeking to participate in that five-bank approach to the extent that they would then require the European participants who were contributing, like the Bank of England in Britain, to make the contributions to the fund centrally and then it would be allocated out from that fund so you would effectively take the burden from the local national governments to do it and take it upon Europe to have the funding provided by using that structure?

*Mr McCreevy:* That would not be possible at the present time because there is not in Europe as we speak a central way of regulating or supervising the regulation of institutions. Each Member State looks after its own institutions and regulates them. There is this vexed question which I have been speaking about recently as to what you would do in terms of a financial institution if, say, Northern Rock was active in six Member States. How would the regulators have dealt with the crisis? Would the French regulator have dealt with the queues of depositors in the same way as the UK person? Would the Spanish regulator have done the same with Northern Rock as other countries? There were also two banks in Germany who had difficulties but they were German. Their reach was within Germany and Northern Rock's reach was in the UK. There was a little bit of spillover into Ireland but the UK Treasury announced that Irish deposits would be treated the same way so that solved that problem. What the central banks had done, the US Federal Reserve, the Bank of England and the European Central Bank, is that they have said the question at the moment is a question of liquidity into the markets, and what really has happened in the markets is first of all this turmoil. Banks are not lending to one another, they are not accepting paper, and that might be good, bad or

middling, and there is a question about their funding arrangements. What these central banks have done is that they say they will provide funding and they will take paper and lend to those particular banks within the jurisdiction, and they will not name them, that might have temporary difficulties, but they have all said that they will extend lines of credit to one another. The US said they would send lines of credit with dollars. That is what they tried to do but that will not have a spillover effect *vis-à-vis* the ECB. The ECB itself would not be aware of the strength or weakness of any financial institution. It might find out but they are not a regulator. Even in the UK the Bank of England is not the regulator. It is a tripartite arrangement in the UK between the Bank of England, the Treasury and the FSA. In Germany it is something similar. I set up a single regulatory authority in Ireland but I learned how difficult it was to put together. This matter with the banks is going to provide liquidity into the market and they have decided to take paper, and they will buy this paper off the banks or whatever. It is not a bail-out situation.

**Q482 Lord James of Blackheath:** My question was directed from the point of view that there may be others like Northern Rock that come upon us and how Europe would react to a repeat of the Northern Rock survival package that was provided by the British Government and whether this provided a way round the problem so that it could be sanctioned by Europe and still go forward.

*Mr McCreevy:* The other question is that if there is another institution that is, say, active in seven or eight Member States, who will deal with the problem? I do not like naming a bank, but take, say, these five banks in the UK that operate in, say, Ireland, UK, France, Germany, Italy and the Netherlands. Suppose that institution was to get into difficulties like Northern Rock. Each and every regulator at the present time in his own Member State has a grip on it. The Dutch regulator knows exactly what is the situation in the Netherlands but he is not communicating with the regulator in London, nor with the regulator in Dublin, and if things went wrong how would they decide what to do? The answer to that is that it is not clear because we have not got round to agreeing a methodology of dealing with cross-border financial crises, and that will be a problem if it occurs. Your question is more specific. If the British Government had another Northern Rock I think the answer is that it would have to be judged on its merits at the time. The UK authorities have decided what to do and they have done it, but your question is, is this all going to be on this whole question of state aid? I think the Commission have enough common sense to deal with that problem.

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13 December 2007

Mr Charlie McCreevy

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**Q483 Lord James of Blackheath:** Thank you for all of that. My other question concerns intellectual property and patent law, and here I have to claim an interest in that I am chairman of a company which is in medical research and it has a lot of patents. We are finding huge difficulty in addressing breaches of patents, particularly in Italy, and it is a persistent problem. The only way round it, not just for ourselves but for anybody to counter the problem of a patent breach is to do the usual modification of your existing patent and apply for a new one and leapfrog past the one you have got, which is fine; we do not mind doing that. It is perfectly easy to do if you can get the process to work, but the whole system in Europe at the moment appears to have ground to a near halt in terms of getting the new patents cleared through, so we cannot move at any speed which gives us a legitimate response to the breaches in Italy. Is there anything that can be done to speed up this process, please?

*Mr McCreevy:* You may have a case through EPO, the European Patent Office, in Munich. As you know, we have been trying for over 20 years to have a Community patent but it has been stuck with all kinds of difficulties. We thought we had it two years ago but it got blocked on the question of more or less language. Most people would agree that that should be English but other governments do not see it like that, so it got blocked. I then tried to get around it by starting off the process with the EPLA, the European Patent Litigation Agreement, and that got into some difficulty last year. Just when it was about time to throw my hat in there has been in the last four months under the Portuguese Presidency a little bit of movement, and I do not like to be stalwart in saying (because this has been going on now for over 20 years) that we will get some movement in this area, but there is a little bit more hope. At least there has been some bit of movement under the Portuguese Presidency and we are trying to put a number of things together. I would be very foolish to predict that that will be solved during my last two years here, but at least we are trying to do something. I think there are something like over 100,000 applications not yet processed in the EPO and we will endeavour to try and make some progress there, but this whole thing of patent law is bogged down with great

national sensitivities, particularly from one or two Member States, but not the UK.

**Q484 Lord James of Blackheath:** Given the extent of the delay perhaps an alternative would be to introduce a better process of correction of breaches at the present moment by some other form of access.

*Mr McCreevy:* That kind of approach has been thought about to see if we can make some progress there in this logjam, and it is a logjam, I accept.

**Q485 Lord Paul:** Your commitment to simplifying the legislation is marvellous and we are all very impressed by your commitment to it, but is there some danger that with over-simplification some of the countries may start applying their own rules again, like France and Germany with gas and electricity?

*Mr McCreevy:* Yes. As part of the better regulation agenda, and Lord Freeman was speaking about the simplification part of it, each DG had to perform its own proposition. We perform things in the area of accounts and company law and many other areas, and some have come back to us and said by repealing total directives we have a lack of harmonisation. Some of them might be very complex and convoluted. By going the other route you might end up with a situation just as you allude to that Member States then are going to have more discretion. Our thinking was that we would only interfere in any piece of legislation where it really is domestic and should be left to the Member State, but other people have come back, just as you have said, to say that where we are attempting to do that we might end up with allowing Member States too much discretion and we will end up with a very uneven playing field. Either the playing field is a bit too heavy at that level or we lower that level and there will be higher undulations, so we are considering trying to marry the two things. It is funny that you mention it today. I was just talking about it two hours ago.

**Q486 Chairman:** Thank you very much indeed. Your voice has held up. You have helped us enormously. We will send you a copy of our report in due course and we are strongly supportive of the initiatives you have taken personally and the Commission has. We are on your side. Thank you.

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# Written Evidence

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## Memorandum by the Association of Electricity Producers

1. The Association of Electricity Producers (AEP) represents large, medium and small companies accounting for over 90% of the UK generating capacity, together with a number of businesses that provide equipment and services to the generating industry. Between them, the members embrace all of the generating technologies used commercially in the UK, from coal, gas and nuclear power, to a wide range of renewable forms of energy.
2. The Association welcomes the Sub-Committee's inquiry and the opportunity to contribute to it. In relation to the European single market, the Association's main interest is in the liberalisation of the EU electricity and gas sectors, and the comments below therefore focus on this topic. AEP strongly supports the creation of a more competitive and integrated energy market in Europe, and believes that this will have considerable benefits for the European economy as a whole.

*Are there significant barriers to firms seeking to offer their goods or services, or to consumers accessing these goods or services, in other Member States of the European Union? If so, what are the most important of these barriers?*

3. The 2003 energy liberalisation package and the subsequent Gas Regulation in principle provide a sound basis for ensuring competitive electricity and gas markets in the European Union. The legislation covers most of the major issues: the creation of competitive markets in generation and retail; unbundling of networks from competitive activities; non-discriminatory access to networks based on published tariffs; and the creation of independent regulators.
4. However, despite these measures, progress to competitive markets in Europe has so far been disappointing, particularly in the main continental market and particularly in gas. New entrants have found it difficult to challenge existing players in power generation and gas supply and, while competition has developed in the large customer market, the picture for smaller customers is rather less satisfactory in most Member States. This is clearly revealed in the thorough analysis carried out by the European Commission in its report *Prospects for the internal gas and electricity market* and in the energy sector inquiry.<sup>1</sup> In the Association's view, the Commission has identified the major shortcomings in the EU's energy markets and highlighted those areas where further regulatory measures are needed, in particular unbundling of networks, regulation and transparency.
5. Governments should remove barriers to genuine competition within national markets and ensure that there is a level playing field between incumbents and new entrants. In addition to full liberalisation of national markets, action is required to ensure compatibility of arrangements so that energy can be traded freely across borders.

*Do you consider further legislative measures by the Commission to be necessary for the completion of the single market? If so, what measures do you consider appropriate?*

6. The Association believes that further liberalisation measures will be necessary, but recognises that this process will inevitably take time. It is therefore important that further efforts are made now to implement the existing package fully. In some Member States, regulators have not been given sufficient powers to ensure full implementation, so that, for instance, regulated tariffs remain in force, reducing the scope for retail competition. AEP would welcome further action to ensure that national regulators have broadly equivalent powers so that they can effectively implement market liberalisation and are able to function independently of national governments. However, care must be taken not to impose excessive regulation in markets which are already heavily regulated, such as the UK.
7. The Association supports further measures to ensure non-discrimination and transparency in European markets. Appropriate levels of transmission network unbundling should be reached in all Member States. Greater enforcement of existing provisions should help achieve this, but we also support proposals to set

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<sup>1</sup> COM(2006) 841 and COM(2006) 851

higher minimum standards for transmission unbundling. The Association endorses the need for mandatory minimum transparency standards, with disclosure standards in all gas and electricity markets raised to levels comparable with the most open markets, notably Great Britain and Scandinavia. There is merit, however, in having some flexibility for differences between markets where these do not adversely affect trade and where uniformity would impose unnecessary burdens on markets that are already highly liberalised.

8. The Association considers that further action is required to resolve cross-border issues which are not currently dealt with in national frameworks. In particular, greater cooperation and coordination between national regulators and Transmission System Operators (TSOs) is necessary. To achieve this, the Association supports the strengthening of the existing European-level regulatory and TSO bodies, ERGEG and ETSO respectively, provided that adequate lines of accountability are established. Both bodies must be properly resourced, take proper account of stakeholder views and reach decisions in a timely manner.

9. The Association welcomes the proposed measures to remove barriers to interconnection, but does not consider arbitrary targets for interconnection to be appropriate; interconnectors should be built on the basis of market need.

*Are the current remedies available to the Commission to enforce single market legislation adequate; and are they used effectively?*

10. The Commission is taking an active approach to enforcing the single market legislation in energy. For instance, it is currently pursuing infringement proceedings against sixteen Member States for non-implementation of the 2003 package. Furthermore, the Commission's Competition Directorate has recently conducted a full sectoral inquiry into the EU electricity and gas markets and has announced that it will bring forward several anti-trust cases as a result.

11. Infringement proceedings can be effective in encouraging national governments to put right failings in implementation. However, such actions tend to be lengthy and rarely reach their conclusion. The problem of enforcement therefore seems to centre on the amount of time taken to achieve results rather than a lack of powers.

*Do the concepts of the "national champion" and "economic nationalism" pose a threat to the single market?*

12. The Association supports the view that markets should be organised on a competitive basis and that companies throughout the European Union should compete on a level playing field. "National champions" and "economic nationalism" are concepts which run counter to the philosophy of a single European market and do pose a threat in sectors such as energy.

13. Overt protection of national players in electricity and gas markets is now less common than before, partly through the advent of regulators who are independent of the industry. The situation could be further improved by strengthening regulators' independence from government in some Member States and by ensuring that regulators have the powers to implement liberalisation within national markets.

14. Government intervention in mergers and acquisitions does remain a problem in the energy sector. Although a number of Member States have privatised parts of their electricity and gas sectors over the last twenty years, public ownership remains prevalent and governments, even if they do not have major shareholdings, often seek to exert influence over leading national utility companies. A number of recent examples indicate that, even where the European Commission has competence for cross-border mergers, national governments may attempt to protect national players and may have a significant impact on the final outcome.

15. The Commission must clearly maintain its efforts to ensure a level playing field not only in the energy markets, but also in mergers and acquisitions. In the Association's view, some problems will persist in the short and medium term, since some Member States will want to maintain public ownership of electricity and gas companies, while others will want to protect national companies from takeover on reciprocity grounds. There are, however, some grounds for optimism that Europe's energy markets are becoming more integrated and that cross-border ownership is becoming more acceptable. The UK's own experience of continental ownership is positive and this may encourage some other Member States to move away from protectionist positions. In the longer term, it may therefore prove more difficult to maintain a policy of protecting national champions.

*Is there agreement on the fundamental importance of a genuine market to support a Common European strategy for energy?*

16. If Europe is to move towards a common energy strategy, it is clear that barriers to moving electricity and gas around the continent must be overcome. A more integrated market will not only provide economic benefits to European consumers but also enhance security of supply, by ensuring that any localised energy shortages can be more readily overcome. A larger, EU-wide market based on transparent and non-discriminatory rules should also attract more investment, which will be essential, given the need to upgrade Europe's ageing power generation and network infrastructure.

*Is there a need for greater cooperation between National Regulatory Authorities?*

17. The Association agrees with the analysis of the European Commission in its recent report on the internal electricity and gas markets when it commented that "Regulatory decisions need to be strongly co-ordinated with neighbouring jurisdictions. If not there is a continuing risk that inconsistent regulatory frameworks will create perverse incentives of energy companies."<sup>2</sup> Regulators sometimes take an excessively narrow view of customer interests and do not pay adequate attention to the benefits of the wider European market.

18. To help tackle these problems, national regulators should have an obligation to consider the interests of European customers in addition to their national remits. Arrangements will also be needed to fill the cross-border "regulatory gap", whereby, for instance, one Member State may be less enthusiastic about a new interconnector because its own customers are perceived to benefit less. To achieve this, both national regulators and the European Commission will have to collaborate more closely to ensure that timely and clear decisions can be made.

*Has there been sufficient unbundling of gas and electricity markets in all Member States?*

19. Effective unbundling of networks is crucial to the development of competition in electricity and gas. It is evident that there has not been sufficient unbundling of networks in all Member States. As an initial step to rectify this, the existing unbundling provisions should be fully implemented throughout the EU. Regulators should have sufficient powers to enforce the provisions and should do so rigorously.

20. The Association also supports the Commission's proposals to set higher minimum standards for transmission unbundling, either through effective ownership unbundling or an Independent System Operator (ISO). In our view, the two models could coexist provided that it can be demonstrated that the network operator is in practice independent of generation and supply interests. A regional ISO model could have further benefits in helping to integrate national markets.

21. In general terms, transmission unbundling has so far been less satisfactory in gas than in electricity, as shown by the low level of compliance with transparency and other requirements. It is therefore important that efforts are made to ensure greater independence of gas TSOs.

*What are the implications for the single market of the Commission's commitments on climate change?*

22. The Association considers that the best way to meet the Commission's climate change objectives is through market-based mechanisms (such as the EU Emissions Trading Scheme) which allow the market to deliver carbon emissions reductions at least cost. To ensure that these market mechanisms function effectively, a stable and non-discriminatory regulatory regime must be put in place. The completion of the single market is therefore necessary so that a level playing field can be achieved throughout Member States and carbon price drivers can act uniformly across Europe.

23. Policy conflicts between the aims of the climate change and competitive market agendas should be avoided as far as possible. It is important that the competitive market's ability to deliver least cost emissions reductions should not be distorted by regulatory restrictions for different electricity generation technologies. For example, setting an overly ambitious, restrictive vision for the use of renewables or Carbon Capture and Storage (CCS) does not seem consistent with the aims of liberalised markets, which usually operate on the basis of freedom of fuel choice. Provided a strong carbon price signal is in place and barriers to the development of new low-carbon technologies have been removed, the market should deliver an appropriate fuel mix to meet climate change targets.

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<sup>2</sup> SEC(2006) 1709

*Should there be a single EU energy regulator?*

24. The Association does not support the creation of a European energy regulator at this stage. Such a regulator could lead to additional layers of regulation, which would run counter to the objective of an open market. It could also raise demarcation issues in relation to the European Commission and national regulators. Similar issues have proved problematical in the USA, where there have been regular conflicts over competence between the Federal Energy Regulatory Commission and the state regulators.

2 July 2007

#### **Letter from the Association of Private Client Investment Managers and Stockbrokers**

We are grateful for the opportunity to contribute to the House of Lords inquiry into issues raised by the European Commission's review of the Single Market. We note that the sub-committee's inquiry will focus on three key sectors one of which is financial services, and our comments are relevant to this sector.

The Association of Private Client Investment Managers and Stockbrokers (APCIMS) is the organisation that represents those firms who act for the private investor and who offer them services that range from no advice or execution only trading through to portfolio management for the high net worth individual. Our 217 member firms operate on more than 500 sites in the UK, Ireland, Isle of Man and Channel Islands, and following the merger of EASD into APCIMS increasingly in other European countries as well. APCIMS members employ 25,000 regulated staff, they have under management €450 billion for the private investor and undertook last year 18.6 million trades on their behalf. A list of APCIMS members is attached to this letter.

We address our comments first on the general areas, and turn next to the sector specific questions.

#### **A. THE CURRENT STATE OF THE SINGLE MARKET**

*What has the impact of the recent enlargements of the European Union been on the single market?*

APCIMS comment: there is no doubt that the recent enlargements have had an impact on the single market but perhaps less so in financial services than in other areas. This may be because the new entrant states have had significantly less well developed financial markets than existing states. In theory therefore they have been able more easily to introduce new financial services legislation. The impact therefore has largely been confined to there being a wider debate on issues which is a welcome development. As regards the processes for initiating and introducing legislation, the introduction of the Lamfalussy process has clearly enabled the enlargements, and has meant that the processes have been maintained in a streamlined and more efficient manner than hitherto.

*Are there significant barriers to firms seeking to offer their goods or services or to consumers accessing these goods or services, in other Member States of the European Union? What are the most important of these barriers? Are small businesses more likely to encounter barriers when seeking to offer their goods and services in other member states? What measures are needed to overcome those barriers?*

APCIMS comment: the major barriers remain cultural, with tax differences, familiarity with local products and language differences all playing a part. There is no doubt that while significant new business opportunities have opened up with the internet, the most challenging barrier to cross border business is that of consumer redress. Consumers need the comfort of knowing that if they are buying a product or service from a foreign supplier that they can obtain satisfaction and redress as easily as possible in the event of something going wrong.

*Do you consider further legislative measures by the Commission to be necessary for the completion of the single market? If so, what measures would you consider appropriate?*

APCIMS comment: we do not believe that further legislative measures are necessary at this time for the completion of the single market. Of the two largest pieces of legislation for the securities markets, namely the Capital Requirements Directive (2006/48/EC) and the Markets in Financial Instruments Directive (2004/39/EC) only the first has been implemented (with effect from January 2007), and the target date for the latter to be implemented is 1 November 2007. Much of the financial industry (and particularly smaller firms) have struggled with the extensive changes brought about with the introduction of the measures in the Financial Services Action Plan, and until implementation of MiFID has been completed and indeed been in operation for some time, it will be too early to assess what further measures might be needed.

*Are the current provisions for monitoring market functioning and performance effective? What evidence is there that Member States are honouring their obligations equally?*

APCIMS comment: we consider that the resources given to monitoring market functioning and performance are not sufficient. Neither within the European Commission nor amongst the regulatory bodies of CESR, CEBS and CEIOPS are there adequate resources devoted to the assessment of market performance. Unfortunately the problem is deep seated and partly stems from the absence of impact assessments before the measures of the Financial Services Action Plan were introduced. This has meant a lack of understanding on the part of the legislators and regulators as to how they expect the markets now to be functioning. We applaud the Commission for now having addressed part of the problem, and there is now a section in the Commission charged with carrying out impact assessments before new initiatives are introduced.

But more resources need to be devoted to monitoring market functioning and it was disappointing to note that in assessing the introduction of the Prospectus Directive (2003/71/EC) one person in the Commission was assigned this large task and only on a part-time basis. We recommend that now that the majority of the Financial Services Action Plan is in operation and that attention turns to market functioning, that the Commission ensures that sufficient suitably skilled staff focus on ensuring that Member States are honouring their obligations equally.

*Is there a need for greater cooperation between National Regulatory Authorities?*

APCIMS comment: there has been a huge improvement in co-operation between National Regulatory Authorities as a result of the introduction of the Lamfalussy process. There are also signs of continuing progress with the introduction of joint training courses for regulators and convergence is improving through groups such as CESR-Pol (which seeks to reach agreed decisions on market abuse and accepted market practices). There is however still room for improvement especially in the regulation of multi-national operators. For example, Euroclear is supervised by some nine regulators and has to respond to each in an appropriate way often having to provide the same information but in slightly different formats. This is a clear case for greater co-operation with the potential for regulators to agree perhaps to supervise different parts of the Euroclear Group and to work to common standards.

*Are the current remedies available to the Commission to enforce single market legislation adequate, and are they used effectively?*

APCIMS comment: the current remedy that the Commission has for enforcing single market legislation is, of course, the power under the Treaties to bring infraction proceedings. In this context it is of considerable and welcome interest to see the very recent action taken by the Commission in its request to a total of 24 member states (all except the UK, Ireland, and Romania) to write into national law the Markets in Financial Instruments Directive and its implementing Directive. These requests are "reasoned opinions" which is the second stage of the infringement procedure under Article 226 of the EC Treaty. To our knowledge, the Commission has not taken similar action on any of the previous Directives in the Financial Services Action Plan even although we were aware of some member states delaying implementation (for whatever reasons) for significant periods.

*What is your view of the country of origin principle? Does it constitute the best basis for single market measures?*

APCIMS comment: we believe that the country of origin principle is at the root of many of the late discussions that have occurred in relation to MiFID. The issues have related, inter alia, to the supervision of branches and to transaction reporting and have all been concerned with the extent to which Article 32(7) of the Level 1 Directive has been applied (relevant Article attached at Annex A).

We believe that one solution would be to do away with the notion of local involvement in a branch and to ensure that in legislative terms branch supervision should be a matter for home countries. However, this would probably expose the xenophobia and mistrust that exists even where there are suggestions that, for example, the German regulator BAFin may have responsibility for more of the business conducted by Deutsche Bank in London. There could be a legitimate view that BAFin should have responsibility for all of the supervision of Deutsche Bank in London.

*What is the significance of the single currency to the operation of the single market?*

APCIMS comment: there remains much progress to be made before the single market can truly be said to be a reality. It is notable however that more than 50% of euro-denominated securities trading originate in the UK, and this would seem to suggest that the significance of the single currency is not as great as might be suggested.

## B. SECTOR SPECIFIC QUESTIONS

*What has been the impact of the implementation of the Financial Services Action Plan as a whole; and in particular the Markets in Financial Instruments Directive?*

APCIMS comment: we believe it is too early to assess fully the impact of the Financial Services Action Plan, and certainly the MiFID which will not be in operation until November 2007. One of the obvious impacts has been the large costs for firms in terms of compliance and new processes which they will have to adopt and put into practice. For smaller firms which will benefit less from the FSAP, at least in the short term, the burden has been very large indeed.

*Do you support the Commission's code of conduct on clearing and settlement?*

APCIMS comment: we warmly welcomed the Commission's code of conduct on clearing and settlement. We believe that industry led solutions are in general far preferable to legislative initiatives where the outcomes can have unpredictable and unwanted conclusions. We are following the ECB's Target 2 Securities project very closely as if it does proceed, it could have outcomes for the UK that are expensive and fall disproportionately on smaller firms.

26 June 2007

## Annex A

### ARTICLE 32 (7) OF THE MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE

The competent authority of the Member State in which the branch is located shall assume responsibility for ensuring that the services provided by the branch within its territory comply with the obligations laid down in Articles 19, 21, 22, 25, 27 and 28 and in measures adopted pursuant thereto.

### Memorandum by Barclays

#### ABOUT BARCLAYS

Barclays PLC is a major global financial services provider engaged in retail and commercial banking, credit cards, investment banking, wealth management and investment management services. We are one of the largest financial services companies in the world by market capitalisation. Operating in over 50 countries and employing 123,000 people, we move, lend, invest and protect money for over 27 million customers and clients worldwide. Barclays PLC has over 300 years of history and expertise in banking.

Barclays is pleased to give evidence to the Committee as part of its inquiry into the Commission's review of the single market.

#### 1. *What has been achieved so far and what are the remaining significant barriers to achieving the Single Market?*

- Significant progress has been made in creating a single market in wholesale financial services through the Financial Services Action Plan (FSAP), 42 separate pieces of legislation.
- The FSAP highlighted, rightly, that legislation does not of itself create an integrated market. Remaining barriers to a Single Market need to be identified and tackled using non-legislative solutions.
- A global wholesale market arguably already exists, and care needs to be taken not to fracture it, or to drive it outside the EU, by overly prescriptive regulation or legislation. The concentration of reinsurance offshore in Bermuda illustrates how mobile business can now be.

- While there needs to be greater convergence of regulatory practices and greater clarity around the respective roles and responsibilities of home and host regulators, there is little need for more legislation in the wholesale area. Market practitioners need time to, digest the legislation that has already been passed (and not all of it has been implemented) and to understand the impact that it is likely to have. Post-implementation reviews of legislation should be carried out to identify areas where the law could be simplified or streamlined to bring it more in line with risk based regulation.
- Turning to specific wholesale issues, the recent call for evidence by the Commission with regard to private placement regimes is very welcome, as the lack of a pan-European regime on a safe-harbour for marketing investment funds to professional investors cross-border is hindering wholesale integration in this area. A lack of consistency in such regimes means increased legal expenses for issuers and that the same products are not available in all markets.
- There has been less integration in retail financial services, for various reasons. These include different consumer behaviour and legal frameworks across Member States. Different structures of state provision across Member States also mean that consumers in different states do not all have the same needs for retail financial services, especially those of the more complex variety. The European Commission's recent sector inquiry into Retail Banking has acknowledged that retail banking markets are national markets.

2. *What have been the benefits of the integration of the EU financial services sector to your business? Which segments of your business have benefited most, and which have remained unaffected? How have consumers benefited?*

- In the late 1990s our investment bank, Barclays Capital, set out to take advantage of the advent of the Euro, a strategic decision that has been critical to its subsequent success. More recently, the increasingly integrated market in wholesale financial services has also been important in its ongoing growth, and Barclays Capital is now one of the largest investment banks in Europe.
- Greater liquidity in European capital markets should have had the overall effect of bringing down the cost of credit and the cost of accessing financial markets for users.
- The convergence of conduct of business rules in particular will benefit wholesale businesses and markets, since most cross-border business is wholesale.
- At a retail level, although we have expanded organically and inorganically in Europe in recent years this has been driven by the opportunities offered in specific markets rather than by any particular changes in European legislation.
- For example, in 2003 we purchased Banco Zaragozano in Spain and combined it with our existing Spanish business to create a network of over 550 branches. We have also doubled our retail presence in Portugal in the last two years, where we now have 100 branches.
- We believe that consumers have benefited through our compelling offering in each of these markets. For example, Barclays Portugal has been recognised for offering the best quality in customer service in the Portuguese market since 2004.
- Despite this, it is worth noting that while there is a common core of consumer needs for financial services which all consumers share, these are very much focused on the basic services of payments and savings accounts, and possibly mortgages. For the rest, European consumers needs may vary for more complex financial and investment services given the different standards of social security provision around the EU. This makes a clear definition of "the European consumer" difficult.

3. *What has been the impact of the Financial Services Action Plan (FSAP) on the financial services sector? Has the regulatory burden under the FSAP increased more in some areas than others?*

- The overall impact of the FSAP has been positive for the financial services sector, especially in permitting the more efficient use of capital by allowing greater use of branches to conduct cross-border business. Although it could be argued that there was a pre-existing global single market in wholesale financial services, there has also been a benefit in terms of raising market standards overall.
- However, complying with the new regulation it has generated has been onerous. It is estimated that compliance with Markets in Financial Instruments Directive (MiFID) will cost the City between £877 million and £1.17 billion for around £200 million of benefits.<sup>3</sup> The non-capital costs of implementing the Capital Requirements Directive will, for large institutions such as Barclays, amount to over £150 million each over a four to five year period, with total implementation costs for

<sup>3</sup> FSA, The Overall Impact of MiFID, November 2006.

the UK bank and building society sector alone estimated in 2006 at around £1.1 billion over the same period.<sup>4</sup> Costs have since increased.

- The Commission's focus should now shift from initiating new legislative proposals to ensuring consistency of implementation by Member States, and to enforcing the legislation that is in place. Given the high costs of implementing EU measures, it is important that the effects of legislation that has been passed are monitored, and that actions to mitigate unintended consequences and eliminate unnecessary provisions are taken.

4. *What do you consider to be the remaining gaps in the FSAP?*

- There is a need to modernise the supervision of insurance companies. This will be the subject of the Solvency II Directive, on which the Commission is likely to make a proposal on 10 or 11 July.
- There is a need to modernise the EU Concentration Risk/Large Exposures regime to bring it into line with the Capital Requirements Directive. This is currently under examination.
- The Commission's recent exposure draft on removing barriers to pan-European investment fund business is welcome, excepting that it only proposes only a "partial passport" for the UCITS management company, under which the functions of calculating the net asset value of the fund and maintaining unit holder registers would have to take place in the domicile of the fund. A number of funds are already administered in another EU Member State and so this would be a step backwards.
- Overall, there is also a need for "care and maintenance" on various Directives. This is all minor. For the most part, the FSAP simply needs time to bed down.
- It is right that the effects of the FSAP should be monitored, but at this time it is too soon to say what the cumulative effect of FSAP measures will be, especially as not all of them have been implemented. There needs to be greater clarity about the respective roles of home and host supervisors, but in the first instance this will largely require discussions between supervisors in the Level 3 Committees, not legislative proposals by the Commission.
- On a more structural and significant level, there is a need for greater understanding on how a financial crisis affecting an institution that is active across national borders would be handled. This is also a topic that is currently under discussion. This would make some countries, especially those where the banking sector is effectively foreign-owned, more relaxed about the way in which their markets have been opened.

5. *In light of the increasing focus on the competition policy, do you think there is sufficient coordination between regulators and competition authorities?*

- We do not believe that a single market can be created through legislation alone and we welcome the increasing use of competition policy—and other such non-legislative tools—in the European Union as a means of opening markets.
- However, we would like to see greater co-operation and co-ordination between different competition authorities both in Member States and at an EU level.
- Regulation inevitably sometimes involves creating barriers to entry and therefore may limit competition (eg the need for prudential capital reserves by banks). It is important that such regulatory barriers are the minimum necessary to achieve essential policy goals. Competition authorities have an important role to play in ensuring that regulation does not become stifling of entry and innovation; by the same token financial services regulators have an important role to play in setting limits to the play of unfettered competition for the common good. It is important, therefore, that regulators are consulted with regard to competition issues at the policy-making stage—to ensure that regulation is compliant with competition policy and that competition policy does not prevent policy goals such as reduction in financial crime or stability of the financial system from being pursued.

6. *Is there a need for greater cooperation between National Regulatory Authorities of different Member States?*

- Yes. As indicated in our responses above, greater co-operation between national regulatory authorities is important for the further development of the single market.

<sup>4</sup> PricewaterhouseCoopers, *The Capital Requirements Directive, Non-Capital Compliance Costs*, published by the FSA as Annex 3 to CP06/3, *Strengthening Capital Standards 2*.

- Such co-operation is provided for by the Level 3 regulatory committees within the Lamfalussy process (CESR, CEIOPS, and CEBS).
- So far, however, these committees (with the exception of CEBS) have been more focussed on the other key part of their role, the provision of advice to the Commission on the implementation of legislation.
- Looking to the future it is important that the Level 3 Committees—and national regulators—focus on greater co-operation as a means of encouraging greater supervisory coherence. This will be an important step in delivering the benefits of the single market in financial services.
- Supervisory convergence to date has been slow, reflecting the difficulty of achieving greater co-operation in a cross-border context and differences of practice and culture.
- We support the principle recently outlined by FSA Chief Executive John Tiner in a speech on 2 July—of a “hard lead regulator”. This would create greater regulatory efficiencies for large, multi-jurisdictional companies, whilst also requiring regulators to work more closely and thereby facilitating greater supervisory convergence. Developments such as the establishment of a regulatory college for complex cross border financial groups are also to be welcomed.
- There is also some pressure for Level 3 Committees to reach more decisions relating to supervision—rather than technical advice—by qualified majority voting. We do not believe that this is appropriate. It would turn a meeting of supervisors into a quasi-legislator (albeit with a restricted scope) and even if non-binding (with a comply or explain rule), would introduce a greater element of politics into what should be a technical forum seeking the correct technical approach.

7. *Do you consider that the integration of EU financial services sector is better achieved by market-led initiatives as opposed to regulatory developments (eg the Code of Conduct on Clearing and Settlement instead of a directive)?*

- Yes. The FSAP, although well-intentioned, has demonstrated that legislation alone cannot integrate markets. It is important that legislation only be used where there is clear market failure that cannot be addressed by other means.
- We welcome the greater focus now being placed by the Commission on the use of non-legislative implements and its espousal of the better regulation agenda when considering legislation.
- Market-led initiatives in particular are an important tool as they harness the natural efficiency of markets and respond to a particular demand. Some financial services policy-making at EU level has been too concerned with supply, on the assumption that creating the conditions for the supply of particular services will create demand for them—this is not the case.

8. *Do you consider further legislative measures by the Commission to be necessary for the completion of the Single Market? What would you consider appropriate?*

- No. We do not consider that further legislation from the Commission will assist the completion of the Single Market. Rather, we would prefer the Commission to focus on identifying the barriers to the further development of the Single Market and tackling these using the non-legislative measures at its disposal, including but not limited to competition policy, market-led initiatives and self-regulation.
- This is particularly important for retail markets where the Commission should focus on removing barriers which prevent or restrict market entry or the development of effective competition for retail products as a first priority.
- The Commission should also focus on ensuring that the legislation that it has sponsored to date is properly implemented and enacted. In the past, additional legislation has sometimes been used as a means of avoiding tackling the issues of implementation and creating a genuine single market.
- We would expect the European Commission and Member State authorities to give the market time to react to initiatives already in place or coming on line before considering others.

9. *To what extent do you consider that EU Member States are fulfilling their responsibilities in setting the framework for the integration of the EU financial services sector (eg timely adoption of the Payment Services Directive or transposing directives into domestic laws)?*

- The UK has taken a lead in transposing EU legislation relating to financial services into national law, and the City of London has benefited from this approach. However, the conditions that will allow a genuine single market in financial services to develop will not be created until all Member States have fulfilled their legislative responsibilities and implemented them in a manner and spirit consistent with the EU's market opening objectives. The issues associated with the implementation of MiFID are a case in point.
- In addition to focusing on the easily quantifiable fact of transposition, the Commission should also need to focus on the manner and spirit in which directives have been transposed and whether they are being implemented in a way that is consistent with the single market. The implementation scorecard is perhaps too blunt a tool to accurately measure this important area.

10. *Are the current remedies available to the Commission to enforce Single Market legislation adequate, and are they used effectively?*

- The tools are available, but the Commission could devote more resource to studying the manner in which EU legislation has been implemented, and in its choice of the tools at its disposal.

6 July 2007

### **Memorandum by British Telecom**

*What has the impact of the recent enlargements of the European Union been on the single market?*

1. It is debatable whether national telecoms regulators in many of the new Member States are adequately resourced or fully independent. In the light of the argument set out in the answer to the next question and the shift of many companies' manufacturing operations to the region in question, the potential impact of these shortcomings extends far beyond the telecoms sector.

*Are there significant barriers to firms seeking to offer their goods or services, or to consumers accessing these goods or services, in other Member States of the European Union? If so, what are the most important of those barriers? What measures are needed to overcome those barriers?*

2. Services account for 70% of EU employment and value-added but only 20% of intra EU trade. The potential tradability of services across borders is nevertheless high. This is particularly true with regard to high-value, knowledge-intensive services—design, finance, IT, legal advice, marketing etc—which account for a high proportion of the retail price of physical products. In contrast to haircuts and household plumbing, there is no requirement for these services to be produced in their place of consumption.

3. Information and Communication Technologies (ICT) allow corporations to rationalise “in-house” provision of such services in the most appropriate geographical sites. Similar benefits can be achieved by outsourcing of the same functions so that firms are able to focus on their core competencies. Such moves form part of a new business paradigm characterised by a shift away from vertically-integrated “command-and-control” organisations towards “flatter” structures—often in the form of multiple firms working together in long-term relationships.

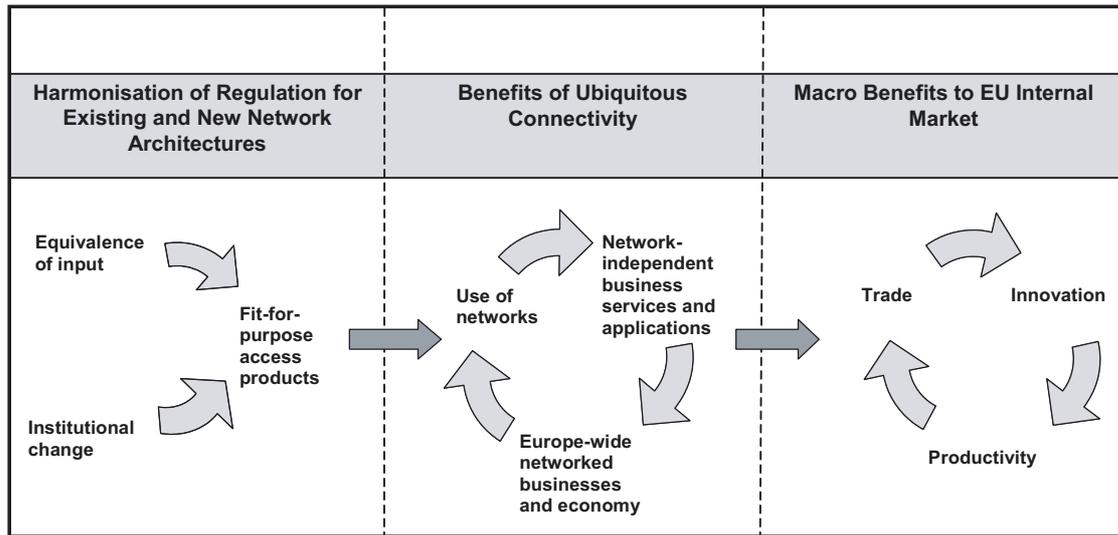
4. Taking account of the opportunities for cross-border service provision that are offered by ICT and this new business paradigm, there is clear scope for the EU to realise significant additional Single Market benefits (greater competition, economies of scale, specialisation, global competitiveness etc). Consequently, BT strongly agrees with the emphasis on a “Single Market for Knowledge” found in the Commission's interim Single Market Review report to the Spring 2007 European Council.

5. In order to realise this vision numerous obstacles need to be overcome, but improved “connectivity” is one necessary condition. Investment in computers is not alone sufficient to enable radical changes in finance, design, production and marketing processes. Computers must also be effectively linked together. As several commentators have suggested, the failure of Europeans to do this may explain why ICT investment has had a lower impact on productivity in the EU than in the US.

6. This failure can, in turn, be partly attributed to obstacles faced by providers such as BT which seek to offer seamless pan-European communications to large businesses. Foremost among these obstacles is the widespread absence of “fit-for-purpose” local access products which are needed to link the widely-dispersed sites of multinational corporations and for which, in many cases, the incumbent operator remains the only source of supply.

7. This situation results from the fact that, to date, debates on EU telecoms regulation have generally focused on the needs of residential telecoms users rather than major business customers. In order to ensure the future vitality of the Single Market and the health of the European economy, BT believes there is an urgent need to redress this balance.

8. Our argument is summarised in the following diagram and is set out in more detail in a recently-published collection of studies by prominent academics, consultants and business telecoms user-representation groups.<sup>5</sup> BT's views on the way forward are set in our answers to the Committee's other questions below.



*What is your view of the Country of Origin Principle, whereby a company registered to provide services in one Member State is automatically qualified to provide those services in any other Member State on the basis of home country regulation? Does this Principle constitute the best basis for single market measures?*

9. BT strongly supports the Country of Origin principle and remains concerned by draft legislation which may undermine it in the e-commerce and broadcasting areas—particularly for contracts involving consumers. This may mean that an online service provider has to be aware of 27 different sets of national rules and thus may shy away from providing pan-EU services.

*Do the concepts of the “national champion” and “economic nationalism” pose a threat to the single market?*

10. BT perceives a strong correlation between continued state ownership of former monopoly operators and inadequate implementation and enforcement of EU telecoms regulation.

11. In addition, the drive to encourage companies to invest in next generation broadband access networks poses a threat to the existing level of service competition as large operators argue for regulatory forbearance in return for new investment. When this investment is seen in terms of national performance and international league tables, the risk to service competition is intensified.

*Is the EU telecommunications market genuinely cross-border at present?*

12. In the fixed telecoms sector, market liberalisation—particularly local loop unbundling (LLU)—has provided significant opportunities for cross-border investment. However, the increased competition associated with LLU has necessarily been limited to geographic areas where the density of potential customers provides new entrant service providers with the economies of scale needed to justify the required investment. As a general rule, such density is available only to operators targeting households and small firms.

<sup>5</sup> The Economic Benefits from Providing Business with Competitive Electronic Communication Services.  
<http://www.btplc.com/Thegroup/Regulatoryinformation/Consultativeresponses/BTdiscussionpapers/Electronic/index.htm>

13. Operators which have the provision of services to large businesses as their main focus occupy a very different position. Such customers typically require the simultaneous connection of multiple, widely-dispersed sites. Even after aggregation of the needs of all potential customers, the density of these sites will justify investment in local access only in very few cases. In most areas, provision of services to large businesses on the basis of infrastructure competition will remain uneconomic for the foreseeable future and the purchase of local access links from the incumbent operator remains a key input.

14. Regulation of such links varies widely between Member States. In many cases inadequate application of EU rules on accounting transparency, and the absence of published service performance indicators (delivery times, repair times etc) mean that incumbent operators' obligations to provide customers with non-discriminatory prices and service levels cannot be effectively enforced. A further problem is the practice of incumbent operators resorting to appeal procedures, which involve suspension of NRA decisions and take several years to complete.

15. In such a context, a cross-border operator wishing to offer business customers a similar service in a number of Member States faces considerable difficulty obtaining suitable, comparable products and services, and may not have access to inputs equivalent to those used by the incumbent operator's retail arm.

16. This situation creates major distortions of competition. Where an incumbent operator is able to take advantage of a regulated input in another Member State but it is not mandated to supply the corresponding wholesale service in its home market, it is unfairly advantaged when bidding for the supply of integrated business services covering the two countries in question.

*Is the current EU regulatory framework for telecommunications sufficiently technology neutral?*

17. In principle, yes. But at national level there has been a tendency for NRAs to define markets in terms of current technologies or specific standards. Local access links configured to work with the Ethernet technical standard provide a striking example. Although retail versions of this product are rapidly becoming ubiquitous, provision of a wholesale equivalent is mandated only in four Member States (including the UK). In the light of the lower costs associated with the Ethernet standard, this situation is distorting competition elsewhere in the EU. Against this background, requirements for technology neutrality could usefully be reinforced.

*Does this regulatory framework require modernisation?*

18. In order to solve the problems identified in previous answers, a number of points require attention:

- Proper implementation of the existing regime's requirements regarding accounting transparency and key performance indicators.
- An addition to the menu of remedies which NRAs can use to deal with an operator with Significant Market Power so that it is possible to impose a requirement for full "equivalence of inputs" between the operator's retail arm and its wholesale customers (by functional separation, if appropriate).
- Introduction of a requirement for NRAs' market analyses and choice of remedies to take account of the particular circumstances of business users.
- Introduction of time limits for court decisions in appeal cases and tightening of the rules on interim injunctions which suspend NRA decisions.
- Establishment of fully-independent NRAs.
- Enhancement of the role currently played by the European Regulators Group (ERG) in promoting harmonised national-level implementation of EU requirements (eg, more detailed best practice recommendations and a requirement for NRAs to explain in detail when they decide not to adopt the recommendations).
- Establishment of additional Commission veto powers over remedies proposed by NRAs which are likely to be ineffective or to take effect too slowly (possibly subject to a formal opinion from the ERG and the surveillance of the European Court).

19. Other points which BT believes should be addressed in the current Review of the E-Communications Framework include the following:

- Greater flexibility in radio spectrum use.
- Adaptation of various telephony service rules to cope with a non-metallic and/or IP service.
- Universal service rules and funding arrangements.

Further details on these points may be found in BT's reply to the Commission's recent consultation on the Review. See

[http://ec.europa.eu/information\\_society/policy/ecommm/doc/info\\_centre/public\\_consult/review\\_2/comments/bt\\_2006r\\_nov\\_consultation.pdf](http://ec.europa.eu/information_society/policy/ecommm/doc/info_centre/public_consult/review_2/comments/bt_2006r_nov_consultation.pdf)

29 June 2007

### **Memorandum by Business for New Europe**

#### **1. ABOUT BNE**

1.1 Business for New Europe (BNE) welcomes the opportunity to submit evidence to the Lords Internal Market Sub-Committee inquiry on the European single market (ESM).

1.2 BNE is an independent coalition of UK business leaders. Our aim is to support the UK's active engagement in Europe, and to promote a reformed, enlarged and free-market EU. We recognise the benefits that cooperation with our European partners brings. Since our launch in March 2006, we have become a leading pro-Europe organisation in the UK, gaining a good deal of press coverage for our views.

1.3 This inquiry is particularly relevant for BNE as we have sought to highlight the benefits to the UK resulting from the ESM, and believe in the further strengthening of the ESM.

#### **2. ACHIEVEMENTS OF THE SINGLE MARKET**

2.1 With the EU celebrating its 50th anniversary in 2007, the ESM stands as probably the most remarkable of the Union's achievements. The benefits of the ESM resulting from closer economic integration are too often overlooked and taken for granted. It is one of the great successes of international economic cooperation in recent times, comparing favourably with any other regional bloc embracing economic integration.

2.2 The Treaty of Rome (1957) identified the European project with four freedoms, namely goods, services, capital and labour—and these have produced significant benefits for the UK and the European economy. In particular, the ESM has eliminated tariff barriers, abolished border controls and introduced mutual recognition for product standards.

2.3 The European market has the largest GDP of any economy in the world. The value of the ESM was \$1.2 trillion in 2005 and it accounts for 40% of global trade. With the EU's enlargements of 2004 and 2007 into eastern Europe, it now reaches almost 500 million consumers.

2.4 By opening up markets, the ESM adds significant value to economic dynamism, boosting living standards, productivity and economic growth. Estimates suggest that the EU's GDP is 1.8% higher as a result of the ESM than it would be without it.

2.5 Also across many economic sectors, eliminating trade barriers has boosted competition and led to a reduction in prices. This has had a positive impact on leading sectors of the economy from automobiles and airlines to pharmaceuticals and telecoms.

2.6 The ESM has had an influence beyond the borders of the EU. It has enticed non-European firms to invest in Europe, with the UK in particularly becoming a magnet for foreign investment which wants to access the rest of Europe. It is estimated that the single market has boosted FDI into Europe by 1500%.

2.7 Furthermore the rules in place to enforce the single market in some sectors have often been adopted by non-EU firms looking to break into the European market. This has positioned Europe at the forefront of regulatory rules, and will give European a competitive advantage in instances where the global market has to move towards adopting their rules.

#### **3. UK AND THE SINGLE MARKET**

3.1 Since its launch on 1 January 1993, the ESM has brought major benefits to businesses, consumers and workers. The UK now has a domestic market which reaches across Europe. Our companies can look beyond the horizons of London and Leicester to the likes of Lyons and Lisbon too.

3.2 For decades the United States has benefited from having a domestic market of millions of consumers, now approximately 300 million in total. The European market now outstrips this, giving UK companies tremendous opportunities to appeal to approximately 500 million consumers.

3.3 It is estimated that the ESM is worth £20 billion annually to the UK. With well over half the UK's trade taking place with the rest of Europe, approximately three million jobs linked to our EU exports and the UK attracting a good share of the total FDI in Europe, the value of the ESM to the UK should be in little doubt.

#### 4. BENEFITS TO THE UK OF SINGLE MARKET

##### 4.1 *Goods*

4.1.1 The UK's biggest trading partner, is by some considerable distance, the rest of Europe. Latest figures show that the other 26 EU Member States accounted for 62.8% of UK exports and 58% of our imports. This has increased from levels of around 43% in 1973 when the UK entered the Common Market.

4.1.2 Even a cursory glance at our top trading partners by country shows that eight of the UK's top ten export partners are in the EU. Meanwhile, seven of our top import partners are in the EU.

4.1.3 The recent enlargements of the EU have had a positive effect on the UK's trade with eastern Europe. Since the collapse of communism and the prospect of EU membership, the UK's exports to the 10 new member states from 2004 have risen by almost 400%. There is a lack of data at the present time on how trade has been affected since the enlargements of 2004 and 2007, but it is more than likely that the UK's volume of trade with eastern Europe has been further boosted.

4.1.4 The EU's free trade rules requires robust policing and enforcement. There have been increasing signs of the willingness of the European Court of Justice to bring enforcement proceedings, thereby forcing Member States to comply with single market rules. This robust action should be encouraged, though concerns remain in some sectors about nationally imposed barriers to the European market.

##### 4.2 *Services*

4.2.1 Services liberalisation forms a cornerstone of an effective single market. The recently passed EU services directive will help to unleash free market forces in the services sector, and stimulate economic growth. It is particularly important as services account for approximately 70% of the European economy, and the UK economy is markedly strong in this area.

4.2.2 The recent services directive is important for the European economy but not only that. It symbolises the changing nature of the EU and in particular, the European Commission. It is estimated that it would create 600,000 across Europe and up to £5 billion a year for the UK economy.

4.2.3 Whilst supporting the services directive as a step in the right direction for liberalisation, there was disappointment in the business community that the text was not as far-reaching as it could have been, notably through the omission of the "country of origin principle". However, BNE hopes that this directive will set down the marker for a future directive that is even stronger, once apprehensive countries see the benefits.

##### 4.3 *Capital*

4.3.1 Increasingly, foreign companies have used Britain as a base to access the European market. Some 19% of inward investment in the EU comes to the UK.

4.3.2 Whilst the UK has been very comfortable with foreign ownership of its companies, there has been evidence of economic nationalism being practised by some countries. High-profile examples of corporate protectionism include the Spanish government seeking to block Eon's bid for Endesa.

4.3.3 The EU has shown its willingness to use its powers to take action against miscreant states, and it should continue to exercise these powers with vigour. Just as the UK has permitted foreign companies to buy some of its major companies, continental markets should be open to investment from overseas. British companies should have the same opportunities on the continent that foreign companies do in the UK.

##### 4.4 *Labour and people*

4.4.1 Freedom of movement in the EU has had a dramatic impact on the UK and its labour market, enabling people to not only work but to travel, study and live across Europe.

4.4.2 As a result of the principle of free movement of people, there are now 750,000 British people in Spain, approximately 300,000 in France and a growing number of British people in the eastern European countries. Many of them are seeking fresh economic opportunities in continental markets.

4.4.3 Furthermore, the UK has benefited from a large number of migrants from other EU Member States. Following the 2004 accession, 600,000 people from the 10 accession countries came to the UK in the following two years. In addition, some sectors of the UK economy have attracted high calibre talent. A high proportion of the 300,000 French people thought to live in the UK work in the financial services industry.

4.4.4 Free movement has sparked not only a surge in the number of tourist visits to the UK, but also an increase in the number of foreign visits made by British people. For example, in the course of 2006, a total of 53 million visits to the rest of Europe were made by British people, an increase of 50% since 1998. A large number of Britons have grasped the economic opportunity to own property abroad, with the figure now thought to have reached 2.2 million.

## 5. SUPPORT FOR THE SINGLE MARKET

5.1 The public at large and the business community are strongly supportive of the single market. It is the business community, in particular, which experiences first-hand the benefits of the single market.

5.2 A Yougov poll commissioned by BNE in March 2006 showed that 68% of business leaders thought that the single European market had been good for UK business, with only 12% saying this was not the case.

5.3 More recently, the MORI Captains of Industry survey (December 2006) showed that 78% of business leaders saying that the single market has been helpful to UK business (with only 22% saying it has been unhelpful). In addition, 38% of business leaders said that the European Commission should have more powers to fully implement the single market (with 55% saying that the Commission already had enough powers). Furthermore support for the ESM in the senior ranks of the British business community was evident in many of the articles in a pamphlet we published in March 2007 entitled "A Europe we can do business with".

5.4 As well as broad support from the business community, the ESM also elicits a strong degree of support from the UK public. When asked about the impact of the EU, 78% of the UK public thought it had increased opportunities for business (Eurobarometer 2006).

## 6. FUTURE CHALLENGES

Whilst the ESM has achieved a great deal both for the UK and the European economy, the ESM faces the following challenges:

6.1 Barriers to trade—There are still too many barriers to trade. Whilst the services directive was a step in the right direction, we would like to see further services liberalisation. In addition, we would like to see Member States embrace open labour markets as soon as possible, which will require the UK to open its labour market to all the recent accession states, including Bulgaria and Romania. One study carried out by the Institut d'Etudes Politiques de Paris claims that removing existing barriers to trade could cost European consumers up to 7% of EU GDP.

6.2 Changing consumer behaviour—Consumers across Europe are not taking full advantage of the ESM. A majority of Europeans shop and invest exclusively in their own country. According to the Bruegel think-tank, a European country spends on average 86% on national products and services against only 10% on those from other EU countries.

6.3 Promoting benefits of the ESM—National governments and the EU need to carry out further work to promote the benefits of the single market, including greater choice and lower prices. A greater appreciation for the tangible opportunities precipitated by the ESM, would be likely to boost support for the European Union in Member States.

6.4 EU institutions—The enforcement of the ESM requires strong EU institutions. There are some Eurosceptics who wish to see the UK be part of a free trade area and sever its ties with the EU. Yet it is not possible to have a fully functioning ESM without a strong European Commission and ECJ to police and enforce the single market. Resolving the institutional impasse through the Reform Treaty should also help to give the EU firmer teeth to take action against recalcitrant Member States.

6.5 Better regulation—The liberal-minded Commission has introduced impact assessments on new regulations, and also set targets to reduce administrative burdens. Encouraging the better regulation agenda will generate a positive impact on the ESM.

## 7. CONCLUDING COMMENTS

The ESM is one of the defining achievements of the EU. It has evolved to encompass 27 countries, and is likely to widen in the future. There is lots of potential for it to strengthen further which requires the Commission to take robust action as appropriate and also for consumers to further appreciate the benefits of shopping throughout the whole market rather than continually opting to shop in their own Member States.

In sum, the ESM is a crucial component of the EU, and the UK's relationship with it. It is set to remain a central feature of the EU. In a limited time, it has achieved a great deal. BNE supports all moves which move the ESM in a positive, open and outward-looking direction.

*16 July 2007*

### **Memorandum by the Centre for European Policy Studies**

#### EXECUTIVE SUMMARY

While we are generally positive on the functioning of the single market, we found it difficult to make in short an overall evaluation of the functioning of the single market. We have therefore preferred to focus on two sectors on which we feel we are capable to make a well-informed judgment: financial markets and telecommunications.

Within the area of financial markets, progress has been enormous over the last years, and has evidenced new priorities: the integration of retail financial markets and the strong monitoring of free competition. As regards telecommunications, some issues still need to be tackled in order to achieve a single market for electronic communications in Europe. More detailed reports on those subjects are available on the website of CEPS.

#### 1. A SINGLE FINANCIAL MARKET

The EU has made enormous progress in creating a more integrated financial market over the last years. Years of work at the regulatory and supervisory level have resulted in a more integrated, sound and market-based financial system. The introduction of the Euro has certainly been one of the major factors in increasing the attractiveness of the European financial market, as the year 1999 is a clearly distinguishable trend break. The Financial Services Action Plan (FSAP), launched in 1999, had the clear benefit of raising the awareness of the issues at stake, and of putting Brussels on the map in financial regulation Worldwide. The adoption of the "Lamfalussy" approach in 2001 has resulted in a much stronger degree of cooperation amongst supervisory authorities.

We will in this brief overview discuss the current state of adoption and implementation of the FSAP, its impact on markets and institutions, the remaining problems and barriers, and some future priorities.

##### *Current state of adoption and implementation of the FSAP*

The EU managed to stick to its timetable regarding the adoption of the FSAP, as by the end of 2005, 39 of the 42 measures were adopted, and in the meantime, another two measures followed, meaning that only one measure remains outstanding, which is of lesser importance, and will probably be withdrawn. According to the latest league tables published by the European Commission, the implementation of these measures is progressing steadily, and almost complete. More than 90% Directives for which the deadline of transposition was passed were implemented (as of 15/06/2007). The European Commission has certainly learned from the after 1992 period, when it failed to monitor implementation sufficiently. It now publishes implementation league tables on a very regular basis, and does not wait to warn member states when they are behind, or to start infraction procedures, if needed, even in an EU of 27 member states. The now well established structure of cooperation amongst supervisory authorities is also useful in this regard, as the regular meetings of the different Committees is an opportunity for the European Commission to exercise peer pressure and remind those member states which are behind.

One of the most important measures of the FSAP, the Market in Financial Instruments Directive (MiFID), remains a weak spot, as most members were behind on the implementation deadline of 31 January 2007, a fact that may negatively impact the preparedness of firms, which have until 1 November 2007 to be in line. MiFID will also be critical in enforcement, as it introduces a totally new concept in legislation, "best execution" of securities transactions, which will be a challenge to monitor for supervisory authorities. This contrasts to the implementation of the new but complex Basel Committee framework for the capital

requirements of banks in the capital requirements Directive, which was done in time, this is January 2007, by most member states.

Enforcement remains a challenge for the European Commission, even more in an EU of 27 member states and of close to 500 million citizens. Financial markets are evolving extremely rapidly, and new financial products are introduced at an accelerating speed, sometimes urging member states to take legislative measures which are not in line with EU law. Hence, the problem is to constantly follow developments in 27 member states and check the consistency with EU law.

The European Commission has also stepped up its actions in the area of the application of EU competition policy. It has started inquiries on the functioning of the single market in retail banking, insurance and the credit card sector.

### *Market impact*

European financial markets and institutions have realised a remarkable growth over the last years, which can be called historic. On several indicators, the EU has realised a remarkable growth, and has in some sectors even overtaken the United States. Whether this is due to the single market measures and the FSAP is difficult to say, but it is certain that the creation of a much larger single currency zone, and probably more adapted monetary policy have played a positive role. It is also clear that some measures, which were seen to be too burdensome, did not have a negative impact on the markets, on the contrary.

Over the last 10 years, bond issuance more than doubled, equity market capitalisation tripled and equity market turnover and the total amount of derivatives contracts written increased six-fold in the EU. Total corporate bond issuance has overtaken the US, whereas the value of bonds outstanding as % of GDP has come very close to the US figure. Most historic is probably that the initial public offerings (IPO) market has overtaken the US as well in number as in total volume since 2005, albeit with a dominant role of the London Stock Exchange (LSE).

A clear impact of the successful completion of the FSAP is that it has put the EU, and in particular the European Commission, on the map in financial regulation. The European Commission is recognized at international level for its role in financial regulation, and is now consulted by regulators and market participants from all-over the world. Specifically with the regulatory authorities of the United States, the European Commission has started a regular regulatory dialogue in 2002, in which it has managed to come to tangible results, easing market access on both sides. Example are the equivalence of rules for auditor oversight (March 2004) or the equivalence of accounting standards (April 2005 and 2006) for issuance on each others capital markets, on which a roadmap was agreed.

### *Remaining barriers*

Two remaining barriers stand out: the very limited integration of retail financial markets in the EU, and the concentration and scale enlargement effect of the single market, reducing market access for small and medium sized financial institutions.

The EU has recognized the importance of integrating retail financial markets, in some measures which have been proposed in the context of the "post-FSAP", and in actions undertaken by the European competition policy authorities. Measures undertaken in this context can be expected to have a positive effect, but it is too early to make any definite statements. It is sure, however, that regulatory measures alone will not help to create a more integrated retail financial market, but that investigation by the European competition policy authorities are needed to detect cartel-like behaviour, abuse of dominant position and price sitting arrangements.

The latter actions are also needed to maintain the contestability of European markets. One of the side-effects of FSAP is that it has increased the regulatory burden, which is on average more costly to absorb for smaller firms as compared to larger ones. This has for example recently been proven in several studies on the implementation of MiFID. The effect is then that smaller firms are sold to larger groups, or that they disappear. Another effect is that the creation of new banks or brokers becomes more difficult.

Another often mentioned barrier is the clearing and settlement of securities transactions. Whereas these systems function effectively at national level, costs for cross-border transactions are much higher, hampering market integration. The European Commission has pushed the industry to implement a self-regulatory code of conduct to increase price transparency and interoperability, as a last resort to avoid a European Directive. The problem is however that there is no harmonized regime for clearing and settlement organizations in Europe, which means that basic rules differ from member state to member state. In addition, there is the initiative from the European Central Bank (ECB) to create a monopoly for securities settlement, the Target 2 Securities project, which according to our view goes in the opposite direction of the intentions of the European Commission to bring more competition in the market.

A final remaining barrier is the cooperation between authorities. While much progress has been achieved over the last years through the creation of the “Lamfalussy” type Committees, such as the Committee of European Securities Regulators (CESR) or the Committee of European Banking Supervisors (CEBS), the problem is that these committees have only advisory powers, nothing more. In the context of growing market integration, it may be useful to formalize the role of these committees, and to allow them to mediate between supervisors, or to delegate supervisory powers between the member states. Related to this is that more attention is needed (and a budget) for the creation of common supervisory tools at European level, such as a database on issuers and issues in capital markets, on supervisory information about banks, on transaction reports of broker/dealers.

## 2. A SINGLE MARKET FOR TELECOMMUNICATIONS

### *The state of the art*

Technological progress and convergence are leading to a massive reshape of the environment in which industry players compete. Especially with the ongoing migration towards Next Generation Networks (NGNs), formerly separate markets are now merging into a single, enlarged market where multi-product firms strive to conquer the attention of consumers. Such changes have the clear potential to lead Europe to achieve the overarching goals set by the Commission in the i2010 strategy launched in June 2005. In particular, the development of a number of alternative interactive digital platforms where consumers can access a differentiated set of services, applications and content will be made possible by the proliferation of technologies that enable broadband access, such as DSL, FTTx, WiMAX, 3G, HDSPPA, and so on.

The recent 12th Report on the implementation of the telecommunication confirmed this view, by observing that “new players such as internet companies are entering the market for IP telephony and are leveraging their large customer bases to gain competitive advantage. They thus exert pressure on traditional fixed and mobile providers to develop new strategies, including investment in broadband and next generation networks to create new, more lucrative, revenue streams from, for example, content services”.

Against this background, the 27 Member States of the European Union seem to be growing at widely differing speed in the field of telecommunications. Some countries—most notably, the UK, Scandinavian countries and the Netherlands—exhibit rapid growth and broadband penetration similar to that of the US and Japan, whereas others, including Central and Eastern Europe and some Southern European states, are experiencing a sometimes dramatic delay in the deployment of modern communications infrastructure, and as such will not be able to unleash the enormous potential of broadband connectivity in the next few years. Hence, one could fairly state that the conditions for full cross-border telecommunications are not genuinely present in the European Union and that the EU Internal Market for electronic communications has not been fully achieved yet. This constitutes one of the main challenges facing the ongoing review of the 2002 Regulatory Framework (RF) for electronic communications.

### *Technological neutrality in the regulatory framework*

The choice of a “technology neutral” regulatory framework was welcomed by all commentators when the RF was introduced, given that such an approach prevents the rapid obsolescence of the framework and accounts for technological convergence in light of future infrastructure-based competition. However, it is important that decisions taken within the RF are applied transparently by both the Commission and National Regulatory Authorities (NRAs) to demonstrate that the principle is being adhered to consistently. Moreover, the implementation of the technological neutrality principle by NRAs has exhibited a number of problems over the past few years, and therefore would need careful fine-tuning and more guidance by the Commission.

In fact, there are specific difficulties in applying the principle of technological neutrality: more specifically, there seems to be a remarkable difference between designing a technology neutral regulatory framework and designing a set of rules that are likely to exert no asymmetric impact on existing and potential new technologies. In most cases, technology neutrality actually requires a pro-active technology policy by national regulators, and this might be seen as falling outside the scope of regulatory intervention. Informational problems and difficulties in accounting for new forms of competition also challenge all attempts to realise full technology neutrality.

Some of the main problems as regards the implementation of technological neutrality in the RF are outlined below:

- Different technologies are still subject to diverging obligations and remedies, which include universal service obligations, finding of significant market power (SMP) in retail services (only fixed-line), etc. This can prospectively alter price competition, especially when the ongoing fixed-mobile convergence becomes a reality.
- Although not directly regulated under the current RF, spectrum is still rigidly allocated to specific uses: only a few Member States have considered the introduction of flexibility in the use of spectrum. While flexibility might generate interference and should be reconciled with spectrum harmonisation across Europe, greater emphasis on flexible spectrum usage and technology/service neutrality should be aimed at.
- The Commission has issued different rules for different technologies: for example, 3G, BPL, leased lines, broadband, VoIP (voice services provided over internet-based protocols), and so on, which are *per se* at odds with the principles of technology neutrality.
- More generally, technological neutrality is often at odds with a technology specific definition of relevant markets: distinguishing between fixed and mobile services—as occurs in the current list of relevant markets, will increasingly prove wrong and will require careful assessment of both supply-side and demand-side substitution on the side of NRAs. As a result, the review of the Recommendation on relevant markets should take ongoing technological convergence into account.
- Even when technology neutral market definition would be appropriate, it may prove almost impossible to achieve, unless NRAs engage in a thorough assessment of demand-side and supply-side substitution for each service considered. For example, the Commission's statement that "satellite provision . . . because of its characteristics, is not substantially interchangeable but rather complementary to terrestrial transmission" should be verified when defining the relevant market, as it does not only depend on technological characteristics, but is more significantly linked to the possibility of demand-side substitution in case of an increase in the retail price of service provided through one of the technologies at hand.
- As it is currently interpreted, the technology neutrality principle might short-circuit the provisions on emerging markets contained in the 2003 Recommendation on relevant markets. If this is the case, then the regulatory forbearance for emerging markets provided for at Recital 15 of the Recommendation on relevant markets is almost impossible to implement in practice by NRAs. Not surprisingly, almost no emerging markets were identified by NRAs since the entry into force of the current regulatory framework.

#### *Suggestion for the modernization of the regulatory framework*

The current disparities in the development of modern communications infrastructure across Europe inevitably suggests that the reported positive results in EU e-communications in the last three years might have occurred independently of the RF. The main question then becomes whether it would be possible to introduce changes in the current regulatory framework that would facilitate the take-up of advanced communications services in laggard EU member states, without stifling the satisfactory growth achieved by leading countries. Such changes should also make sure that the RF achieves its stated ultimate goal: the transition from *ex ante* regulation to *ex post* competition policy.

The review of the 2002 Regulatory Framework for electronic communications has now accomplished its first step, as the European Commission is expected to adopt two proposed Directives by October 2007. These proposed new pieces of legislation will then have to be discussed by the European Parliament and the Council within the co-decision procedure. As is widely known, the European Commission has focused its attention on a number of potential changes to the 2002 framework, most notably a stronger coordination

of spectrum policy, streamlined procedural requirements for market analyses by NRAs, and a proposed extension of the Commission's veto power on remedies proposed by national regulators.

Since the review of the NRF is not expected to take effect before 2010, transitional measures should be adopted to promote investment and growth in the EU communications sector:

- The list of relevant markets can be shortened by removing all retail markets and some of the wholesale markets.
- The treatment of emerging markets under the RF leads to a short-circuit between the technology-neutrality principle and regulatory forbearance for new services. The “three-criteria test” should be clarified and strengthened, whereas the SSNIP test<sup>6</sup> should not be applied by national regulatory authorities when defining emerging markets.
- The current proposal for the review does not address the issue of how to encourage investment in NGNs. To be sure, an optimal way to encourage investments in NGNs might differ depending on national peculiarities; however, action should be taken by NRAs to stimulate the roll-out of new infrastructures, by providing regulatory certainty and commitment.
- The current framework misses the broader picture: in line with the emergence of complex multi-product digital platforms with unprecedented business models, issues related to content applications and network neutrality should be addressed within the RF. In addition, the development and deployment of digital rights management (DRM) must remain voluntary and market-driven and copyright levies should be removed for DRM-enabled services.
- Finally, non-linear services should be taken out of the scope of the Television without Frontiers Directive, as they are already regulated by the E-Commerce Directive.

As regards the future regulatory framework, spectrum policy should seek a more coordinated, pan-European approach, promote spectrum liberalisation and trading as a key driver of growth and employment, while at the same time bearing in mind that the availability of harmonised spectrum resources is crucial. Existing rights should not be undermined in the transition; however, as technology advances, the European Commission should pay increased attention to unlicensed uses of spectrum.

In the future framework, the review of decisions by NRAs should be streamlined in order to make the process more efficient and attuned to the principle of subsidiarity:

- The scope of the Article 7 review should be clarified and extended to spectrum policy.
- The RF should be amended in order to avoid lengthy appeals procedures.

In addition, the “competition policy dimension” of the RF may be significantly strengthened:

- The automatic application of remedies on firms with significant market power (SMP) should be abandoned.
- The “three-criteria test” should be awarded a higher status and included in the text of the future Framework Directive.
- Multi-sided market issues should be duly taken into account when assessing SMP in future markets.

Moreover, the “better regulation dimension” in the RF should be strengthened by providing for limited use of impact assessment by NRAs and by stronger compliance with the principle of “no regulation without justification”.

Finally, the scope of universal service should be made less technology specific. The European Commission is likely to move in this direction in the upcoming Communication on universal service to be adopted at the end of 2007.

*3 July 2007*

<sup>6</sup> SSNIP stands for Small but Significant and Non-Transitory Increase in Price.

**Memorandum by Mr Giles Chichester, MEP****ENERGY***1. Has there been sufficient unbundling of gas and electricity markets in all Member States?*

No. Even if the Second Directives were fully transposed and implemented it will be necessary to go beyond legal unbundling to remove obvious conflict of interests from common ownership.

*2. Is there agreement on the fundamental importance of a genuine single market to support a Common European strategy for energy?*

There is broad support for a liberalised single market, but room for different opinions on what this actually means based on recognition that national markets remain the normal reality with some regional markets such as Nordic Pool or UK. There are also a range of views on what a Common European Strategy for energy actually means.

*3. What are the implications for the single market of the Commission's commitments on climate change?*

The answer depends on how transparent policy instruments are. In particular the ETS needs to be revised and a realistic price for CO<sub>2</sub> established as well as clearly understood criteria for RES support mechanisms be they financial or regulatory. Market mechanisms are the best way to pursue EU policy objectives on climate change.

*4. Should there be a single EU energy regulator?*

No or certainly not yet. The existing ERG structure has room for improvement in terms of maintaining common standards and sharing best practice but it should be allowed to develop by trial and error before turning to the drastic step of having a single regulator. There are signs of an interesting compromise proposal on this issue to come from the Commission this autumn.

27 June 2007

**Memorandum by the City of London Corporation****INTRODUCTION**

1. The City of London Corporation welcomes the opportunity to comment on the European Commission's Review of the Single Market. The City of London Corporation aims to promote and reinforce the competitiveness of the Square Mile and in particular UK-based international financial services by tackling issues created by both domestic and EU economic, legislative, fiscal and regulatory developments which may impact upon the open, efficient and competitive environment for doing business in the City. As the significance of European legislation in this area has grown in recent years, there has been far greater coordination of thinking about the future direction of the single market for financial services, combined with an acceptance of the need to pool resources. The City Corporation has for some time been involved in facilitating contact between the City and the EU institutions, primarily the European Parliament and European Commission.

2. Many City firms, institutions and trade bodies have been playing an active part in helping to achieve a single European market for financial services from their sectoral standpoints and, to this end, the City Corporation's particular focus has been on wholesale financial services. In this context the City fully supports the Government's desire to bring about a fully functioning single market in wholesale financial services, recognising that such harmonisation would be beneficial to economic growth in the UK and EU. More generally the City has a growing interest in the wider better regulation agenda and for some time been seeking to highlight the importance of thorough and detailed scrutiny of EU legislation by Parliament, in addition to trying to ensure that directives which emanate from the EU are both principles-based and proportionate.

3. The City Corporation is not in a position to respond fully to all the questions posed in the Committee's Call for Evidence but the following paragraphs reflect the City Corporation's views on those elements of the review of the Single Market which are of particular interest to its activities.

#### NECESSITY OF FURTHER LEGISLATIVE MEASURES

4. The European Commission has shown willing to press ahead with the “better regulation” agenda. The agenda has received widespread support from practitioners in the City and beyond who have been calling for some time for both less and better legislation, and a genuine policy shift towards achieving more considered and intelligent regulation. At the EU and the domestic level, there is currently a major push towards these goals. There is also a growing realisation that the most effective legislation is produced in close consultation with key practitioners and stakeholders.

5. In the financial services sector there have been 42 legislative measures introduced under the Financial Services Action Plan. This has been an extremely extensive and costly exercise. For example, the one off costs for implementing the Markets in Financial Instruments Directive (MiFID) have been calculated to be between £870 million and £1 billion with ongoing costs of an extra £100 million a year<sup>7</sup>. While research published by the City of London Corporation has suggested initial benefits deriving from the FSAP programme<sup>8</sup> it is clear that at a time when the financial services industry is facing a period of enormous and costly institutional change as a result of the impact of the FSAP, it needs a substantial period to consolidate these changes effectively. The City would therefore support calls for a regulatory pause to allow firms to adjust to the new regulations<sup>9</sup>.

6. Moreover, before any new legislative measures are considered, it is first necessary to undertake proper market failure analysis, this is essential in order to decide whether there is a *prima facie* case for regulatory intervention or whether non-legislative approaches are possible. Where further legislative moves are suggested these should first be justified through transparent and effective cost benefit analysis, and then involve a rigorous regulatory impact assessment in consultation with practitioners which demonstrates that the chosen regulatory route is the least burdensome to business within the spirit of the legislation. In certain circumstance it may be more appropriate to make targeted amendments to existing legislation rather than the introduction of brand new legislation. The Commission should seek to ensure that once transitional changes have been absorbed, regulatory/supervisory and other burdens are permanently reduced.

#### THE COMMISSION'S ENFORCEMENT POWERS

7. City practitioners feel there should be a major emphasis on the need for effective and consistent implementation of Financial Services directives across the EU as a whole. Member State compliance with the provisions of Community law in all Member States is essential to ensure that citizens and businesses across the Union benefit fully from the advantages of Community law. To realise the potential benefits of economic integration from EU financial services legislation while avoiding costly burdens on business, it is vital that there should be effective, proportionate and consistent implementation of legislation across the EU. Now that the legislative framework of the Financial Services Action Plan (FSAP) has largely been set, the City would like to see resources within the Commission shifted from legislative work to implementation and enforcement in order to tackle these issues and to pursue a system of reviewing the practical impact of legislation already in operation. It is suggested that a new combined unit should be established to monitor this within the Commission and reporting to the Internal Market and Competition Commissioners.

8. It is understood that the Commission is considering ways to reduce non-compliance and is intending to publish a Communication on this issue. The City of London Corporation sees merit in introducing evidentiary hearings in Brussels, after several years experience of implementation across the EU, to establish whether the final policy meets the original objectives of the policy makers. More generally, the City Corporation favours the use of competition policy as a means to remove barriers to cross border trade and, in turn, create an integrated financial market.

#### COOPERATION BETWEEN NATIONAL REGULATORY AUTHORITIES

9. In order to improve implementation and enforcement of EU financial services legislation, more cross-border supervisory cooperation is required. The Lamfalussy processes and structures provide a flexible framework for the evolution of regulatory and supervisory structures. The City's position is that this framework should be built upon by enhanced cooperation between national authorities and convergence of their approaches. The City would argue that pressures to create a single EU authority are premature.

<sup>7</sup> FSA Press Release 24 November 2006 at [www.fsa.gov.uk/pages/library/communications/pr/2006/123.shtml](http://www.fsa.gov.uk/pages/library/communications/pr/2006/123.shtml)

See also Financial Services Authority (FSA) The Overall Impact of MiFID, November 2006

<sup>8</sup> “The Importance of Wholesale Financial Services to the EU Economy”, centre for economics and business research ltd (cebr), published by the City of London Corporation, May 2007. Discussed further at para 12 below

<sup>9</sup> Notwithstanding those initiatives that have already been the subject of preliminary discussion and preparation in the Commission, eg UCITS and Solvency II.

## NATIONAL CHAMPIONS

10. There is a danger that the concepts of “national champions” and “economic nationalism” could distort competition and, therefore, prevent the full potential of the single market being realised. The City is a strong advocate of free competition and the City of London is a perfect model of the success that can flow from allowing competition.

## FINANCIAL SERVICES

### *Implementation of the Financial Services Action Plan and in particular MiFID*

11. The key concern for the City of London in the immediate future is the continued transposition and implementation of the Financial Services Action Plan (FSAP). Towards the end of 2007 a major element of the FSAP—the Markets in Financial Instruments Directive (MiFID)—will be implemented across Member States. The City wishes to see consistent implementation of EU legislation across the Union to ensure that the benefits of wholesale financial markets liberalisation are fully realised for the industry and ultimately the consumer.

12. In terms of the benefits of FSAP, the City of London published research this spring on the “*Importance of Wholesale Financial Services to the EU Economy*”<sup>10</sup> which attempts an initial analysis. It is important to underline that it is still too early to provide a definitive answer on the benefits of FSAP given legislation either remains to be implemented, or has only recently been introduced. Nonetheless, the authors address firstly the European Commission’s current work on the evaluation of the FSAP, highlighting a number of issues to be taken into account to ensure a sound analysis of the impact of the legislative programme. The importance of using mathematical analysis to separate the various drivers of the EU wholesale finance market is underlined and an attempt is made by the authors to provide an early assessment of the impact of the FSAP. Initial findings, based on existing data, suggest there may have been a one-off net increase in EU financial services output of around 2%. The Report underlines, however, that more time has to elapse before truly robust calculations can be made. Separately, the authors state that the costs of the FSAP could amount to between 0.2%–0.3% of GDP to the UK economy, over a 10-year period.

13. The City of London will be including an assessment of the impact of FSAP on City and European financial services markets on an annual basis in its research programme as a contribution to the continuing debates around follow-up to the FSAP programme.

### *The Commission’s Code of Conduct on Clearing and Settlement*

14. The City has welcomed the European Commission’s self-regulatory approach to the issue of clearing and settlement, where it has opted for a voluntary Code of Conduct drawn up by industry aimed at creating a more efficient clearing and settlement infrastructure across the EU. In early spring, the City of London also published follow-up research on clearing and settlement in the EU<sup>11</sup>. Building on the two previous publications, this paper evaluated the European Commission’s initial work on possible legislative measures but found difficulties in comparing clearing and settlement activities or costs across the member states, since data is either unavailable or not available in a standard form or format.

15. On a related issue, the European Central Bank (ECB) has recently proposed to provide securities settlement services in central bank money for euro-denominated securities, (TARGET 2 Securities or T2S). The City has been working closely with the ECB as it develops its proposals, with the City Corporation initially facilitating the creation of the National User Group in the UK. It is vital that the users of this system are fully involved in its governance. For the project to succeed any proposal must offer a manifestly better alternative to other possible solutions. The main aim should be the creation of efficient, deep, liquid capital markets backed up by a strong settlement system.

### *June 2007*

<sup>10</sup> “*The Importance of Wholesale Financial Services to the EU Economy*”, May 2007, op cit.

<sup>11</sup> “*The European Equities Post-Trading Industry: Assessing the Impact of Market and Regulatory Changes*”, NERA Economic Consulting, published by the City of London Corporation, February 2007

### Memorandum by the Confederation of British Industry

1. The CBI speaks for some 240,000 businesses that together employ around a third of the private sector workforce. Member companies, which decide all policy positions, include 80 of the FTSE 100, some 200,000 small and medium-size firms, and over 150 sectoral associations.

*What has the impact of the recent developments of the European Union been on the single market?*

2. The Single Market is no doubt one of the greatest achievements of the European Union, and successive enlargements have contributed to its success. In 2007, the Single Market comprises approximately 500 million inhabitants, making it the world's largest trading bloc. Citizens from Belfast to Bucharest, Stockholm to Sardinia, can all take advantage of the four freedoms contained within the Treaty, in theory allowing them to live, study, work, buy and sell goods and services anywhere within the EU. For business, the Single Market offers a domestic market of 500 million customers.

*Are there significant barriers to firms seeking to offer their goods or services, or consumers accessing these goods or services, in other member states of the European Union? If so, what are the most important of those barriers? What measures are needed to overcome those barriers?*

3. Enlargement of the European Union in 2007 created the world's largest trading bloc. However, the opportunities that this great domestic market of 500 million consumers promised have yet to materialise. Despite the four freedoms in place, backed up with years of jurisprudence, many barriers still exist. One of the greatest shortcomings of the Internal Market is the lack of implementation and enforcement of Internal Market legislation in a number of Member States. This patchwork implementation has resulted in a number of national barriers remaining in place, restricting companies from truly benefiting from the advantages of a fully functioning Internal Market. This is particularly evident in the field of energy policy where, despite legislation in force, the market remains highly fragmented and extremely difficult for new entrants to penetrate domestic and non-domestic markets.

4. Enforcement of the basic principles and legislation of the Internal Market is of paramount importance for the well-functioning of the Internal Market, and plays a central role in the perception of citizens and companies, especially SMEs, about Europe. Enforcement is understood in this respect in both the non-harmonised areas where the mutual recognition principle applies, and in harmonised areas where EU rules exist and must be transposed, implemented and applied, and sanctions are envisaged for non-compliance.

5. Enforcement involves various aspects and different tasks according to the different levels in the decision-making process. The quality of legislation is also of key importance: it must be clear and easy to understand in order to avoid different interpretations and conflicts between areas of law. Better knowledge of the main Internal Market principles should be ensured at European and national level, including amongst legislators, officials and judges.

6. Member States should play a decisive role for efficient enforcement. However, they are not fulfilling their responsibilities adequately and the Commission's watchdog role is increasingly difficult to discharge in an enlarged Europe. In this regard, it is important that more resources are allocated at EU and national level to ensure correct enforcement.

*Do you consider further legislative measures by the commission to be necessary for the completion of the single market? If so, what measures would you consider?*

7. Legislation can play an important role in the completion of the Internal Market but it is only one instrument in the mix. Traditionally EU legislators have been too quick to come forward with legislative proposals in order to address the malfunctioning of the Internal Market in a specific sector. It is our view that legislation should be the last resort, backed up with sound economic justification as to why the legislative route is the best way forward.

8. Before suggesting new legislation, EU legislators should look at the existing body of EU legislation, assess what is working and what is not, identify the real shortcomings and address them—this may require amending existing legislation, but our experience suggests that most of the problems that business encounters are due to Member States failing to implement, enforce or comply properly with existing EU rules. The European Commission should play a greater role as defender of the Treaty in policing Internal Market legislation.

*Are the current provisions for monitoring functioning and performance effective?*

9. No. Greater action is required by the four main actors—national administrations, the European Commission, national courts and the European Court of Justice—in order to improve the monitoring of how Internal Market rules function. A review of the division of their competences and responsibilities for monitoring and enforcement should be carried out. Equally, cooperation between them should be enhanced and made more operational.

10. The Commission also has an important role in monitoring and assisting Member States and to act as a facilitator for better cooperation and exchange of knowledge between them. Member States should co-operate with the Commission in order to ensure correct transposition and implementation of Internal Market legislation. Also, more exchange of best practice should be promoted. This could take various forms, including transposition workshops and guidance, and meetings managed and organised by the Commission in which representative stakeholders should also participate. The co-operation that took place between the Member States and the European Commission throughout the transposition of the Unfair Commercial Practices Directive is a model that could be replicated in other areas.

*Is there a need for greater co-operation between national regulatory authorities?*

11. Better coordination between national regulators should be promoted. The establishment of an independent mechanism for national regulators to cooperate, coordinate and take decisions on important cross-border issues on behalf of the Commission seems necessary for better integration of these markets.

*Are the current remedies available to the commission to enforce single market legislation adequate; and are they used effectively?*

12. Better enforcement of the Internal Market calls for the greater development of monitoring tools and indicators to assess the implementation and performance of Member States' enforcement of Internal Market legislation, including both the executive and judiciary authorities. To achieve this objective, a system for reporting and data collection between Member States and the Commission should be put in place.

*What is your opinion of the of the country of origin principle, whereby a company registered to provide services in one member state is automatically qualified to provide those services in any other member state on the basis of home country regulation? Does this principle constitute the best basis for single market measures?*

13. The CBI fully supports the Country of Origin Principle as this provides business with legal certainty when operating cross-borders. The Country of Destination Principle may act as a deterrent for businesses, particularly SMEs, as this would require them to have knowledge of all legislation affecting them in each Member State to which they are providing goods and services. This in turn would be detrimental to the consumer and it would ultimately reduce choice.

*Do the concepts of the “national champion” and “economic nationalism” pose a threat to the single market?*

14. Open and competitive markets are at the very core of a fully functioning Internal Market. The recent trend of protectionism within the EU, whether in the name of protecting “national champions” or “economic nationalism” is contrary to the four principles of the European Union.

*Should there be a greater role for technology and research in facilitating the single market?*

15. Research and technological development conducted at the European level can, and does, help to facilitate the Single Market. However, this must only be seen as an added benefit, not the *raison d'être* for the European Research Area (ERA). Research and technological development should be funded on the basis of quality, and its likely economic and quality of life impacts, and should not be led by social cohesion or Single Market agendas. Currently, ERA policies focus firmly on the “PUSH” side of the innovation equation—generating research activity, facilitating researcher movement, creating infrastructure. These aspects are important and necessary, but the “PULL” side must also be considered: creating new markets for technology and innovation, creating intelligent customers (public and private, corporate and individual) and creating demand for innovation, all of which will drive research investment and innovation activity across the economy. Increasingly, this pull side is being recognised as the factor that deserves most attention because of its potential and because it often lies outside of the standard envelope covered by government science and innovation

policy. With an effective Single Market in place, Europe will be better placed to develop the critical mass of market size and first users that will enable new products, services and processes arising from our investments in innovation to compete more effectively in global markets.

*Has there been sufficient unbundling of gas and electricity markets in all member states?*

16. The CBI welcomed the outcome of the Commission's review of competition in the energy market, which concluded that there were several deficiencies in the transposition of the Internal Market Directives, including insufficient unbundling of transmission and distribution system operators, regulated prices preventing entry from new market players, discriminatory third-party access to the network and insufficient competences of regulators. In the first instance therefore, there needs to be a focus on correct implementation of the existing provisions under the Directives to ensure that there is the required legal and functional unbundling of Transmission System Operators. In this regard, we welcome the Commission's action against major infringements in twenty member states over the past year.

17. The CBI agrees with the Commission findings that the existing unbundling provisions are not sufficient, and that there is a danger of discrimination and abuse where companies control energy networks as well as production or sales. We share the Commission view that ownership unbundling is a key element for the establishment of a truly open and competitive internal market and the only certain way to ensure non-discriminatory access to networks. However, if the Independent System Operator model is favoured, this will need to go hand in hand with the establishment of a strong independent regulator and regulatory framework at member state level, which has been the key to the success of this approach in Scotland. Currently, this is absent in many member states.

*Is there agreement on the fundamental importance of a genuine single market to support a common European strategy for energy?*

18. The creation of a properly functioning single European energy market is key to the delivery of the EU's security of supply and climate change objectives, as well as ensuring competitive pricing within the EU. UK business has been suffering as a result of the lack of liberalisation in the EU eg winter 2005 saw low gas imports at times of shortages and excessively high prices, and the lack of transparency in the EU market has made it difficult for market players and users to predict supply. In light of this, we welcome the measures (eg unbundling, more harmonisation of independent regulation at national level, greater transparency) in the Commission's Strategic Energy Review to accelerate EU market opening.

*Should there be a single EU energy regulator?*

19. The CBI does not believe that there is a case for a single EU energy regulator, but there is a need to level up the powers of national regulators so that they are better able to implement market liberalisation, including existing (and future) unbundling provisions. In addition, there is a need for national regulators to be given independent powers to co-operate and take decisions on important cross-border issues.

20. We believe that there is a need for greater transparency, and support the adoption of mandatory minimum transparency standards so that all companies in Europe are able access the same information and to operate on a level playing field. Strong national regulatory powers will be crucial if such standards are to be adequately enforced.

*Is the EU telecommunications market genuinely cross-border at present?*

21. Within the Internal Market, telecommunications liberalisation has been a major success in allowing the growth of a certain degree of competition at a national level, reducing prices and facilitating choice. However, inadequate enforcement and widely diverging application of the rules are preventing the full benefits from being achieved both at the national level and even more so at a pan-European level. The current system has not delivered a true Internal Market, with businesses facing different regulatory approaches in different countries. Application of the regulatory framework should aim at ensuring competitive supply and encouraging major new investments in new networks and services.

22. The CBI supports greater action from the Commission in this area, based on the principles of better regulation and subsidiarity. National regulatory authorities (NRAs) are closest to the market and ultimately should be best placed to make regulatory decisions, but the CBI recognises that NRAs are not always able to deliver the necessary level of consistency and certainty.

23. The European Commission has proposed a "Euro-regulator" as one option for addressing this issue. The CBI does not support this idea: an additional layer of policy or decision-making on top of the existing institutional arrangements is unnecessary and is unlikely to gain acceptance from stakeholders. But more extensive consultation and decision-making between the Commission and the European Regulators Group (ERG) would facilitate greater consistency and a stronger relationship between the EU-level objectives and national-level operations.

24. The Commission should use this year's review of telecoms legislation to create a more consistent and competitive environment. Within such an environment, the independence of national regulators from political interference is crucial, as they are best placed to conduct detailed market analyses and to respond accordingly. The Commission does not need extensive veto powers over decisions of national regulators. Instead, a selective extension, based on a system of checks and balances, involving greater engagement of the ERG, would be more effective.

*Is the current EU regulatory framework for telecommunications sufficiently technology neutral?*

25. Technology neutrality is one of the founding principles of the current EU regulatory framework. Retaining a technology-neutral approach is vital to ensuring the regulatory framework does not stifle innovation and technological developments in the fast-moving world of communications. The current framework is sufficiently technology-neutral to not give preferential treatment to one technology or platform over another. As we move into an environment converged upon the internet protocol, it will be increasingly important that the framework is kept technology-neutral. This is equally applicable if the Commission is to move forwards with its innovative plans for developing spectrum markets in the EU.

*Does this regulatory framework require modernisation?*

26. DG Information Society and Media are currently reviewing the regulatory framework for electronic communications, with their proposals due to be published by autumn 2007. The regulatory framework requires modernisation to ensure Europe has the electronic communication networks and services necessary to support the advanced applications and services businesses are running across these networks in order to improve business their performance and competitiveness.

27. Europe's businesses require access to modern communications networks and services which offer the bandwidth, quality, resilience and innovative qualities that can underpin advanced use of applications and services. Network operators need appropriate returns for the risks involved in investing in high-speed networks and services, in a marketplace where demand is uncertain. Users and consumers more generally are looking for new and innovative services which operate seamlessly across technical devices and platforms. Overall, a competitive market will drive innovation, investment and consumer benefit.

28. The needs of all will be best met in an environment of increasing choice and open competition. This should be characterised by a transition away from the need for detailed consumer regulation such as retail price controls as competition becomes more effective—the more regulation can be concentrated on the genuine economic bottlenecks, the quicker can be the move to a more open commercial model.

*What has been the impact of the implementation of the Financial Services Action Plan as a whole; and in particular the Markets in Financial Instruments Directive?*

29. The Markets in Financial Instruments Directive is one of the cornerstones of the Financial Services Action Plan (FSAP). Although implementation is on track in the UK there are delays in implementation of national legislation in other Member States. To date the UK, Ireland and Romania are the only Member States to report full implementation.

30. Delays in implementation will give firms less time to prepare for the new regulatory environment and there is a real risk of legal uncertainty as investment firms providing services in other Member States could be uncertain as to which legal regime is applicable.

*Do you support the Commission's code of conduct on clearing and settlement?*

31. The conditions for access to post-trade services and interoperability between systems must be agreed by June. If these do not meet the needs of users or those who are pushing for more choice, the whole voluntary approach to reform will be open to doubt and regulatory intervention by the Commission will be hard to oppose. Despite the provisions of the Code itself (that appeared to guarantee genuine rights of access and interoperability) there is still resistance in some quarters to taking the steps that will deliver a more competitive industry structure.

3 July 2007

### **Memorandum by the Engineering and Technology Board**

The Engineering and Technology Board (ETB) welcomes the opportunity to submit written evidence to the inquiry. The ETB is an independent organisation that promotes the essential role of science, engineering and technology in society. The ETB partners business and industry, Government and the wider STEM community:

- producing evidence on the state of engineering,
- sharing knowledge within engineering, and
- inspiring young people to choose a career in engineering, matching employers' demand for skills.

We have confined our comments to Section A. "The current state of the Single Market", specifically the question "Should there be a greater role for technology and research in facilitating the Single Market?"

1.0 Over the last 25 years research has been carried out and technology developed by member states under the Framework Programme. This initiative has generated widespread networks of collaborators from universities and industry through pre-competitive research projects, often involving staff interchanges and hence significant transfer of knowledge and skills.

1.1 The seventh Framework Programme is now in the early stages of calling for submissions. It has evolved from the earlier programmes and now operates at three levels depending upon the size of the initiative. The largest projects, under the level 3 Joint Technology Initiative, can be over one billion euros in value with half of this contributed by the industry partners.

1.2 Considerable effort is required to put together consortia for projects of this size across many states and through a complex supply chain. This is justified for the larger projects but cumbersome for the smaller ones.

1.3 Some sectors, such as aerospace and information and communications technologies (ICT), have been particularly proactive in developing the strategies that underpin the programme. The research is thus well-targeted and there is a concurrence of objectives between partners. A downside of this is that it may be difficult for new partners to join in.

1.4 Other sectors such as marine and rail are following the aerospace lead to form *Technology Platforms*.

### **RESEARCH**

2.0 The Framework Programme has strong support from the research community, though funding at the 50% level can preclude the participation of research companies who can find it difficult to obtain matching funds. It is accepted, however, that the 50% funding rule is required by WTO rules.

2.1 Engineering Departments in UK Universities are very active participants in the Framework Programme which forms a significant part of their research portfolio. The research tends to be applied, rather than "blue skies" and calls for significantly more reporting and project review than other programmes.

2.2 While the benefits of the collaboration between universities and business are highly valued there are concerns about the relative attractiveness of Framework projects. The level of indirect costs that can be claimed by the university partners is, however, often cited as insufficient to cover the full costs so that a department could not function on this class of research alone.

2.3 This apparent disincentive results in a lower priority being given to projects in the Framework programme. Funding from other sources, which provide the full economic costs, for basic research is highly competitive, highly esteemed and may be attracting our best researchers. Hence, opportunities for transitioning basic research into applied research and technology development are being missed.

2.4 This is being addressed to a greater extent in the Seventh Framework programme. There is, however, still a deficit that, it may be argued, could be effectively filled by top up funds through the Research Council. **We recommend that consideration should be given to the Research Council providing such top up funds.**

2.5 This Framework Programme is complemented by an increasing mobility of students and researchers, UK universities offering studentships in engineering receive many high quality applications particularly from the new member states. This can be taken in conjunction with data from the Higher Education Policy Institute (HEPI Report 31, June 2007) which cites that the UK attracts more European Union students than any other member state, with almost 60,000 in 2005–06 and a 15.5% increase in applicants for 2007, according to UCAS. This is particularly important for the UK university system since we face a demographic downturn of over 10% in the number of potential students in the 18–20 age group from now to 2020.

2.6 Thus, much has been done and there is a clear momentum in developing and transferring technology with the member states, with the UK playing a leading role in exploiting its intellectual science and technology assets.

#### GOVERNMENT'S ROLE IN STIMULATING INNOVATION

3.0 However, the generation of knowledge and technologies is not enough to create a competitive Knowledge Economy. Other nations, particularly the US have programmes that are more effective in exploiting technology in order to support an ever increasing standard of living for its citizens.

3.1 While the UK has developed mechanisms for improved technology transfer, such as the DTI's Knowledge Transfer Partnerships scheme, it is generally regarded that the United States programmes that support the generation and scale up of small businesses that have grown into some giant corporations are unmatched in Europe.

3.2 It is generally regarded that more intelligent use of procurement in stimulating the exploitation of new technologies is an essential building block of a competitive Knowledge Economy both in the UK and Europe. The United States are world leaders in this while we still seem to be talking about it rather than exploiting the opportunity. In the UK alone Government procurement stands at about £150 billion per annum. **We recommend that the Government earmarks a small percentage of this in strategic technologies and sectors (such as energy and technologies associated with mitigating the effects of climate change) to provide the stimulus for a step change in the growth of new technology based businesses.**

#### SUPERCOMPUTING

4.0 One area of technology where there is a clear gap in Europe compared to other nations is in the access to supercomputing facilities. These facilities are essential to support the whole eco-system formed by our technology based companies. Over the last twenty years or so the dependence upon large physical infrastructure, such as large scale wind tunnels and test facilities has declined to very low levels. Simulation generally replaces the need for these. European industry is at a real disadvantage compared to competitors in terms of access to large scale computing power. **We recommend that European businesses' access to new world class European supercomputers is increased.**

#### DUAL USE TECHNOLOGIES

5.0 The United States has a very large defence budget which, among other things, supports the generation of technologies that are exploited for both military and civil commercial benefit. These are sometimes called Dual Use Technologies. The European Union does not have a budget on this scale nor does it create technologies through this route on anything like that of the United States. This is a missed opportunity for a Europe wide market. **We recommend that consideration is given to how Europe could learn from the United States' success in this the encouragement and exploitation of dual use technologies.**

#### STIMULATING GROWTH IN NEW MARKETS

6.0 While the Framework Programme has been hugely successful in generating new technologies into existing markets there is a potential problem with new technologies (perhaps nanotechnologies are an example) where there is not an existing market. **We recommend that, in parallel with the development of these technologies, thought is given to what steps might be taken to seed and stimulate the growth of these new markets, including the aforementioned use of procurement.**

## THE LISBON AGENDA

7.0 An economic action and development plan for the European Union was set out by the European Commission in 2000, *the Lisbon Agenda*. The aim was to address the low productivity and stagnation of economic growth across the European Union with a view to making Europe the most competitive and most dynamic knowledge-based economy in the world by 2010. The ambitious goals were to raise economic growth by 3% across the European Union, and to increase employment rates to 70% of the population by 2010.

7.1 A mid term review in 2005 indicated that the European Union was failing to meet the 2000 targets and economic growth rates in the European Union were only 1.6% in 2005 compared to 3.46% in the USA and 10.2% in China. The targets were then revised to focus on the economic context only. The target of investing 3% of GDP in research and development was maintained, while the United Kingdom reduced its own target to 2.5%.

7.2 There appears to be a lack of incentive for industry to invest in research and development up to these levels. A key role of the new Technology Strategy Board will be to help the UK meet its 2.5% target, within the context of the relatively low economic growth in the European Union.

7.3 Related to this is the apparent lack of focus on skills in the UK and European Union member states' technology strategies. While the UK seems to be maintaining the level of young people entering science, technology, engineering and mathematics degree courses, anecdotally, this is not the case throughout Europe. If the UK, for example, were to increase its research and development spend by 50% then there will be a large increase in employment opportunities in engineering and technology and a lack of skilled people in the pipeline to fill the vacancies.

7.4 Thus the consequence of the Lisbon Agenda would be the need for a coordinated approach in the promotion of careers in the engineering and technology sector. This should be as part of an integrated approach to innovation rather than focussing simply upon a technology centric economic policy. That is, the bringing together of technology and the associated skills to apply and exploit it. **We recommend that the next Framework concentrates on exploitation routes for technologies developed by the networks generated by previous Frameworks.**

3 July 2007

### **Memorandum by Mr Malcolm Harbour MEP, Mr John Purvis MEP and Baroness Wilcox**

1. A vibrant and fully functioning single market is a vital asset in maintaining the European Union's competitiveness in the global economy. The four freedoms of movement—of goods, services, people and capital—are the foundations of the single market and must be sustained. We welcome, therefore, the inquiry by the House of Lords into this crucially important project.

## THE CURRENT STATE OF THE SINGLE MARKET

2. The economic impact of the recent EU enlargements has been generally positive. A single market of nearly 500 million consumers is a very attractive investment location, putting the EU in a strong position in the global economy. At the same time, the competition from the dynamic new Member State economies (which are growing faster and generally have more liberal economic policies) is stimulating modernisation and reform across Europe.

3. Nevertheless, the inclusion of these underdeveloped, but high potential economies, has created new challenges for the single market. Having coincided with increasing competitive pressures from the emerging global powers, particularly India and China, enlargement has fuelled public fears over potential job losses and wage decreases. This leads to mistrust and protectionist attitudes among some Member States, with calls to slow down the progress in achieving a genuine single market. (This was most evident in the debate around the Services Directive, the subject of two reports by your Committee). Additionally, the fact that the EU has nearly doubled in size puts extra pressures on the Commission, as guardian of the Treaty, to ensure compliance by all Members with single market provisions.

4. Businesses have consistently identified delays in transposition and ineffective enforcement, as well as “gold plating”, of EU legislation as the most important obstacles to freedom of movement in the single market. On top of that, infringement cases are numerous, showing that in addition to late adoption, the quality of the resulting national rules poses a serious problem. These time consuming procedures penalise all Member States, their citizens and businesses, because the Single Market in the areas concerned is effectively non-existent.

5. For SMEs, in particular, obstacles to free movement can be prohibitive. Legal uncertainty and the cost of varying administrative provisions, such as additional testing requirements, and the need for multiple authorisations, often discourage smaller businesses from expanding beyond national borders.
6. There is also evidence that consumers are frustrated in their attempts to take advantage of the single market. Some on-line marketing sites, offering cheaper prices, are barred to UK consumers. Consumer protection and competition authorities should be encouraged to take action in these cases, unless there are exceptional circumstances (as in the case of pharmaceuticals, for example).

#### POLICY INITIATIVES TO BOOST THE SINGLE MARKET

7. Proposals for “fast-track procedures” to deal with severe problems in transposition and implementation should be evaluated. We also strongly support measures in the Services Directive and the proposed Mutual Recognition Regulation in the Goods Market (currently under the European Parliament’s scrutiny) that require Member States to be completely transparent in cases where they seek to frustrate citizens or business from exercising the four freedoms.
8. We have noted that efforts to complete the single market can be frustrated by internal inconsistencies within the Commission itself, sometimes proposing legislation that actually creates more barriers. To address this problem of lack of coordination, an Internal Market Test, examining the impact of the envisaged action on the full implementation of the four freedoms, should be part of all Commission proposals and activities and integrated into the “Better Regulation” process. Member States too, within their responsibilities, should promote a culture in which administrations always take into account the implications of their actions on the free movement of goods, services, people and capital.
9. To create a positive environment for the Single Market, citizens and enterprises have to be more engaged. Public support would be enhanced if there was a concerted effort to inform enterprises and customers about the opportunities that are offered. Two new single market initiatives, the Single Points of Contact mandated by the Services Directive, and the Product Centres provided for in the proposed Mutual Recognition Regulation, will require Member States to take action to provide easily accessible and comprehensive information for business. These complement the existing network of SOLVIT centres, which provide assistance with specific questions and problems of market access and consumer rights. These low profile operations are already proving very effective, but should be given more promotion and resources. We would like to see the UK Government take a lead in setting up a unified Single Market Centre, combining information and promotion for service and product markets with the problem resolution network.
10. Significant parts of Single Market legislation have already been adopted, most recently the Services Directive. (In the case of services, we endorse the strong recommendations of your Committee on the need for early, effective and consistent transposition) They now need to be properly implemented, and the European Parliament’s Internal Market Committee will be reporting on the Services Directive transposition in early 2008. But there are still areas where Community action—legislative or otherwise—should be considered. As already noted, the proposals enhancing the free movement of goods should be adopted quickly. Other areas to be progressed are the protection of intellectual property, completing the liberalisation of the energy market, and tackling remaining issues in public procurement. There are a number of other proposals in closely related areas now under review, for instance the revision of the consumer acquis, appraisal of consumer redress and the codification of international private law. Here, any new legislative proposals should aim at simplifying the rules for businesses active in the single market, enhancing consumer confidence and avoiding market fragmentation.
11. Citizens moving to live and work in the single market continue to experience many frustrations. The SOLVIT centres help to resolve a significant number of personal complaints by helping to overcome bureaucratic obstacles. There is a need for closer cooperation among Member States’ regulatory authorities to make the freedom of movement in the single market operate more smoothly. Adoption of the Commission proposal on registering cars, for example, would deal with one of the areas of complaint. Mutual recognition of qualifications needs to be expanded and existing difficulties resolved. More professions should be encouraged to develop common platforms as a basis for mutual recognition.
12. The Country of Origin Principle is a very useful concept from the point of view of companies and an important tool for making the single market work, despite differences in national rules. It is important to point out that Member States do retain the right to ensure public policy, public health, and protection of environment under this principle, but we must ensure that they do not abuse these safeguards. Any interventions must always be fully justified, proportionate to the problem concerned and not discriminatory against sellers and service providers from other Member States. In recent years there has been a troubling backlash against this principle, which became very evident in the course of negotiations on the Services

Directive. It demonstrated the need for Member States to cooperate more closely and build an environment of mutual trust.

13. The concepts of “economic nationalism”, associated with “national champions” promoted by the state, rather than the market, are extremely detrimental to the single market. They pose a threat to EU competitiveness, and discourage the evolution of “global champions”, the true pan European enterprises who are taking advantage of the potential of the single market. We welcome the intervention by the EU Competition Commissioner in recent cases of proposed cross border mergers, and encourage her to be vigilant in supporting the cause of undistorted competition.

14. The EU will only be able to thrive in the global economy if it matches and even improves on the innovation capacity of its trading partners. Harnessing the opportunities of the digital economy, in particular, could boost the Europe's global standing, in addition to improving the lives of its citizens. We need specific measures to make the EU single market more innovative, including continued support for the Framework Research Programmes and Joint Technology Platforms, the use of public procurement as a tool for boosting innovation (especially though pre-competitive procurement) and the creation of a viable IPR framework.

*Evidence was requested on the evolution of the single market in three strategic sectors. The Conservative Spokesman in the European Parliament has submitted a separate paper on energy matters. We now submit the following points on Telecommunications and Financial Services*

#### Telecommunications

15. The current EU Framework for Electronic Communications, adopted in 2003, still has to be fully implemented in every Member State. Nevertheless, the basic principles of the framework—open access, technological neutrality, and independent regulators close to the market—are fully supported. The principal problems are related to consistent implementation and inconsistencies between national regulators. These should, in our view, be addressed by strengthening the coordination and research capability of the European Regulators Group.

16. The Framework Directives do not, in our view, require significant changes, with the exception of the Universal Service Directive, where its provisions now look very out of date in relation to the evolution of the market. We broadly support the limited proposals for reform published by the Commission in 2006. In particular, we strongly support proposals to encourage more market based, technology and service neutral spectrum allocation.

17. We consider that the principle of delegating regulation close to the market, under a common framework, must be safeguarded, given the national characteristics of each country's infrastructure or spectrum boundaries. We are not in favour of a pan-European regulator, although we continue to support the rights of the Commission to intervene, if national regulatory behaviour is inconsistent with the single market.

#### Financial Services

18. Despite complaints about the substantial increase in red tape, there is a growing realisation that the FSAP (including MiFID) has contributed to a more real single market in financial services. Conditions are not more burdensome than appear necessary and they have provided opportunities for UK-based Financial Services firms. The Lamfalussy process has provided ample opportunity for national regulators and other stakeholders to participate in the detailed implementing measures.

19. Nevertheless, it is true that certain sectors have been drawn into further regulatory complexities, in particular smaller and fringe operations. On the other hand, the risk-based approach of the Financial Services Authority (FSA), and therefore its concentration on entities of potential major risk, means that the smaller firms will be less obtrusively regulated. This is in line with the EU's risk-based and principle-based approach to regulation.

20. The Lamfalussy scoreboard suggests that the FSAP is not as yet being implemented consistently enough across the EU, with certain countries seen to be dragging their feet. This could be a particular problem with MiFID, with several member states apparently not likely to meet the 1 November deadline.

21. We have consistently prodded the industry to go down the Code of Conduct route for Clearing and Settlement, in order to avoid the need for legislation. We are reassured that they have finally and belatedly chosen to do so, but it remains to be seen if it is as effective as would be hoped. The option for a more interventionist approach is still a possibility.

22. The situation is further complicated and, in a positive sense, pushed forward by the ECB's proposed Clearing and Settlement project (Target2Securities). We are not wholly convinced that the ECB should be entering this arena, but at least it provides a prompt to the industry.

3 July 2007

### Memorandum by Mr Alan Littler

#### 1. OVERVIEW

Gambling is excluded from the scope of application of the Services Directive<sup>12</sup> following amendments made to the European Commission's 2004 proposal<sup>13</sup> by the European Parliament. The European Parliament justified these amendments by reference to consumer protection issues and the disparities between national approaches to regulating gambling. Although the gambling sector was subject to a transitional derogation in the proposed draft, the European Commission envisaged that it would be subject to the country of origin principle following additional harmonisation of national regulations. At present, gambling does not benefit from the country of origin principle at all. In instances where this principle is embodied in secondary legislation gambling is excluded there from. A prime illustration of this is the E-Commerce Directive which aims to create a single market for "information society services".<sup>14</sup>

Nevertheless, gambling remains subject to the freedom to provide services as under Articles 43 and 49 EC Treaty and this relationship has generated six preliminary reference rulings from the European Court of Justice ("ECJ").

In summary, the *Schindler* case<sup>15</sup> recognised that gambling amounts to a service, consequently falling within the scope of the freedom to provide services (Article 49 EC Treaty). However the ECJ noted that lotteries have a "peculiar nature" based upon; the moral, religious and cultural aspects of lotteries; the accompanying high risk of crime and fraud; the damaging individual and social consequences from lotteries being an incitement to spend; and that lotteries contribute to the financing of benevolent or public interest activities. Only the first three can constitute justifications to restrictive measures, ie restrictions to the freedom to provide services.

The scope for Member States ("MS") to restrict gambling services, their so-called margin of discretion, was not diminished by the subsequent case of *Läärä*.<sup>16</sup> The ECJ considered that the assessment of a particular national restriction could only be made by reference to the objective of the restriction in question and not in light of other regulatory regimes upheld in other MS. Following the cases of *Zenatti*<sup>17</sup> and *Anomar*,<sup>18</sup> the most important developments arose in *Gambelli*,<sup>19</sup> *Lindman*<sup>20</sup> and most recently, *Placanica*.<sup>21</sup>

*Gambelli* saw the ECJ require that restrictive measures have to be applied in a manner consistent and systematic with their aim; for example MS can no longer restrict the cross-border supply of gambling on the basis of avoiding the stimulation of demand, while permitting national monopoly operators to advertise extensively. Furthermore, *Gambelli* sees the ECJ recognise the importance of home state control and supervision mechanisms, requiring the destination/host Member State to take these into consideration when deciding whether to restrict supply. However, if a MS uses the monopoly supply model then other operators are *de facto* excluded, regardless of the nature of their home MS control.

*Lindman* points towards the possibility of an evidentiary burden upon the Member State seeking to uphold the restrictive measure since the importance of proving a causal relationship between the concern against which the MS sought to guard against and the actual dangers which their residents face, was noted.

<sup>12</sup> Directive 2006/123/EC of 12 December 2006 on services in the internal market.

<sup>13</sup> European Commission, *Proposal for a Directive on services in the internal market*, 13 January 2004, COM(2004) 2 final.

<sup>14</sup> Art. 1(5)(d) of the Directive 2000/31/EC of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.

<sup>15</sup> Case C-275/92, *Her Majesty's Customs and Excise v. Gerhart Schindler and Jörg Schindler*, [1994] ECR I-1039.

<sup>16</sup> Case C-124/97, *Markku Juhani Läärä, Cotswold Microsystems Ltd and Oy Transatlantic Software Ltd v Kihlakunnansyyttäjä (Jyväskylä) and Suomen valtio (Finnish State)*, [1999] ECR I-6067.

<sup>17</sup> Case C-67/98, *Questore di Verona v Diego Zenatti*, [1999] ECR I-7289.

<sup>18</sup> Case C-6/01, *Associação Nacional de Operadores de Máquinas Recreativas (Anomar) and Others v. Estado português*, [2003] ECR I-8621.

<sup>19</sup> Case C-243/01, *Criminal Proceedings against Piergiorgio Gambelli and Others*, [2003] ECR I-13031.

<sup>20</sup> Case C-42/02, *Diana Elisabeth Lindman v Skatterättelsenämnde*, [2003] ECR I-13519.

<sup>21</sup> Joined Cases C-338/04, C-359/04 and C-360/04. Available online at [www.curia.eu](http://www.curia.eu).

Most recently *Placanica* saw the ECJ reduce the margin of discretion enjoyed by MS, although it does not require the abolition of monopolies or any degree of liberalisation, deregulation or harmonisation of national markets. Firstly, given that the aim of the Italian legislation was to eradicate crime and fraud in the gambling sector, while not seeking to curb demand, the ECJ stated that a policy of controlled expansion (by the incumbent provider(s)) was permissible, even if the cross-border supply of gambling was restricted. This could allow for advertising, an extensive range of games and the use of new distribution methods. However, a simple *numerus clausus* would fail to justify a restrictive measure. Secondly, the exclusion of operators quoted on regulated markets outside of Italy from being able to hold a licence was deemed disproportionate, amounting to an infringement of Articles 43 and 49 EC Treaty. This points towards the recognition of home state control and the removal of double regulatory burdens. Nevertheless MS remain free to establish their own objectives and standards.

## 2. THE CURRENT STATE OF THE SINGLE MARKET

2.1 *Are there significant barriers to firms seeking to offer their goods or services, or to consumers accessing these goods or services, in other Member States of the European Union? If so, what are the most important of those barriers? What measures are needed to overcome those barriers?*

Regarding the supply of gambling services in a cross-border context the vast majority of barriers are encountered by the (potential) suppliers of such services. Far fewer examples of barriers exist which restrict the ability of consumers from accessing gambling services offered by a supplier established in another MS.

The barriers encountered by suppliers are a consequence of the model of supply chosen by particular national governments, or are a consequence of the implementation of that model. Some MS have chosen to supply gambling services, or perhaps a particular form of gambling, by granting a monopoly position to an undertaking. It would be in contradiction to the very nature of a monopoly if suppliers located in other MS were able to access the home market of a particular monopolist. One such example is the Française des Jeux of France. Monopolies however are not *per se* contrary to EC law, if a competitive licensing procedure is in place which allows both national and non-national undertakings to bid on an equal footing, then EC law is most likely to be respected. One such example would be the UK National Lottery.

Tendering procedures are important in MS which award numerous licences to various suppliers. To uphold the Single Market it is of utmost importance that non-national suppliers can compete in such procedures, procedures which do not include requirements which can only be met, or most easily met, by national suppliers. The recent case of *Placanica*<sup>22</sup> provides an illustration; the Italian legislation in question excluded all companies (whose shares were) quoted on regulated markets from tendering for a licence.

As a consequence of MS seeking to maintain national consumer bases for their monopolists, consumers can be prevented from accessing the services of suppliers based in other MS. For example, case-law arising in the Netherlands requires Ladbrokes to refuse bets placed by residents of the Netherlands. This can be regarded as a practical consequence of maintaining a monopoly model of supply, but from the consumers' point of view amounts to an infringement of their right to access services under Community law. Furthermore, other MS may require internet service providers to block their residents from accessing gambling services hosted in other MS.

Although these barriers exist, there are only two ways at present through which they can be overcome. Firstly they can be challenged on an *ad hoc* basis through cases before national courts and via infringement proceedings undertaken by the European Commission. Proceedings at the national level have given rise to preliminary references before the ECJ. The subsequent rulings of the ECJ however are not intended to develop a European gambling policy but merely to apply existing Community law to the particular national circumstances of the cases in question. Consequently the existing requirements of the law are in an embryonic stage and, apart from upholding the freedoms enshrined in the EC Treaty, lack any policy direction. Furthermore, the infringement proceedings can only apply the existing case-law. By virtue of the fact that this is relatively limited, such proceedings have their limitations if perceived as a mechanism for developing a European gambling policy.

A potential second means for overcoming such barriers would be for secondary legislation to be enacted. This would require the 1994 Edinburgh Council Decision<sup>23</sup> to be overcome, but would be of value since it would provide a policy direction and establish a framework for assessing the legality of restrictions. Furthermore, it would furnish an opportunity for determining whether monopolies are to be permitted to remain within this

<sup>22</sup> *Ibid.*

<sup>23</sup> European Council, DOC/92/8, *European Council in Edinburgh—11 and 12 December 1992 Conclusions of the Presidency*, 13 December 1992.

sector, and under what conditions. The legislative process would provide an opportunity for matters to be discussed and decisions taken which do not fall within the remit of the ECJ during preliminary reference proceedings.

*2.2 Do you consider further legislative measures by the Commission to be necessary for the completion of the single market? If so, what measures would you consider appropriate?*

In light of the answer above, legislative measures are necessary to not only complete the single market, but more fundamentally perhaps, be used to decide where the boundaries of the single market lie in relation to this sector. Relying upon the ECJ and European Commission infringement procedures to settle this issue is subject to the limitations inherent in these mechanisms, as alluded to above.

During a conference on this matter, former Advocate-General Alber of the ECJ noted that MS should accept that the EC Treaty has far reaching effects; and that as a consequence, national gambling markets should be open to competition.<sup>24</sup> MS have different views on this, as various approaches to regulating gambling indicate.

Consequently, the legislation of various MS clashes with the ideals behind the single market on a theoretical level, and with each other on a practical level as operators mount challenges, using Community law as a tool, to prise open protected markets.

MS also have numerous concerns regarding consumer protection and the eradication of crime and fraud from gambling, as indicated by the justifications put forward in the ECJ's case-law. Community secondary legislation would provide an opportunity for these to be addressed. For example, responsible gambling mechanisms could have a pan-EU application so that a resident of one MS cannot circumvent national mechanism by playing on a site located in another MS. Furthermore, secondary legislation would provide an opportunity for different forms of gambling to be distinguished and accorded different treatment where deemed appropriate. The means by which gambling is delivered, whether via the internet and other means of distance communication or in an off-line environment frequently entails a considerable difference to the manner in which it is regulated. Again, secondary legislation would provide an opportunity for necessary distinctions and nuances to be made.

In my view, the legislative process would provide a coherent framework for these issues to be debated at an institutional level. The outcome of this process is likely to be far more coherent than the results of various *ad hoc* preliminary references and infringement proceedings, and would hopefully contain an effective supervision and enforcement mechanism.

*2.3 What is your view of the Country of Origin Principle, whereby a company registered to provide services in one Member State is automatically qualified to provide those services in any other Member State on the basis of home country regulation? Does this Principle constitute the best basis for single market measures?*

The use of the Country of Origin Principle would provide an effective mechanism for encouraging the cross-border supply of gambling services. However, numerous issues regarding the quality of supply, the eradication of crime and fraud, as well as consumer protection/responsible player mechanisms would have to be determined at a European level. Inherently, the status of monopolies would have to be decided upon also. Consequently, it is unimaginable that this principle could apply to this sector, without detailed legislation, probably of a harmonising nature, being in place. If Community secondary legislation were to be enacted then the means by which providers established in different MS are recognised in other MS would have to be decided upon, and the merits of the Country of Origin Principle would have to be balanced against other potential forms, such as mutual recognition which has been used in other fields, eg professional qualifications.

*2.4 Should there be a greater role for technology and research in facilitating the single market?*

Research on gambling in the context of the EU is extremely limited. Before decisions are made at the level of the European institutions a thorough understanding needs to be gained of the effects of gambling in a cross-border environment, particularly with reference to whether the dangers associated with gambling are likely to be greater in such an environment. This will either support MS restrictions or point towards greater cross-border activity, but could also be used to develop cross-border mechanisms to respond to such concerns while upholding the Single Market.

29 June 2007

<sup>24</sup> As stated by Professor Siegbert Alber during his presentation "Key Principles to be Remembered", during the conference *The Future of Gambling in the Internal Market: The Demise of State Monopolies?*, Academy of European Law, Trier, Germany, 8–9 February 2007.

### Letter from the National Consumer Council

Further to the Committee's call for evidence as part of the above inquiry I am pleased to respond.

In May the National Consumer Council (NCC) published a pamphlet entitled *Making the European internal market work for consumers*, as part of our series of fresh thinking pamphlets. The full publication can be viewed here: <http://www.ncc.org.uk/europe/internal-market.pdf>

The pamphlet considers three overarching questions:

- Has the internal market so far delivered to the benefit of its consumers?
- What are the reasons for low cross-border consumer activity?
- How can an effective single market for goods and services, which works for consumers, be achieved?

For ease of reference below are our conclusions and recommendations:

1. On its half-centenary the European Union is embarking on a springclean of its biggest achievement, the single market project, and its large body of legislation. It wants the single market to be better suited to the needs of its consumers and citizens—recognising that focusing policy on business has been less than successful in reaching consumers. For the most part, they continue to shop, invest and work at home.
2. The revision of the body of consumer legislation, part of the single market review, seeks to harmonise trading standards across member states in order to boost cross-border retail trade in goods and services—particularly through e-commerce. While the focus on better regulation is welcome, the review fails to address other important barriers that stop consumers taking full advantage of the single market. Some of the most important of these barriers are being created by business and online traders, which result in a digitally divided Europe and a dysfunctional internal market in services.
3. It is therefore welcome that the Commission, in its February 2007 Communication to the Council, acknowledges the need for a shift in focus towards consumers and citizens, in order to achieve a better balance between their benefit and the economic interests of business.
4. One good way to achieve this goal is to adopt and implement the upcoming EU Parliament Resolution on Consumer Confidence in the Digital Environment, as well as the Bill of Rights proposed by our European umbrella organisation (BEUC). Another is to ensure that existing consumer-focused policy tools are effectively used:
  - DG Competition needs to be more of a detective than policeman in applying competition rules and in market investigations of traders who apply different conditions and prices in different EU countries. It must pay more attention to the interests of consumers when making decisions, and make it easier for consumer groups to play an active part in investigations.
  - The review of the *consumer acquis* can and should provide some of the solutions, such as more streamlining and harmonising of basic trading standards across Europe—and, in particular, strengthening consumer rights in the digital environment by extending the scope of the sales and guarantees Directives to include digitally downloaded goods (music, software).
  - Consumer participation in crossborder markets is unlikely to thrive unless rights can be guaranteed and easily enforced. Proposals in the Commission's 2007–13 strategy that related to enhancement of consumer action, such as some form of class action, should become reality.
  - There needs to be an EU-funded program investigating market segmentation practices (visible and invisible) by traders online: currently there are many examples, but only systematic empirical research can capture and assess the scale of the problem, the forms it takes and the likely impact on competition and trade within the single market.
  - Practical collaboration between relevant business providers, consumer groups and the Commission could create solutions to the issue of consumer access to cross-border comparative information (through search intermediaries, such as search engines, price comparison sites and rating or review sites).
5. Looking ahead to a consumer focused spring-clean of the single market, the overarching goal is to get the digital space right. First, a much more pro-active competition policy will be needed with a focus on services. Services—from internet banking to finding the best providers for green energy or pan-European ISPs—are essential to the future of cross-border digital trading.
6. We strongly agree with those commentators who stress the need to deal with sectors individually and to prioritise key markets (for example, network industries and financial services).

7. The key task here is to establish which barriers to trade in services are inhibiting the market unacceptably, and which are necessary to reflect consumer and public concerns. "One size fits all" does not work across services sectors. Second, more consideration should be given to intermediaries in promoting the single market. In the goods market the Commission could support eBay-style, pan-European gateways that could bypass the search engine problems while ensuring comprehensive comparative information, payment and redress systems: a type of European virtual shopping city, achieved in collaboration with all relevant stakeholders.

8. Intermediary networks can bring huge benefits to the services areas as well, which would mean opening up wholesale markets (including in financial services), while making final delivery to consumers subject to local rules and redress systems. For example, a UK consumer could get mortgage credit from a provider in France through a UK financial adviser.

9. Last but not least, proper integration of consumer, competition, trade and environment policies must be addressed. Encouraging large movements of goods across Europe through promotion of cross-border e-commerce does not sit well with policies on climate change and sustainable consumption, so a proper balance between free movement of goods and environmental protection will need to be found.

10. With all this in place, development of a large cross-border "virtual trade" in digital goods, services and entertainment could well be the way forward—and by promoting familiarity with Europe's cultural diversity could also help to ensure its own success.

27 June 2007

### Memorandum by the Office of Fair Trading

#### QUESTIONS ON FINANCIAL SERVICES

1. The Office of Fair Trading (OFT) has not been involved in the consideration of integration of financial services in the wider European context and its consequences apart from participation in organisations such as the European Competition Authorities (ECA) and the European Competition Network (ECN). Acquisition of information by OFT in relation to EU-wide integration is usually at best only partial. The FSA does, however, contribute to policy development and enhanced supervisory co-operation in the EU and international context so as to identify, monitor, prioritise and mitigate risk, including improving the oversight of firms operating on a cross-border basis. There is a well developed European system of regulation for financial services, based on the Lamfalussy Committees, in which the FSA plays an active role, and which operates on a different basis from the ECN. OFT and the FSA have largely separate remits, and coordinate where there is potential for overlap of interests or responsibilities.<sup>25</sup> OFT is aware that the FSA has responded to questions from the Select Committee on such issues and OFT has no further points to make on them.

2. However, from its work in and with the ECA and ECN, the OFT can respond to the following questions from the Select Committee.

*Question 4. To what extent have UK customers benefited due to the integration of the EU financial services sector? Which types of customer have benefited most?*

3. This will become more apparent as full integration of the EU financial services sector takes full effect; this has not yet, of course, happened, although the market for financial services has become more cross-border as companies involved in the market have developed their activities across Europe.

4. Integration of the financial services sector in the context of the draft Payment Services Directive (PSD) relating to the operation of the single market in payment services will, the EC anticipates, facilitate "a modern and coherent legal framework for payment services, . . . should ensure the coordination of national provisions on prudential requirements, the access of new payment service providers to the market, information requirements, and the respective rights and obligations of payment services users". In essence, the Directive will ensure that cross-border payments are as easy and cheap for users (business as well as private customers) as those made within a Member State; the main beneficiaries of the improved service will thus be users of payment systems throughout the EU. This should result increasing competition for UK consumers (and, of course, other national consumers within their own countries) leading to lower prices, increased quality and greater innovation within the market.

<sup>25</sup> Further information on the roles and responsibilities of the OFT and FSA can be found here [http://www.offt.gov.uk/shared\\_offt/about\\_offt/oft941.pdf](http://www.offt.gov.uk/shared_offt/about_offt/oft941.pdf)

Question 5. *To what extent is the objective of increasing competition in the EU financial services sector better served by competition policy initiatives as opposed to EU regulatory developments?*

5. OFT's remit is to help produce successful market outcomes—that requires that Government does not unduly restrict competition, that firms compete vigorously and behave honestly towards their customers, and that informed consumers actively drive competitive business behaviour.

6. Regulation and legislation can set minimum standards, but governments can not legislate to provide the best market outcomes in terms of efficiency and consumer welfare. Effective market competition and active informed consumers drive firms to meet consumer needs, and competition authorities (whether NCAs or at EU level) should seek to facilitate and incentivise behaviour that makes markets work well. Regulation should, wherever possible, seek to *enhance* existing levels of competition rather than *substituting* for it, but even when it achieves that aim, it should not result in ossifying competition through the creation of inertia in the market. Increasingly competitive behaviour together with enhancing regulation should, in turn, secure compliance with the minimum standards set out in law, and facilitate the market process which achieve even better outcomes—competitive, efficient, innovative markets, high standards of consumer care, consumer choice, empowered and confident consumers, high compliance but not disproportionate burdens from regulations or harm from market abuse.

7. Competition usually serves to create a level playing field and low barriers to entry and works best when they exist. With specific regard to cross border EU financial services, different regulatory requirements operate in different countries. As a result companies can find it difficult to achieve economies of scale across borders and there are barriers to entry from having to learn about and overcome the specifics of each market that favour domestic companies. In this context, regulatory developments will have a greater role to play in helping competitive forces create the level playing fields that will allow competition to flourish if they focus on reducing variation and lowering barriers to entry.

8. The PSD and subsequent developments under the Single Euro Payments Area (SEPA) will bring some degree of harmonisation in specific areas.

Question 6. *In light of the increasing focus on competition policy, is there sufficient coordination between regulators and competition authorities, and between national competition authorities?*

#### European Competition Network

9. The OFT considers that there is excellent communication and co-ordination within the European Competition Network (ECN). The ECN comprises the European Commission and EU National Competition Authorities (in the UK, these are the OFT and the sectoral regulators with concurrent competition powers: the CAA, OFCOM, OFGEM, ORR, and OFWAT). The ECN was created in parallel with the implementation of EU Regulation 1/2003, the EU Competition Law Modernisation Regulation, which entered into force on 1 May 2004.

10. In terms of communication and co-ordination, at the formal level, there is the ECN Interactive database of cases. This allows National Competition Authorities to be aware of formal investigations under Articles 81 and 82 EC Treaty that are being conducted by their counterparts within the ECN. Any member can contact another member to discuss a listed case in more detail. This can even be with a view of case allocation or enforcement co-ordination, both of which are envisaged in the European Commission Notice on Co-operation within the Network of Competition Authorities. The European Commission also hosts plenary meetings of the ECN in Brussels. National Competition Authorities take an active part in these meetings and often make presentations or give frank expression to their concerns and which can allow, where appropriate, for co-ordinated policy development. The European Commission will also alert ECN members to its own proposed initiatives at such meetings. In addition to these meetings, there are sectoral sub-group meetings in Brussels, in which competition issues relating to specific industries are discussed and know-how is shared. There are also working group meetings, which undertake certain projects, such as those addressing co-operation between members. Working groups are chaired by representatives of National Competition Authorities and include representatives of both the European Commission and a wide range of National Competition Authorities. For example, the OFT co-chaired the Working Group on Leniency Issues, which was responsible for the development of the highly influential model leniency programme. This has led to co-ordination of cartel enforcement leniency programmes within the EU.

11. The UK also has a designated contact within the European Commission, with whom we have frequent, sometimes daily, contact. In these contacts, we discuss anything from high-level policy and strategy issues to very focused practical queries. Case handlers within the OFT also have specific discussions on issues of mutual interest (for example, approaches to certain cases) with their counterparts in the European Commission. OFT officials also attend European Commission Advisory Committee meetings on specific cases (both anti-trust and mergers) and which relate to Commission policy initiatives (for example, new Commission notices). We share our views with the European Commission in such venues and they appreciate our feedback.

12. In our experience, prior to the ECN, although there were contacts between National Competition Authorities, they are now far more frequent, streamlined and more effective. Owing in no small measure to the Network meetings in Brussels referred to above, members of National Competition Authorities tend to know each other and certainly enjoy good working relations. This has encouraged more frequent informal contacts between such authorities, which in turn assists in the dissemination of information and best-practice knowledge among the authorities. If the OFT needs to speak to a person in another competition authority on specific issue, it is now simply a matter of getting on to the phone to the contact at the other authority, who can then point us in the right direction. As a practical matter, it was simply not this efficient, or as effective, prior to the establishment of the ECN.

13. High level formal contacts have continued through the ECN and the annual meeting of directors general of competition hosted by the Commission. The BERR (as successor to the DTI) and the OFT, are represented at the latter. NCAs also take it in turn to host an annual meeting of the heads of competition authorities of the EU and EFTA Member States, a meeting to which the Commission is invited. This informal association known as the ECA (European Competition Authorities) has generated a number of working groups which address topical issues. Current work is focused on fining practices across the EU and the prioritisation of NCA activities.

14. In addition, participation by the Commission and a number of its Member States, including the UK, in wider international competition fora, provides the opportunity to discuss relevant topics with a broader group of peers. EU discussions are informed by discussions in International fora such as the OECD's Competition Committee, where the Commission and Member States' National Competition Authorities and Ministries benefit from the views and experiences of leading non-EU competition authorities.

#### European Competition Authorities

15. The OFT, with the Swedish, Dutch and Irish competition authorities, took part in a study set up by the ECN in 2005–06 into Competition Issues in Retail Banking and Payments Systems Markets in the EU. The Report, published in May 2006, looked particularly at the issues as perceived by the National Competition Authorities. The report was based on qualitative research and on the opinions and experiences of National Competition Authorities. It considered issues especially relating to customer mobility in relation to retail banking, and access and governance arrangements of payment systems schemes. The Report addressed a number of recommendations to National Competition Authorities about switching costs for consumers, creating more open and transparent payment systems markets, and perceived competition issues with the access and governance arrangements of the Single Euro Payments Area. The latter issue is currently the subject of further work being carried out by the European Commission and the ECA, in which the OFT is taking a major part.

#### UK regulators

16. In the UK, we have good lines of communication and co-ordination between both concurrent regulators (listed above) and non-concurrent regulators (those without competition law powers). With respect to concurrency, OFT chairs the Concurrency Working Party (CWP), which meets bi-monthly to discuss key policy issues. Senior staff members from OFT also meet their counterparts from the UK economic regulators at meetings of the Joint Regulators Group (JRG). As a means of enhancing co-ordination between the CWP and the JRG, the OFT will be reporting to JRG in September on the application of competition law by CWP members.

17. On the non-concurrent side, OFT has good working relations with economic regulators such as Postcomm and, in particular, the FSA. The OFT and the FSA have different, but complementary, powers and statutory objectives. Given the overlapping of interests and jointly regulated businesses, it is important both organisations work well together in order to maximise effectiveness in dealing with consumers and businesses.

18. The OFT has been working closely with the FSA, and will continue doing so, on specific issues such as payment protection insurance and across a broader range of mutual interests. A joint action plan<sup>26</sup>, published in April 2006, sets out in detail how we intend to:

- reduce the administrative burdens on jointly authorised firms by streamlining processes where possible;
- join up work to promote consistency in approach, resulting in more efficient investigations and improved outcomes for markets. This will help improve regulatory certainty for business;
- ensure better communication and advice for business and consumers by joining forces to target messages, including relevant signposting on websites and at contact centres; and
- ensure consumer education initiatives are coordinated and complementary.

19. Further updates, summarising progress of each of the work streams, were published in November 2006 and July 2007.<sup>27</sup>

20. Both the OFT and the FSA have powers in relation to unfair contract terms under The Unfair Terms in Consumer Contracts Regulations 1999 (the UTCCRs), and co-ordinate enforcement action and co-operation to ensure the effective and consistent delivery of consumer protection in this area. A revised framework for this co-ordination is set out in a new concordat which came into effect on 31 July 2006.

21. Under the concordat the OFT and the FSA consult and liaise to reduce duplication of effort and to promote appropriate action by the body better placed to lead on an issue.

22. The concordat provides that the FSA will consider the fairness under the UTCCRs of standard terms in financial services contracts issued by authorised firms or their appointed representatives for regulated activities. This will include contracts for, and the selling of, mortgages; insurance and the selling of insurance; bank, building society and credit union savings accounts; pensions; investments; and long term savings.

*Question 7. To what extent is the integration of the EU financial services sector better achieved by market-led initiatives as opposed regulatory developments (eg Code of Conduct for Clearing and Settlement instead of the proposed framework clearing and settlement directive)?*

23. Similar considerations to those in the answer to Q.5 above will apply.

20 July 2007

#### **Memorandum by Santander**

Santander is the world's 12th largest financial group by market value, with 69 million customers and over 10,800 branches. It operates in 12 European countries. It is a leading retail bank in Spain, Portugal and, following the acquisition of Abbey in 2004, the UK. Santander also has an extensive consumer credit franchise across Europe.

1. *What has been achieved so far and what are the remaining significant barriers to achieving the Single Market?*

Within financial services, the measures to facilitate a single market have largely targeted the wholesale sector. Steps to integrate retail markets are underway, for example, via the Commission's Green Paper on Financial Services. Integration of retail markets is inevitably more complex due to differences in language, culture and consumer behaviour as well as differences in local markets, access to information and legal and tax systems. The key to achieving integration will be facilitating cross-border mergers and acquisitions by financial services providers, rather than cross-border purchasing by consumers. Our response, therefore, focuses primarily on barriers to this activity.

2. *What have been the benefits of the integration of the EU financial services sector to your business? Which segments of your business have benefited most, and which have remained unaffected? How have consumers benefited?*

No response

<sup>26</sup> A copy can be found here [http://www.ofc.gov.uk/shared\\_ofc/about\\_ofc/ofc838.pdf](http://www.ofc.gov.uk/shared_ofc/about_ofc/ofc838.pdf)

<sup>27</sup> Copies can be found here [http://www.ofc.gov.uk/shared\\_ofc/about\\_ofc/ofc940.pdf](http://www.ofc.gov.uk/shared_ofc/about_ofc/ofc940.pdf)

3. *What has been the impact of the Financial Services Action Plan (FSAP) on the financial services sector? Has the regulatory burden under the FSAP increased more in some areas than others?*

No response

4. *What do you consider to be the remaining gaps in the FSAP?*

We believe that the focus of the FSAP should be on the features of regulation that would improve the way markets work across the EU and would facilitate improvements in the efficiency of financial products. This is a much more effective way to consistently deliver favourable outcomes for customers than focusing on harmonisation of consumer protection measures. For example, if the Consumer Credit Directive (CCD) tackled key elements such as taxation, recovery process and protection of collateral harmonisation the resulting efficiencies in products would lead to decreased prices and increased quality of service. Unless these gaps are tackled, we cannot identify any element within the CCD that will increase cross-border activity in this field.

5. *In light of the increasing focus on the competition policy, do you think there is sufficient coordination between regulators and competition authorities?*

6. *Is there a need for greater cooperation between National Regulatory Authorities of different Member States?*

7. *Do you consider that the integration of EU financial services sector is better achieved by market-led initiatives as opposed to regulatory developments (eg the Code of Conduct on Clearing and Settlement instead of a directive)?*

Response to 5, 6 & 7:

Greater cooperation and more consistent practice between National Regulatory Authorities is desirable and would make operating in new markets more straightforward. Different supervisory regimes result in multiple requests for different information or for the same information but on a different basis and with different definitions. This has significant time, resource and cost implications. Greater consolidation in supervision would alleviate these pressures.

We would echo some comments made in a recent speech by Charlie McCreevy, European Commissioner for Internal Market and Services, and are keen to see the Commission taking action to pursue this objective:

- “We need regulatory and supervisory structures in all sectors that allow our firms and markets to deliver world-class performance. The quality of these structures, the way we work and co-operate, and the outcomes of our regulatory processes are of critical importance for the long run competitiveness of our financial sector.”
- “Level 3 Committees must demonstrate progress on convergence quickly and convincingly. Progress in this area is urgently needed and I am convinced it will bring about a more efficient and better supervised financial system.”
- “The cost of the present supervisory arrangements for pan-EU institutions is one major problem which we should try and address urgently, without however taking the slightest risk to with respect to financial stability.”

More important than the nature of supervision of retail financial services once operating in a market, however, is the ability to enter that market in the first instance. We believe that closer integration of the retail financial services sector will be driven largely by cross-border mergers and acquisitions and not by the sale or purchase of goods across borders. We believe the market will drive this process and that regulatory initiatives should be kept to a minimum. Santander's purchase of Abbey is a good example of commercial drivers facilitating integration.

Santander found the process of entering the UK market largely a positive experience. There were some regulatory difficulties: the double taxation of dividends and the problems Abbey shareholders experienced in receiving Santander shares due to the lack of co-ordination in stock registry and settlement issues. However, there were no major obstacles to market entry.

Not all markets are open to the same extent. We believe that one way in which the Commission could help to facilitate integration would be by encouraging National Regulatory Authorities to create a more level playing field in terms of access to markets.

One of the major obstacles facing a financial services company attempting to enter a new market is prudential assessment from the host regulator. In March the Commission approved the Directive on Prudential Assessment of M&A in the Financial Sector. This reduces the discretionary veto powers of local supervisors by establishing a clear and transparent process of valuation for the authorities supervising cross-border mergers and acquisitions. We strongly support the Commission's initiative in its objective of providing clear and consistent rules so that the market can operate efficiently. We would, however, stress the need for these processes to be agile. Consolidating the information processes of central banks involved in cross-border operations would be one way to facilitate this.

8. *Do you consider further legislative measures by the Commission to be necessary for the completion of the Single Market? What would you consider appropriate?*

Where change is required to enable the market to more effectively drive integration (such as the example above) both self-regulatory and legislative measures should be considered.

9. *To what extent do you consider that EU Member States are fulfilling their responsibilities in setting the framework for the integration of the EU financial services sector (eg timely adoption of the Payment Services Directive or transposing directives into domestic laws)?*

10. *Are the current remedies available to the Commission to enforce Single Market legislation adequate, and are they used effectively?*

Response to 9 & 10:

Implementation of EU legislation is not always undertaken in a timely manner by all member states and Commission remedies are not always sufficient for enforcement. This is evidenced by MIFID which has been transposed into national law in very few countries. Indeed only the UK had implemented the legislation by the deadline of 31 January 2007.

The delay in approval of the Payment Services Directive prevents the direct debit element coming into effect before the end of 2009. We would like to see the application deadline aligned with those for SEPA in order to achieve optimal implementation.

Greater vigilance is required in ensuring deadlines are achievable and are met.

12 July 2007

### **Memorandum by Shell**

#### **INTRODUCTION**

Shell plays a role in bringing gas into the European market and distributing gas across the EU. Europe represents a core operating area for Shell and we are here for the long-term in both the upstream and downstream operations.

Shell Energy Europe operates a pan-European gas business with activities and staff spread across 17 countries, 13 of which are members of the EU.

The comments that are offered in this submission relate mainly to our activities in the European gas market.

As the European Union shifts towards greater dependence on external energy sources, the need to respond to the climate change issue and an increasingly challenging environment in terms of exploration and production, Shell hopes that the outcome of the various initiatives will result in the promotion of those factors that are critical to underpinning the future of the sector, namely:

- free and competitive markets;
- security of supply;
- a regulatory environment that is clear, stable, predictable and applied equally throughout the European Union;
- a regulatory environment (including the competition rules as applied to the sector) that encourages continued investment and allows companies the necessary flexibility to manage risk; and
- the protection of the environment.

Shell agrees with the Commission's observation that sustainable, competitive and secure energy will only be achieved with open and competitive energy markets. We believe that such markets, operating on a level playing field within a transparent and stable fiscal and regulatory framework, will best meet this challenge. Furthermore, we believe that open markets will attract and retain the necessary long-term capital investment required to meet future energy needs.

The EU has an important role to play in securing sustainable energy supplies and the efficiency of European markets, by supporting enterprise initiatives and ensuring the coordination of efforts across national governments, including towards non-EU partners and other stakeholders. A European energy policy can also contribute to both national and global efforts to enhance; energy efficiency, energy diversification, ensuring the best use of indigenous resources and the reduction of carbon emissions.

Shell supports the establishment of an internal European gas market. In our view it is important that the provisions of the European Gas Directive are implemented fully and equally in all European Member States.

#### GENERAL QUESTIONS

*Do you consider further legislative measures by the Commission to be necessary for the completion of the single market? If so, what measures would you consider appropriate?*

We very much support a level playing field in the European gas market. To that end Shell has previously stated its support for the full and equal implementation of the Gas Directive before considering the possible need for further legislation. It is only when legislation has been fully implemented that the need for additional measures can be appropriately identified.

Therefore, as part of the introduction of new legislation, clarity regarding the steps and available instruments to ensuring full and unequivocal implementation (of the legislation) would greatly aid market certainty and expectations. This could then be expected to have a positive impact on the creation of a single market.

We would like to stress the importance of a regulatory environment that is clear, stable and predictable as we see this as a fundamental requirement for the substantial long term investments, eg in transportation, LNG facilities and storage, that will be needed to materialise.

The EU Commission Interim report on the internal market emphasises the importance of a consistent and effective set of rules and the necessity for simplification<sup>28</sup>. We fully support this statement. The continued debate around some aspects of the market, eg the validity of long term contracts is unhelpful. Also, there exists a tendency towards overregulating and to be overly descriptive where we believe commercial and market based solutions are more appropriate.

In taking the development of the European regulatory framework forward we would like to re-emphasise our support for the EU Commission's initiative to continue the long-standing process that builds on the Madrid and Florence Fora. It is in our view important to include all stakeholders in this process.

*Are the current provisions for monitoring market functioning and performance effective? What evidence is there that Member States are honouring their obligations equally?*

This is of course for Member States and their Governments to say. From our perspective the European Gas and Electricity Directives provide a good basis and we support the full and equal implementation across Europe.

It should be realised that the provision of information carries cost and liability elements. We support transparency where it serves a purpose. Information provision should reflect the practical needs. Information provided either publicly, to authorities or individually to contract parties has to protect competitively sensitive information.

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<sup>28</sup> A Single Market For Citizens—Interim report to the 2007 Spring European Council. COM(2007)60, 21.2.2007

*Is there a need for greater cooperation between National Regulatory Authorities?*

We support an enhanced European coordination of regulation of energy markets as this would in our view support a level playing field. Care must be taken, however, to achieve fit for purpose regulation that simplifies the rules and reduces the over-complication currently experienced in some Member States.

With respect to the Regional Initiatives of the European Regulators' group (ERGEG) that are currently under way we would like to repeat our comment that such a concept could exacerbate market segmentation. Given that the lack of integration between national markets is seen as the most persistent shortcoming we have doubts about this approach.

*Are the current remedies available to the Commission to enforce single market legislation adequate; and are they used effectively?*

Again, this is for Member States and their Governments to say. We believe that the Gas and Electricity Directives in combination with the provisions of national and European competition law provide for adequate enforcement.

*Do the concepts of the "national champion" and "economic nationalism" pose a threat to the single market?*

As stated, we support the full and equal implementation of the Gas Directive across Europe. This means that national champions and economic nationalism must not be allowed to distort the market. A level playing field must be maintained including non-discriminatory behaviour and equal treatment on unbundling.

*Should there be a greater role for technology and research in facilitating the single market?*

We believe that technology and research have a major role to play. Our comments in this section refer to the energy area.

Technology is capable of delivering solutions in all the areas covered by the European Green Paper on Energy and for the benefit of society-at-large. Technology has proven critical in increasing security of oil supply by providing access to unprecedented volumes of energy resources out of previously inaccessible regions or locations. Europe is one of Shell's core areas for research, innovations and solution development.

Technology remains the most reliable and promising tool to address global environmental concerns without affecting the standard of living of society at large. Research and technology can play an important role in increasing energy efficiency; given that today we waste half of the energy we generate, this is an area of high importance.

Shell supports the development of a "strategic energy technology plan" delivering coordination of research efforts at EU level. European-wide plans should get wider support. Industry is ready to actively contribute to its development.

Industry is already committed to some "energy technology platforms". These could benefit from enhanced project management. Creating international connections on science and technology is going to be crucially important. Preferentially forming partnerships internationally could be of benefit to EU and industry alike.

Shell is a partner in the Energy Technology Institute announced by the Government earlier this year. This seeks to commercialise cleaner energy technologies. Shell also has important technology centres in Aberdeen, supporting our upstream business globally, and Thornton in Cheshire that specializes in fuels development.

## SECTOR SPECIFIC

*Has there been sufficient unbundling of gas and electricity markets in all Member States?*

Shell supports the concept of transparent, free and non-discriminatory access to networks as outlined in the Gas Directive.

Our own experience supports the statement made by the EU Commission concluding that progress in this respect has been made in Europe. We believe it is at this point in time more important to ensure a full implementation of the existing Gas Directive than embarking on new legislative measures.

Before any decisions on enhanced unbundling proposals are being taken, we believe it is important that available options and their implications are being fully considered.

*Is there agreement on the fundamental importance of a genuine single market to support a Common European strategy for energy?*

Shell supports the establishment of an attractive and competitive internal European gas market which is also necessary to secure global supplies. In our view it is important that the provisions of the European Gas Directive are implemented fully and equally in all European Member States.

Europe as a whole will be faced with increased dependence from imports of energy supplies. In our view this is not a problem in itself. Most countries, including those that produce oil and gas require energy imports. External energy policy should aim to deepen relations so as to stimulate producer countries to develop their oil and gas resources in the face of increasing EU and global demand and with the help of international oil companies.

Diversity of supply, access to adequate infrastructure and long-term contracts are an important basis for security of supply as is a stable and predictable regulatory environment.

European resources are also essential for the future EU energy balance. For the investments to come forward and exploit the remaining potential, a competitive regulatory regime is required both at EU and national level, including access to resources, a stable fiscal regime and cost-effective requirements for operations.

In creating and improving the internal energy market it is important to recognise the characteristics of this market. Primary emphasis in recent communications from Regulators and the Commission on the general structure of the European gas market has been on short-term markets, hub trading, liquidity and spot prices. While we acknowledge that there is a role for short-term business in the gas market, we also see that the gas business in Europe is fundamentally long-term orientated and requires longer term economic signals than exist in the traded market at this time.

Long-term contracts are essentially a risk management tool. They exist to limit the risk for an investor but also to give security of supply and thus mitigate the risk of disruption to energy supplies. In many cases long-term contracts are a precondition for major investments.

*What are the implications for the single market of the Commission's commitments on climate change?*

The challenge is significant and the milestones that the EU would need to meet by 2025 can be summarised as follows:

- One quarter of all coal fired power generation capacity will use carbon capture and storage, which means rapid commercialisation of this technology.
- Natural gas use will grow by some 35% from 2002, mainly from power generation, bringing with it an increase in import dependency for several countries.
- Nuclear power growth will restart, which means early clarification of public acceptance issues.
- Renewable energy will grow substantially, with wind power alone being some 10–15 times the 2002 level. This means a consistent approach across the EU to renewables development.
- Average on the road vehicle efficiency will improve by nearly 50% and a zero emissions alternative (eg advanced biomass fuels or hydrogen from carbon free sources) will have a strong foothold in the sector (at least 10% on the road).

Source: Pathways to 2050: energy and climate change (WBCSD)

*Should there be a single EU energy regulator?*

We support an enhanced European coordination of regulation of energy markets as this would in our view support a level playing field. Care must be taken, however, to achieve fit for purpose regulation that simplifies the rules and reduces the over-complication currently experienced in some Member States.

Whether enhanced coordination of regulation necessitates a single regulator is for the Member States and the EU Parliament to decide. If it did happen, it would be important to ensure that the regulator's powers, remit and aim were clearly identified and delineated to avoid duplication and ambiguity. In any event, it remains Shell's view that before considering the need for a single European regulator, the more critical issue remains ensuring the full and equal implementation of the Gas and Electricity Directives across Europe.

17 July 2007

## Memorandum by T-Mobile

### A. THE CURRENT STATE OF THE SINGLE MARKET

#### 1. *What has the impact of the recent enlargements of the European Union been on the single market?*

The EU enlargement is clearly beneficial for the European Economy as a whole, as it further supports economic and financial integration and increases competition, productivity and economic growth. Both the new and old Member States benefit from the enlargement, creating a win-win situation.

Deutsche Telekom invests massively in state of the art mobile and fixed telecommunication networks in the new Member States. Today, Deutsche Telekom operates in the Czech Republic, Poland, Slovakia, Hungary and Bulgaria and also in Croatia, Montenegro and Macedonia. The enlargement of the European Union clearly helps us fulfil our commitment to offer state of the art telecommunications networks in these countries.

#### 2. *Is there a need for greater cooperation between National Regulatory Authorities?*

In the telecommunications sector, National Regulatory Authorities (NRAs) cooperate and interchange information through the European Regulators Group for electronic communications networks and services (ERG), established by the European Commission. Contrary to the deregulation requirements of the EU telecommunications legal framework the guidelines issued by the ERG have increased the scope of intervention. Although the ERG does not issue formally binding documents, such institutions always bear a certain risk of creating "soft law" sidestepping democratic checks and controls and therefore need to be questioned.

Concerning the cooperation between the EU Commission and NRAs, the current pragmatic model of co-operation should be retained.

#### 3. *Are the current remedies available to the Commission to enforce single market legislation adequate; and are they used effectively?*

In the telecommunications sector, the EU Commission criticizes that not in every Member State similar sets of remedies have been applied in the past and this would have negative effects on the consistent regulation across the EU. Further centralization is demanded. However, harmonization does not mean applying the same remedies in all Member States, but to apply the same principles. NRAs must take into account different situations in various countries such as the momentum of liberalization and different market and cost situations. As a consequence, different remedies have to be applied according to the particular market situation.

The EU Regulatory Framework gives the European Commission powers to oversee the national regulatory measures (the so-called Article 7 procedure). NRAs are required to conduct a national and a Community consultation on the intended regulatory measures prior to adoption. This procedure has led to a significant increase in bureaucracy without significantly promoting deregulation. To achieve the goal of deregulation, the incentive structures should be shifted to allow the Commission and NRAs more opportunity to define themselves not solely in terms of more but of less regulation. Although a certain amount of Europe-wide standard basic competition policy principles is required, Europe also needs to develop competition around the "right" regulatory approach within the principles of general competition law. Additional centralised competences will not only add an extra layer of bureaucracy, but would also not be adequate to take into account the differences of the 27 national telecommunications markets and the principle of subsidiarity.

#### 4. *What is your view of the Country of Origin Principle, whereby a company registered to provide services in one Member State is automatically qualified to provide those services in any other Member State on the basis of home country regulation? Does this Principle constitute the best basis for single market measures? How is cross-border activity by small businesses helped or hindered by the Country of Origin Principle?*

In the context of the current Review of the EU telecommunications framework, the Commission proposed a common approach to the authorisation of services with pan-European or internal market dimension (See COM(2006) 334, p.9). The authorisation system would be complementary to the current system and would be applied only in specific cases. We see some merits in this proposal of the Commission. This could be a contribution to removing red tape provided that no further bureaucracy is established. In particular in the area of online services the country of origin principle is of great importance.

5. *Do the concepts of the “national champion” and “economic nationalism” pose a threat to the single market?*

Deutsche Telekom offers modern telecommunications services in numerous countries in Europe and around the globe. We are convinced that in a globalised economy any “national” approach will not be promising.

Nevertheless, we do observe with great concern that Europe is falling behind other leading economic regions, such as Asia or the US, precisely in the area of electronic communication networks and services, which drives productivity and innovation in modern economies. Europe’s ICT sector is weakening in important market indicators, such as size of the economy, market revenue growth, R&D, investments and labour productivity. Instead of creating incentives for additional growth by reducing state intervention, urgently required investment is being discouraged by unnecessary bureaucracy in the sector. Only deregulation is the option to foster innovation, investment and growth in the telecommunications sector and to achieve the goals of Lisbon. Recent economic studies point a clear link between a light touch regulatory approach and increased investments into the sector. Increased investment in telecommunications networks will ultimately lead to more economic growth. The USA can serve as a good example for the positive effects associated with the reduction of sector specific regulation. European telecommunications operators must be able to compete on a “level playing field” with operators from eg the USA and Asia. Only if the regulatory conditions allow for it, “European champions” who can compete with large operators worldwide will evolve.

6. *Should there be a greater role for technology and research in facilitating the single market?*

Technology and research are certainly key drivers for economic growth. Especially telecommunications infrastructure plays an important role connecting businesses and consumers throughout Europe and the world. It is therefore vital for the single market to enable the technology sectors, especially ICT, to contribute to economic growth and welfare. To enable the private sector to massively invest into Research and Development (R&D), these investments must also pay off. The regulatory framework for new markets must allow R&D activities to result in concrete products. This can only be achieved by a light-handed regulatory approach.

## B. SECTOR-SPECIFIC QUESTIONS—TELECOMMUNICATIONS

7. *Is the EU telecommunications market genuinely cross-border at present?*

For historical reasons, telecommunications markets in the EU are, to a large extent, national markets. This does, however, not impose any threat to the single market or imply any necessity for intervention. Competition policy should focus on creating the necessary conditions conducive to economic activity. In relation to the single European market, the aim is essentially to facilitate Europe-wide market entry. This condition exists today. To this extent the Common Market for telecommunications services is already a reality. If economic factors support the idea of additional integration of the European telecommunications market, the market will follow. In this respect, particular note needs to be taken of the emerging consolidation in the European telecommunications landscape. Cross border mergers and market entry into third countries should be market driven and should not be hampered by unnecessary regulatory obligations.

8. *Is the current EU regulatory framework for telecommunications sufficiently technology neutral?*

The legal framework tries to marry the principle of technological neutrality with the technical development and the associated technical and service-related convergence. This approach is unsuitable, as it does not adequately reflect actual market dynamics which provide a wider choice of networks and services thus leading to more network and service competition. In effect, virtually none of the NRAs have embraced the principle of technology neutrality to reduce the amount of regulation but have used the principle to extend regulation whereby new technologies and products have been included in markets that have already been regulated. The technology-neutral approach entails the inherent risk that services provided on the basis of infrastructures, which, according to non-compliance with the three-criteria-test, should actually not be subject to sector-specific regulation yet are included in markets that have already been regulated and, in turn, are then also subject to regulation. Examples include services that are provided on the basis of new infrastructure set up in a competitive environment and yet are included within the existing regulation based on the legacy network by virtue of the technology neutral approach. Such arguments apply also to all issues relating to fixed/mobile substitution so that the risk exists that services provided essentially on a competitive basis in the mobile communications sector could end up under conventional fixed network regulation. Instead of expanding sector specific price and access regulation to the “new” infrastructure, economic regulation of the “old” infrastructure should be significantly reduced, since market dynamics are increasing.

9. *Does this regulatory framework require modernisation?*

Yes indeed. Sector specific price and access regulation in the telecommunications sector was from the beginning designed to last only for a transitory period. This transitory period was meant to end as competition evolves and supervision of the sector left to competition law as in any other sector. This is the clear message that can be found in manifold EU-documents and statements (eg the 1999 Communications Review) and is recognised by the Commission. But any concrete steps towards an end of sector specific price and access regulation are postponed to the next review process.

Looking at the state of competition today, vital competition is already determining the telecommunications sector in Europe with lower prices, better products and more choice for the consumer. Competition will—until the current review becomes effective with national implementation—further increase with powerful players from the content and software industries entering the converging telecoms market which are not subject to comparable regulatory regimes.

In this competitive environment, it appears to be appropriate to significantly reduce sector specific price and access regulation to the minimum required and to largely rely on the oversight of competition authorities under general competition law. Ironically and to the contrary, regulation is getting more and more comprehensive and complex the more competitive markets become. We see more regulation today than was necessary to open up the telecommunications markets back in the mid 1990's. It is important to emphasize that deregulation does not lead to an “unlegislated” space. Modern competition law will continue to effectively combat abusive practices and to provide competitors a right to access essential facilities. Each modification to existing access services remains subject to controls of abusive practices.

16 July 2007

**Memorandum by Vodafone**

1. Vodafone is grateful to have the opportunity to submit evidence to the Committee's inquiry into the working of the Single Market in general and to its application in the telecommunications sector in particular. Vodafone is the worlds leading mobile telecommunications company, with significant interests in Europe, Asia, Africa, the Middle East and the United States. Within Europe Vodafone owns subsidiaries in 13 of the 27 Member States, and holds significant interests in affiliates in France and Poland.
2. Although based in Newbury in the UK since 1985, Vodafone has grown over the past 20 years to become one of a few truly pan-European businesses to operate in the telecommunications sector of Europe. Few other firms own and run major physical infrastructures in over half the Member States. Vodafone has built its business through a combination of organic growth and cross-border acquisition, most notably the heavily publicised acquisition in 2000 of the Mannesmann group of companies in one of the largest cross-border acquisitions ever undertaken in Europe.
3. Vodafone owes its success over twenty years to a European policy of market liberalization. Vodafone first gained a licence to compete with the mobile subsidiary of the incumbent fixed operator, BT, in the United Kingdom. The UK was one of the first Governments outside of the United States to pursue the liberalization of telecommunications markets which had previously been served by state-owned monopolists. Twenty years later the UK market remains one of the most competitive and successful in Europe. It is also one of the most international, with Vodafone today being the only British mobile operator.
4. Vodafone has also been able to use the skills and experience acquired in competing in the UK market to expand rapidly across the European Union and beyond. The pro-competitive merger regime operated by the European Commission Competition Directorate (which we consider one of the foundations of the Single Market) enabled Vodafone to acquire mobile assets in many other Member States. We note that cross-border acquisitions in the fixed telecommunications sector (eg Deutsche Telecom/Telecom Italia, Telia/Sonera) have often been fraught with political difficulties not present in mobile.
5. Acquiring scale in Europe has been a prerequisite for Vodafone to compete on the global stage. In the mobile industry there are significant benefits to be derived from scale. American and Chinese competitors can acquire scale within their national borders. China Mobile (in which Vodafone holds a small shareholding) added 65 million customers in 2005, more than the entire mobile industry in Western Europe in the same year. The Indian operators added 64 million customers in the same year.
6. Vodafone continues to pursue the benefits of scale and efficiencies across Europe—management reporting and financial systems are currently being consolidated in Hungary, networks are increasingly integrated throughout Europe and many services are now developed in one Member State but implemented across all.

7. Aside from the liberalization of markets in order to allow entry and competition, European policymakers have also assisted the development of a pan-European mobile industry through the development of a coordinated policy on the licensing and management of the radio spectrum on which the industry relies. Both operators and the supply side of the European industry—where firms such as Nokia and Ericsson remain world leaders—benefited from the early identification and release of radio spectrum on a harmonized basis across all Member States. This allowed for the collaborative development of technologies by the entire European supply chain (with some non-European participation), culminating in the launch of the GSM technology which has been the foundation of Europe's mobile success.

## THE CURRENT STATE OF THE SINGLE MARKET AND TELECOMMUNICATIONS REGULATION

### *Role of the Competition Directorate*

1. It will be clear to the Committee from the above that Vodafone finds that the Single Market is already operating effectively in the mobile telecommunications sector. Our first concern is therefore to ensure that Europe's pro-competitive legal framework—and the role of the Competition Directorate of the Commission in tackling “economic nationalism” and protectionism—remains at least as robust as we find it today.

### *The EU Telecoms Regulatory Framework*

2. The second pillar of the Single Market is the current EU Regulatory Framework for the telecommunications sector, currently overseen by the Information Society Directorate and the Competition Directorates of the European Commission. This Framework was adopted in 2003 and is widely and rightly admired throughout the world. Although it is currently the subject of a wide ranging review which is expected to result in proposals from the Commission in October of this year, Vodafone does not believe that fundamental change is required.

3. The requirement of the framework to apply consistent and rigorous economic and legal principles to regulation and the alignment with competition law has been important and useful for Vodafone. Regulatory competence and resourcing has increased significantly in Europe since 2003 but it nonetheless remains very varied. The framework allows us to take regulatory “best practice” in some markets (with the UK's Ofcom often providing an example of this) and to argue that other regulators should come to the same conclusions on the same facts, notwithstanding different political or other pressures. This is particularly important when regulators pursue policies which attempt to benefit particular competitors in a national market rather than competition (and thereby consumers) as a whole.

4. Considerable efforts have been made to improve the consistency in application of the regulatory framework, most notably through the establishment of the European Regulators Group of national telecoms regulators (of which Ofcom was the chair last year). The output of this Group has been disappointing to date, but we recognize that significant efforts are now underway to increase the influence and scope of the Group's work. This may in part be prompted by recent suggestions from Commissioner Reding that a “Euro-regulator” may be required to ensure more consistent implementation of the framework. We note with interest that this appears in some contradiction to the Commission's vision of a single market for the 21st century which is “more decentralized and network based”<sup>29</sup>.

5. In the case of telecoms regulation, we believe that most Single Market objectives can be successfully pursued through existing (decentralized) institutional arrangements, *provided* the national institutions are adequately resourced with competent staff and with institutional independence. The UK should not underestimate the relative immaturity of the regulatory institutions in many of the recently liberalized markets (as well as some in the EU15). The UK might provide more assistance in this regard, and the Commission can also assist more. But this remains first and foremost a responsibility for national Governments and their commitment to good regulatory practice and competition.

6. Second, and equally if not more important, we see liberalisation and competition as being more important for Europe than the unqualified pursuit of harmonization. Harmonisation is important insofar as it aids competition and growth within the Single Market, but we believe that other measures which are pursued on the name of the Single Market cannot be justified on this basis. It is important that the Single Market is not devalued by such activities and that harmonization is pursued for a clear purpose and with clear justification.

7. A topical example of this is the recently adopted EU Roaming regulation, which has been pursued by the European Commission and adopted by Council under Article 95 of the Treaty. Irrespective of the legal merits of this measure—which Vodafone strongly disputes—the resulting attempt to set a single price for the same

<sup>29</sup> See EC IP/07/214 “A vision for the single market of the 21st century”

service across 27 Member States (in this case by capping roaming charges at 49 cents for making calls and 24 cents for receiving them) appears to make little economic sense. The Single Market does not mean that every consumer in Europe pays the same price for the same goods or services. We know of no other measure in any sector which disregards differences in the costs of provision or the conditions of supply that prevail in different Member States.

8. We do propose one change to the current telecoms framework. The rights of firms and the outcomes of the regulatory process depend upon the availability of a robust appeal process which allows the challenge of regulatory decisions. Despite the requirements of the existing framework, the competence of these bodies varies very significantly between Member States. Very few have a body with the expertise and authority of the UK's Competition Appeals tribunal or Competition Commission. Some constraints are provided by the Commission's right to review the proposals of national regulators—but the Commission claims that it is not itself reviewable in this capacity. If the Commission and national regulators agree, Vodafone may have no effective right of appeal.

9. Vodafone proposes that the solution here is to ensure that all decisions by the Commission must in future be capable of review by the European Courts. In this way, Vodafone could pursue its rights on important matters with pan-European implications directly in the European courts, rather than seeking redress at national level.

### *Spectrum management*

1. We noted above that spectrum remains an essential input for the mobile industry and that the Single Market for GSM services (including the ability to roam across borders using compatible technology) owed much to the pan-European co-ordination of spectrum management. This is, however, an important aspect of the Single Market which Vodafone believes would now benefit from reform.

2. The EU telecoms regulatory framework has effectively deferred consideration of spectrum matters until the current review. As a result, spectrum remains the responsibility of national Governments and a formidable institutional apparatus exists to ensure co-ordination within Europe (and between Europe and other regions). The original rationale for much of this activity was that radiowaves have no regard for national boundaries and that the co-existence of users in different countries requires pan-European co-ordination if we are to avoid interference between them.

3. Spectrum has, however, remained inefficiently managed in Europe. The conditions of supply have been inflexible, with the result that users cannot easily migrate between technologies, or trade spectrum amongst themselves. Later this year the European Commission will propose measures allowing mobile operators to use their existing GSM spectrum for the later "3G" technology. No such measures were required in the United States with the result that operators there have been reusing their spectrum for many years. Since supply has been constrained, the prices paid to Governments have also sometimes been highly inflated, as with the 3G auctions in 2000. Overall, whilst Europe's spectrum policy served it well for the second generation of GSM technologies of the 1990s, there is growing realization that we have been less well served in recent years.

4. The challenge for Europe is how to move to a more efficient and more flexible spectrum management regime without losing the ability to co-ordinate in a manner which allows us to capture the scale and other benefits of the Single Market. This is a live debate amongst policymakers and the industry, the results of which could have a profound influence upon Europe's relative competitive position in wireless services over the next 20 years or more. An example of the difficulties is provided by the so called "digital dividend", perhaps the most valuable spectrum to become available in the next 50 years. At present some Member States propose to reserve this spectrum for broadcasting, whilst others (such as the UK) propose to make some available for mobile applications. Yet others have no clear view. As a result, Europe proposes to defer substantive decisions on this issue until 2011. In the meantime, the United States will be auctioning the same spectrum on a national basis later this year.

5. We trust the foregoing is of assistance to the Committee in its deliberations.

*July 2007*