Welsh Government Response to the Response from the UK Government to the House of Lords EU Internal Market Sub-Committee Report on Brexit: Competition and State Aid

The Welsh Government was asked to share its views with the Sub-Committee on the potential implications of the UK’s future State aid framework following the written response by Andrew Griffiths MP, Minister for Small Business, Consumers and Corporate Responsibility.

We are grateful for the elaboration of UK Government policy thinking on State aid post-Brexit and welcome the UK Government’s recognition of the flexibility present in the EU State aid rules. The acknowledgement of the UK’s high success rate of fewer than ten negative decisions in forty years, the lowest of the large EU Member States, stands testament to this.

The Welsh Government believes that the UK’s interests are best served by a very close alignment with the EU regulatory regimes after Brexit, in order to facilitate full and unfettered access to the Single Market. Whilst it is reassuring that the UK Government is working on plans to transpose EU State aid rules, alignment with EU State aid rules will need to be long-term to ensure continued confidence that the UK is not seeking to undercut the EU.

This will certainly require a strong commitment to maintaining a State aid regime that is robust and impartial. We would expect it to need to take significant account of the existing EU State aid regime, and, for the EU to need to have confidence in the UK’s ability to ensure a level playing field in this area, as the EU’s agreed guidelines state. We are heartened to see the UK Government’s response reiterating the Secretary of State for Exiting the EU’s Vienna statement on the UK’s history of supporting the restriction of unfair subsidies to ensure competitive markets; this is something which is vital to the delivery of the UK Government’s commitment to create “an economy that is resilient to change and fit for the future”.

The Welsh Government agrees with the requirement for a domestic State aid regime to avoid the risk of domestic subsidy races, based upon a UK-wide legal framework. It follows that the Welsh Government believes that any authority which assumes overall responsibility for compliance with the State aid rules within a UK framework should be independent of government and impartial in order to develop and retain credibility. As such, conferring this role upon the well-respected Competition and Markets Authority (CMA) would seem a reasonable option.

However, this would represent a fundamental development and alteration of the CMA’s current role. The Welsh Government welcomes recognition from the UK Government of the impact this additional function will have on the CMA’s resources, however, we are concerned that the wider ramifications are not being given due consideration. Whereas the current remit of the CMA impacts principally on businesses within the private sector, adjudicating on State aid will very directly involve making rulings on the policies and behaviours of government bodies, including the Devolved Administrations. Indeed, the impact of a UK State aid regime
on devolved competences in Wales, such as economic development and the environment, is significant.

For that reason, the Welsh Government expects the development of such a regime, and the devising of any future changes to such a regime, to be done cooperatively and consensually between the UK Government and the Devolved Administrations as a truly equal partnership; the Devolved Administrations need to be part of the design and operation of any new legal or institutional arrangements, we are not just another stakeholder to be considered alongside the increasing plethora of lobby groups and think tanks. If the CMA is indeed to be tasked with this role, it is imperative that its governance and operational arrangements are reviewed to ensure that it is capable of being seen to act independently on what may be very sensitive issues involving the UK Government and Devolved Administrations.

To this end, it is important that Ministers of the Devolved Administrations have a meaningful role in the appointment of CMA Board members, to ensure that the CMA works for the whole of the UK, building on examples such as the Food Standards Agency (where the matters under consideration are devolved) and the BBC Board (where the matters are reserved).

In order to ensure legitimacy across all nations of the UK the Devolved Administrations should also be given effective input into the remit and day-to-day processes, preferably with dedicated case handlers in CMA who are alive to the issues and regulatory differences in each of country of the UK. Political oversight of the UK State aid regime will require ongoing joint decision-making between Ministers from Devolved Administrations and the UK Government representing English interests in a forum such as the proposal set out in our paper ‘Brexit and Devolution’ for a UK Council of Ministers.

Although the Welsh Government welcomes the increase in the UK Government’s engagement on this matter, a lot more work is required in order for this to be resolved effectively and properly. Whilst positive discussions are taking place between the UK Government and the Devolved Administrations during the recent deep dive discussions on State aid we are concerned that decisions, such as the conferring of this role upon the CMA, are being taken without the agreement, or active input, of the Devolved Administrations being sought. We would consider it to be unhelpful for all concerned if a future State aid regime were imposed on Devolved Administrations by the UK Government, as this approach would make implementation less easy, less effective, and this unhelpful in reassuring the EU in any future economic partnership.