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Sub-Committee
House of Lords
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From: The Rt. Hon. Lord Tyrie
Chairman

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James Harvey

Re: Brexit competition and State aid

Thank you for your letter of 9 April about the CMA's preparations for Brexit and its expanded responsibilities.

The UK's exit from the EU is expected to require that the CMA take on responsibility for additional merger control and competition law enforcement investigations, which would previously have been within the exclusive remit of the European Commission. These cases are often global in nature, meaning that the CMA will need to work with other competition authorities from around the world.

As you highlight, it is government policy to give the CMA responsibility for approving state aid given by UK public authorities (subject to Parliamentary approval of the relevant legislation).

The CMA has been preparing for the UK's exit from the EU since June 2016, working closely with BEIS, HMT, DExEU and other departments. This has helped ensure that the CMA has the necessary people, skills and infrastructure in place for different exit scenarios, including 'no deal'.

The CMA's plans have been endorsed by the Infrastructure and Projects Authority, the National Audit Office and the Government Internal Audit Agency.

Recruitment

The CMA's recruitment has succeeded, so far, in meeting challenging targets in a highly-competitive market, particularly for specialist staff. The CMA is growing very significantly in a short period of time. The CMA has recruited 158 out of 274 (57%) EU Exit and State aid roles, with further recruits confirmed but not yet in post; this means that the CMA has now appointed to over 80% of our total number of roles across the CMA and expect to be at full capacity by the end of 2019/20.

The CMA's new office in Edinburgh now has a headcount of 41, compared to 3 in May 2018. The CMA continues to recruit in Edinburgh and is attracting strong candidates. Staff in these offices work across the CMA's tools and are integrated with its London-based project teams.

The CMA is currently sourcing new office accommodation in Belfast and Cardiff and has begun recruiting to expand its offices there. The first roles it will fill are the State aid adviser posts, one in each location, who will be responsible for the day-to-day relationship with the Welsh Government and NI Department for the Economy. (These roles are equivalent to a role already filled in the Edinburgh office).

The CMA has been successful in recruiting people who have experience in working on state aid matters in central government and the devolved administrations, in law firms in London and Brussels and in the European Commission.

The CMA reviews its workforce capacity and recruitment plans each month and will continue doing so up to and after exiting the EU.

Case work

The CMA estimates that Brexit is likely to lead to an increase of around 30-50 additional 'Phase 1' mergers cases (i.e. initial examination of mergers) annually – and might result in an additional five 'Phase 2' cases (i.e. full investigation where a competition concern has been identified in Phase 1) per year. On the competition law enforcement side, Brexit might result in the CMA taking on an additional 5-7 complex cases (suspected cartels and other anti-competitive agreements or abuses of a dominant market position). These are, of course, estimates rather than precise figures.

For state aid, the CMA estimates receiving 14 notifications a year, plus an additional six cases arising from complaints or its own proactive monitoring. Of these the CMA estimates that about 2 are likely to be the subject of a full ('Phase 2') state aid investigation.

In the run-up to EU Exit, the CMA will undertake additional monitoring and have already carried out preparatory work on cases under investigation or in 'pre-notification' with the European Commission.

In the weeks after we leave the EU, the CMA will make announcements about any new cases consistent with our new responsibilities. These are likely to be primarily merger control and state aid where – unlike competition law enforcement - the work operates to strict statutory deadlines, and the CMA has less discretion over whether it opens each case.

Between now and EU Exit, and after, the CMA will continue to review its workload and how we resource and staff our functions. If necessary – for example if the merger case load is heavier than predicted, or unexpected state aid is notified – the CMA is prepared to take tough decisions about some aspects of its ‘discretionary’ work (i.e. work that it is not legally obliged to undertake, even though doing so can be very important for UK consumers, such as consumer protection law enforcement, antitrust investigations or market studies) in order to reallocate staff and resources.

As part of the preparation for assuming its state aid responsibilities, the CMA has developed a new IT system for aid grantors to notify aid measures in a way similar to that of the European Commission’s state aid notification system.

Stakeholder engagement/consultation

The CMA has consulted on and published guidance on the effect of no deal on mergers, antitrust, consumer protection and has consulted on draft procedural state aid guidance. It will be publishing the results of the consultation on state aid procedural guidance in due course.

The CMA is committed to continuing to make its senior staff available to maintain and strengthen links and relationships with regional governments and devolved administrations. This includes building relationships with state aid teams in devolved governments across the UK. These relationships will play an important role in supporting the effectiveness of the UK state aid regime. As noted above, the CMA has appointed dedicated and locally-based state aid posts in each of its devolved nation offices. The CMA has sought input from state aid teams within the devolved administrations in developing its procedural guidance and our new state aid IT system. The CMA has also held information sessions for aid grantors in Scotland and London and is planning to do the same in Northern Ireland and Wales.

The CMA’s stakeholder engagement has included meeting with large aid grantors such as the Department for Environment, Food and Rural Affairs and the Department for Business, Energy and Industrial Strategy, and with the Local Government Association that represents 435 local authorities across England and Wales.

State aid decision making

As the UK’s primary competition authority (and a non-ministerial government department) it operates independently of Ministerial departments. Safeguarding this

independence is fundamental to ensuring the state aid regime will be effective and achieve its aims. The CMA has therefore considered its state aid decision-making model carefully with a view to maximising robustness, independence and impartiality.

The initial examination of state aid will be undertaken by a dedicated CMA state aid team, supported by professionals across the CMA and with decisions taken by senior officials. This is in line with other CMA decisions – for example ‘Phase 1’ merger cases. For more complex cases, we intend to establish a State Aid Decision Group. The Group will lead the investigation and take a final decision independently from the CMA Board and other CMA decision-making structures.

The CMA’s aim is that each State Aid Decision Group will be led by, as soon as practicable, appointees with judicial experience. The appointment of the State Aid Decision Group will, as with other CMA tools, be made in accordance with the CMA’s conflict of interest policy. We are seeking to ensure panel members for state aid decisions will be representative of the entire UK.

International cooperation

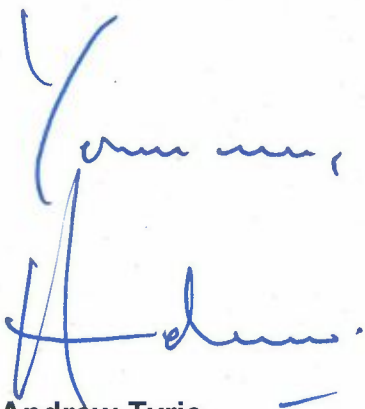
Given the cross-border nature of the mergers which will come under the CMA’s jurisdiction and the enforcement investigations it intends to pursue, international cooperation will be crucial. The CMA is a globally-active competition and consumer agency, with strong relationships with a range of international groups and agencies.

With its primary duty to promote competition, both within and outside the UK for the benefit of consumers, the CMA will coordinate its actions with those of agencies in other countries and, where appropriate, help other jurisdictions to develop robust systems. The CMA intends to make full use of its existing close relationships with international agencies to work together, seek and share information to the extent permissible, and develop new ways of working to protect UK consumers from harm.

The CMA will also seek to maintain and build on the strong, mutually beneficial and cooperative relationships with its overseas counterparts through cooperation agreements and our participation in international fora, including the OECD, International Competition Network and the International Consumer Protection and Enforcement Network.

While it is possible that the CMA will not in future be a full member of the European Competition Network (ECN), the CMA would expect to maintain strong and effective relationships with European competition authorities through new arrangements with the European Commission and EU Member States. Although they are not members of the EU, Norway and other countries that have ratified the EEA agreement still participate in the ECN in a limited way.

The CMA is ready to take on its additional responsibilities and for the opportunities and challenges the period ahead will bring. It remains firmly committed to protecting consumers across the UK and making sure that markets work in their favour.



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