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The Rt Hon. The Lord Whitty
Chair, EU Internal Market Sub-Committee
House of Lords
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29 March 2018

Dear Lord Whitty

GOVERNMENT RESPONSE TO THE HOUSE OF LORDS EU INTERNAL MARKET SUB-COMMITTEE REPORT ON THE IMPACT OF BREXIT ON UK COMPETITION AND STATE AID

Thank you for your report on the impact of EU exit on competition and State aid. The Government welcomes the detailed analysis that your Committee has carried out as part of this inquiry and the recommendations you have put forward. We will take these into account as we develop our position on these issues.

The Government is currently engaged in negotiations with the European Commission on our separation from and future relationship with the EU. The Prime Minister has set out clear objectives for these negotiations. These are restoring control over UK laws; ending the jurisdiction of the Court of Justice of the EU (CJEU); ensuring a smooth, orderly exit from the EU; securing as frictionless trade as possible with European markets without being a member of the Single Market; and striking new trade agreements with other countries. Competition and State aid policy are key to delivering these objectives.

Competition encourages enterprise and efficiency, increases consumer choice and improves international competitiveness. It is also an established way to raise productivity and growth to deliver an economy that works for everyone – the core aim of the Government's Industrial Strategy. As such, the Government is committed to preserving the strengths of our competition regime during our exit negotiations with the EU and thereafter.

Alongside being a global leader in the field of competition law and enforcement, with one of the strongest competition regimes in the world, the UK also has a reputation for consistent adherence to EU State aid rules. The Government is writing separately to the Committee to set out its approach to State aid after exit.

As the committee will be aware, the UK and EU negotiating teams have reached an important milestone in the Brexit process by agreeing the terms of a time-limited implementation period, to be based on the existing structure of EU rules and regulations. This will include State aid

and mean that, for the duration of the implementation period, the UK will continue to apply the EU State aid rules and that the European Commission will continue to be responsible for approving and monitoring aid.

Longer-term decisions on the UK State aid regime are subject to further discussion with the EU on our future economic partnership. It is right that a responsible Government plans for all scenarios. This is without prejudice to future negotiations. The Government's view therefore is that the UK should be prepared to establish a full, UK-wide subsidy control framework, with a single UK body for enforcement and supervision, at the point this is required.

In line with this objective, the Government can confirm it is planning to transpose the EU State aid rules under the EU (Withdrawal) Bill, as is the case for EU rules more broadly under this Bill. The transposition of the existing rules will apply to all sectors, including agriculture, fisheries and transport, and will replicate any existing exemptions from State aid rules. To ensure the regime is operable, the Government has concluded that at the point when an independent UK State aid authority is required, the Competition and Markets Authority (CMA) would be best placed to take on the role of State aid regulator. This reflects its experience and understanding of markets as the UK's competition authority and its independence from Government.

The Government's response to the recommendations set out in your report is attached below.

Yours sincerely,

A handwritten signature in blue ink that reads "Andrew Griffiths". The signature is written in a cursive, slightly slanted style.

ANDREW GRIFFITHS MP
Minister for Small Business, Consumers & Corporate Responsibility

GOVERNMENT RESPONSE TO THE HOUSE OF LORDS EU INTERNAL MARKET SUB-COMMITTEE REPORT ON THE IMPACT OF BREXIT ON UK COMPETITION AND STATE AID

THE CURRENT COMPETITION LANDSCAPE

Recommendation 1) *EU competition policy is derived from rules set out in the Treaty on the Functioning of the European Union (TFEU), and encompasses three 'pillars': antitrust, mergers, and State aid. EU Member States' courts and competition authorities are required to apply EU antitrust law when considering anti-competitive agreements and conduct which may affect trade between Member States, and to ensure consistency with the principles applied and decisions reached by the Court of Justice of the European Union (CJEU). The European Competition Network (ECN) facilitates cooperation between the national competition authorities of Member States and the European Commission.*

In relation to merger control, the Commission primarily examines larger, international mergers which have an 'EU dimension', based on specified turnover thresholds achieved in more than one Member State. This provides a 'one stop shop' whereby merger reviews are usually dealt with either by the Commission or by a Member State authority.

The EU has exclusive competence in determining the compatibility of State aid with the internal market, which is prohibited without the approval of the Commission. However, the majority of new State aid measures are now covered by the General Block Exemption Regulation (GBER) and Member States are not required to notify them to the Commission for prior authorisation.

The Competition and Markets Authority (CMA) is the UK's lead competition authority, with responsibility for investigating potential breaches of UK or EU antitrust prohibitions and examining mergers which could restrict competition. Certain sectoral regulators also have concurrent competition powers. The UK's antitrust and merger control regime is robust and highly regarded, and the CMA is well-respected among its international peers. By contrast, the UK's domestic State aid framework is very limited, as EU law applies directly and the Commission approves any aid not covered by block exemptions, such as the GBER.

While stakeholders are generally positive about the operation of the current UK and EU competition regimes, there are some issues such as consumer concerns regarding pricing and dominance in some markets, and delays and bureaucracy in the EU State aid approval process.

The Government recognises the link between EU and UK competition rules and the current system of parallel enforcement of Articles 101 and 102 of the Treaty on the Functioning of the European Union. The Government also recognises the value of the European Competition Network (ECN) in facilitating cooperation between the European Commission and EU national competition authorities (NCAs). Mutual assistance and information sharing in competition investigations is crucial to the effective enforcement of competition rules.

The Government recognises the rationale for the existing 'one-stop shop' system of merger control, whereby mergers are assessed by the European Commission instead of potentially multiple Member States. There are also differences between the EU merger system and the UK's. For example, the European Commission operates a mandatory notification scheme for mergers that meet the 'Union dimension' threshold, whereas the UK operates a voluntary notification scheme, although the Competition and Markets Authority (CMA) retains the power to assess mergers that are not notified.

The UK has led the way globally in the field of competition law and enforcement. We have one of the strongest competition regimes in the world. Our law is transparent, and enforcement is based on economic reasoning and carried out by a specialist, independent and world-class body. Ministers have separate powers to intervene in merger cases to protect the public interest on the grounds of national security, media plurality and financial stability.

The Government is committed to preserving these strengths as we leave the EU. Beyond the changes necessary to ensure our competition regime remains fully operational when we leave the EU, we do not plan to make fundamental changes to the UK competition framework.

On State aid, as the Committee has noted, over 90% of UK aid is now given under the EU General Block Exemption Regulation. When State aid is not covered by the Regulation, it must be notified and approved by the European Commission before it can be granted. Aid givers are always advised to take advantage of the pre-notification procedure to engage in constructive conversations with the European Commission as early as possible. This can help minimise delays in the approval process. Most stakeholders the Government has engaged with, including businesses and the Devolved Administrations, broadly recognise the role of State aid rules in ensuring market actors compete fairly and are familiar with the processes involved.

SHORT-TERM IMPLICATIONS OF BREXIT

Recommendation 2) *Although Brexit does not necessitate a fundamental revision of the UK's well-established domestic competition framework, the 'consistency principle' under section 60 of the Competition Act 1998 will no longer be appropriate in its current form after the UK leaves the EU and EU law no longer has primacy. It would be desirable to replace section 60 with a softer duty, whereby UK authorities might 'have regard to' EU law and precedent, although such an approach may not be appropriate in the longer-term. We call on the Government to clarify this during negotiations on the UK's future relationship with the EU.*

Section 60 of the Competition Act binds UK courts and the CMA to act consistently with the EU competition regime. This consistency principle is important in the context of EU membership, ensuring that substantive competition law is interpreted uniformly across the Single Market where trade between Member States may be affected. After we have left the EU, it will no longer be appropriate to maintain the primacy of EU law over UK law. The EU (Withdrawal) Bill provides that UK courts will not be bound to follow judgments of the CJEU handed down after exit day.

While issues relating to our future relationship with the EU are subject to negotiation, the Government understands that consistency might be appropriate in some cases, as our competition regime mirrors the EU's and our competition laws follow similar principles. As the Prime Minister explained in her recent Mansion House speech, the Government may choose to commit some areas of our regulations, including competition and State aid, to remaining in step with the EU's. The Government welcomes the arguments put forward to the Committee on the retention of some form of duty on UK courts to take account of CJEU jurisprudence and will take account of the views in the Committee's account.

Recommendation 3) *The current EU block exemptions are valued by UK businesses in helping them to ensure that certain types of agreements do not fall foul of either EU or UK antitrust prohibitions. Similar arrangements should continue to apply under UK law after Brexit. To provide certainty and minimise disruption for businesses, the Government should clarify whether the EU (Withdrawal) Bill is intended to facilitate the ongoing application of current exemptions, and for how long. The Government will also need to decide the extent to which the UK will continue to take account of future EU block exemptions.*

The Government recognises the benefits of the block exemption regime in allowing businesses in specific markets or types of commercial relationships to enter into agreements that have positive effects in these markets. The EU (Withdrawal) Bill will incorporate into UK law the EU Block Exemptions Regulations. It will allow the Government to make the technical changes to the Competition Act 1998 and the

retained block exemption regulations necessary for this regime to operate effectively in the UK after exit.

Each retained exemption will run until its expected expiry date.¹ As these exemptions reach their expiry, and where a block exemption regulation is enacted by the European Commission after EU exit, the Government will be able to decide, in consultation with the CMA, whether to use its existing powers under section 6 of the Competition Act 1998 to issue a domestic Block Exemption Order to similar effect.

Recommendation 4) *The loss of the ‘one stop shop’ arrangement whereby larger mergers fall under the exclusive jurisdiction of the Commission is likely to increase the number of mergers subject to review by the CMA and the number of appeals heard before the Competition Appeal Tribunal (CAT). We welcome the CMA’s commitment to continue to work on procedural efficiencies to minimise the burden of dual notifications to businesses, and we support measures to reduce the impact of differences between the statutory timelines for CMA and Commission reviews.*

The Government understands the impact on business of ending of the ‘one stop shop’ arrangement for merger control. European and UK merger processes have many practical similarities that should reduce the burden of dual notification. The CMA will also continue to review its merger review procedure to ensure that it is as efficient as possible.

In cases where dual notification is required, information sharing between jurisdictions can reduce the administrative burden on businesses operating in both the EU and the UK. The Government hopes to negotiate a close relationship of cooperation with the European Commission and NCAs to allow for information sharing in merger cases. Businesses can also help streamline the merger review process by agreeing confidentiality waivers to allow confidential information to be shared between enforcement agencies.

Recommendation 5) *A further issue is the effect of Brexit on specialist legal services. A number of factors have enabled the UK, and London in particular, to develop into Europe’s foremost jurisdiction for private damages actions resulting from breaches of competition law. Many of these features are likely to endure beyond Brexit, but uncertainty surrounding the future status of EU antitrust prohibitions and Commission decisions could put this leading status at risk. The Government should take this into account when it decides whether to repeal or amend the legislative basis for ‘follow on’ claims in the Competition Act 1998, and whether to allow UK bodies to continue to accept final Commission decisions.*

¹ One exception to this the exemption found in Council Regulation (EC) 169/2009 applying rules of competition to transport by rail, road and inland waterways. This has no expiry date. The Government is currently considering the options for this exemption.

Private actions are an important aspect of competition law enforcement, as they increase the cost of non-compliance to companies that breach the law and incentivise pro-competitive behaviour. They also provide an important mechanism for redress for those harmed by breaches of competition law. The Government is clear that consumers and businesses should continue to be able to seek redress where they have suffered harm from competition law infringements after exit. As noted in the report, the UK is an attractive jurisdiction for these claims due to factors such as the independence and specialist expertise of UK courts and lawyers. These factors will not be affected by our withdrawal from the EU.

The legal basis for follow-on claims in UK courts based on decisions by the European Commission and the CJEU after we leave the EU is subject to ongoing negotiations on civil judicial cooperation. In any case, the CMA will continue to investigate and act against anti-competitive agreements and practices in the UK. Claimants suffering harm as a result of these agreements and practices will at a minimum be able to bring claims for private damages based on the CMA's infringement decisions.

TRANSITIONAL ARRANGEMENTS

Recommendation 6) *Negotiations on any transition (or implementation) period for the UK's withdrawal from the EU need to be resolved to gain clarity on exactly when the UK will completely withdraw from the EU's competition regime. Nonetheless, whether in March 2019 or at the end of a two-year period where EU rules and regulations remain largely in force, arrangements will be necessary to manage EU court cases and administrative procedures which are 'live' at the point of this transition, including competition cases. We welcome the Government's recognition of the necessity of such arrangements and expect the Article 50 withdrawal agreement to include provisions to ensure continuity in the handling of such cases.*

The Government is aware of the importance of reaching an agreement with the EU as soon as possible on the jurisdictional arrangements that will apply to cases that are live at the point of exit. Transitional arrangements are also needed for new cases relating to pre-exit conduct and to pre-exit cases where remedies and commitments need to be monitored and reviewed after we have left the EU. The Government is currently engaged in live negotiations with the European Commission on these issues. The objective of these negotiations is to provide certainty for businesses, consumers and enforcement agencies as soon as possible.

Recommendation 7) *We note the differing positions outlined in the EU and UK position papers on ongoing Union judicial and administrative proceedings,*

particularly with regard to the jurisdiction of the CJEU post-Brexit, which may complicate the process of reaching a transitional agreement on competition matters. We recognise the Government's ambition to provide clarity for businesses on these issues but note that businesses are likely to already be planning future merger transactions and investment projects that will span, or occur after, the point of Brexit. We urge the Government to come to an early agreement with the EU on jurisdiction over competition cases during any transition period, to provide certainty for businesses and to ensure that no cases 'fall through the cracks' during this time, to the cost of UK consumers.

The Government understands the implications to businesses of the UK leaving the EU. As outlined above, we are hoping to conclude an agreement on separation issues as soon as possible. This should include transitional mechanisms to ensure there is no 'enforcement gap' through which anti-competitive agreements and behaviour might fall. We have started discussions on these arrangements with the European Commission, including on technical questions such as when proceedings would be considered as formally commenced.

Recommendation 8) *We support the Government's ambition to reach at least an outline agreement with the EU on a transition (or implementation) period, including competition matters, in the first quarter of 2018. Any transitional agreement on competition issues should ensure continuity with current arrangements, so that businesses are not faced with the additional complexity and cost of having to adapt to the implications of Brexit twice.*

The European Council has agreed a time-limited implementation period of 21 months. The Government believes that a strictly time-limited period of implementation would enable the UK, Member States, EU institutions and businesses to prepare for new arrangements in a controlled manner. As highlighted in the Committee's report, the period should be based on existing structures and rules, to make sure businesses only have to plan for one set of changes. This will include competition matters.

FUTURE UK POLICY: ANTITRUST AND MERGER CONTROL

Recommendation 9) *The UK has played a significant role in recent decades in pushing forward the broad alignment of global competition policy, based on improved economic efficiency that delivers economic growth and development, and long-term consumer welfare. We note that ongoing consistency with the EU's approach to competition policy—at least in the short-term—could help to provide stability and predictability for UK businesses in the face of the significant changes Brexit will bring.*

The UK has a well-established system of competition law, driven by economic reasoning and consumer welfare. We have often led the way in Europe and around the world in advocating for effective competition enforcement as a crucial part of such a strong competition regime. The deep and special partnership we are aiming to establish with the EU, as well as our continued participation in international networks such as the International Competition Network and the OECD, will allow us to continue to do so.

Domestically, beyond the changes that are necessary to ensure our laws remain operational once we have left the EU, we do not plan to make fundamental changes to our competition framework, including to concurrency arrangements. Retaining the current regime will provide the necessary degree of certainty and continuity for businesses, consumers and enforcement bodies.

Recommendation 10) *Nonetheless, Brexit does provide an opportunity for the UK to develop a more effective competition enforcement regime. With the repatriation of responsibility for enforcement decisions previously taken by the European Commission, the UK will have the freedom to take a more innovative and responsive approach to antitrust enforcement and merger control, including in relation to fast-moving digital markets and dominant online platforms.*

As recognised in the Committee's report, there are no immediate reasons for the UK to change its regime of competition law and enforcement in the short term. As outlined in the Industrial Strategy, the Government is already taking steps to strengthen this framework. These include:

- providing the CMA with an extra £2.8m a year, so it can take on more cases against businesses that are acting unfairly;
- encouraging the CMA to identify, prioritise and tackle inadequate competition in low-productivity sectors that have an important impact on growth;
- publishing a review of the existing competition regime by April 2019, to make sure it is working as effectively as it can; and
- publishing a Consumer Green Paper that tackles markets that are not working well for consumers and businesses.

The Government recognises that there may be areas for innovation in the future. These include issues of non-cartel enforcement, particularly in abuse of dominance cases in large online platforms and other fast-paced digital markets. However, this is subject to the outcome of future relationship negotiations and any binding commitments made to ensure fair and open competition in the EU and the UK.

Recommendation 11) *In terms of the potential for the UK to review public interest criteria in merger control, the UK is already able to intervene on larger mergers within the jurisdiction of the EU Merger Regulation (EUMR) on public interest*

grounds that closely match those specified under UK law. Member States are also able to make interventions based on other “legitimate interests”, subject to approval by the Commission. We conclude that EU rules have not materially prevented the UK from amending its approach to merger control. Indeed, the current competition-based approach was pioneered by the UK.

We recognise that, post-Brexit, there may be pressure for wider public interest criteria to be considered—particularly in relation to foreign takeovers—as well as opposing pressures, for example to dilute merger controls to encourage more inward investment. On balance, we do not consider that Brexit should be seen as an opportunity to make significant changes to existing public interest criteria.

The Government is keen to maintain an open environment for trade and investment after we have left the EU. Operating a reliable merger control regime that gives businesses certainty is a key part of this environment. As such, the Government recognises the importance of not moving away from a regime driven by the economic analysis of the impact of mergers on competition in relevant markets.

Proposals to change the public interest regime were put forward by the Government in the National Security and Infrastructure Investment Review in October 2017. The aim is to ensure that investments into, and acquisitions over, UK businesses cannot undermine national security. As a first step, the Government recently introduced secondary legislation to amend the turnover and share of supply tests in the Enterprise Act 2002 in relation to specific sectors of the economy where these threats are particularly relevant. A consultation on longer-term reforms closed in January. The Government is considering the responses to this and will bring forward proposals in due course.

Recommendation 12) *The extent of trade between the UK and the EU 27 makes it likely that future substantial antitrust and merger cases will have effects in both markets. It will therefore be in the mutual interests of the EU and the UK to continue to cooperate on competition matters post-Brexit. The best way to facilitate this cooperation would be for the UK and EU to negotiate a formal cooperation agreement, covering both antitrust and merger case investigations and enforcement actions. Any such agreement should enable reciprocal evidence-sharing (including of confidential information) which would not be possible under informal cooperation arrangements without express consent from the undertakings involved. We note that parties to mergers would be more likely to provide this consent to ensure that merger transactions can go ahead as quickly as possible.*

The Government understands that cooperation between NCAs and the European Commission is beneficial for the effective enforcement of competition rules. Both the CMA and its European partners would see as mutually beneficial the ability to share confidential information for the purposes of competition enforcement. This is more

important for antitrust investigations than in merger cases, as undertakings subject to the former are unlikely to facilitate information sharing through confidentiality waivers. The Government is also keen to ensure the CMA and its European counterparts are able to help each other in their investigations, for example by carrying out fact-finding measures on behalf of each other. This would allow them to avoid duplication of enforcement efforts and outcomes that might harm the UK or the EU's interests.

While these cooperation mechanisms could be set up through formal treaties, they could equally be agreed at an agency-to-agency level or undertaken informally so long as this is allowed in the national laws of the States concerned. As part of our negotiations with the EU, we will determine the most appropriate legal vehicle for these mechanisms and whether any changes to our domestic laws are required to put them in place.

Recommendation 13) *The UK and the EU start from a position of extensive mutual assistance within the ECN. Nevertheless, we note that, if it is to achieve the CMA's desire for the same, or equivalent, levels of current cooperation, the Government will need to negotiate the most comprehensive competition cooperation arrangement the EU has ever agreed with a third country. The UK will also need to re-establish competition cooperation arrangements with countries currently covered by existing EU bilateral agreements.*

The Government is keen to set up cooperation mechanisms between the CMA and the European Commission and NCAs. There are some international agreements between the EU and third countries, such as Switzerland and those currently being negotiated with Canada and Japan, that provide for enhanced cooperation between competition enforcement agencies. However, the Prime Minister has made clear that the UK does not want its future relationship with the EU to be defined by existing models of international cooperation. While this is subject to negotiations, starting from a position of in-depth cooperation as part of the European Competition Network (ECN) allows the Government to be ambitious in aiming to establish a comprehensive agreement that goes beyond the levels of cooperation the EU currently has with third countries.

The Government recognises that leaving the EU means the UK will no longer benefit from cooperation agreements the European Commission has with third countries. Therefore, the Government is currently working to replicate the effect of these agreements, which will further ensure the CMA and competition authorities in those countries are able to help each other and share information in a meaningful way. In due course, the Government and the CMA will also consider the possibility of setting up new competition cooperation agreements with third countries and their competition authorities. The Government has already had discussions with a number

of our key international partners about the possibility of deepening cooperation in the future.

FUTURE UK POLICY: STATE AID

Recommendation 14) *While it is clear that the EU's State aid rules have been the source of some frustration in the UK, successive Governments have found them flexible enough to provide support for major projects. Moreover, other EU Member States spend significantly higher sums on State aid. This indicates that the EU rules have not been the decisive factor in limiting State aid in the UK, during the time it has been an EU Member State.*

The Government agrees that EU State aid rules have been flexible enough to provide support for major projects. The UK has had fewer than ten negative decisions in over 40 years of EU membership. This is among the lowest in the EU and the lowest of the large Member States.

The Government managed to secure approval for large and complex projects such as Hinkley Point C and Contracts for Difference in the electricity market. It also secured approval for the removal of the Royal Mail pension burden, thus paving the way for privatisation. The Government was also able to gain approval for the restructuring of banks during the financial crisis within short time-frames.

Recommendation 15) *The EU has, in almost every case, insisted that trade agreements with third countries include some form of controls on State aid, and it is highly likely that any deep and comprehensive UK-EU Free Trade Agreement (FTA) will include State aid provisions. There is also likely to be a link between the level of access to the Single Market the UK hopes to secure and the degree of coherence with the EU State aid regime the UK is required to maintain.*

The Government's longer-term decisions on State aid control will be influenced by the outcome of the negotiations with the EU on the future economic partnership. However, as the Prime Minister said in her Florence speech, the UK believes "it would be a serious mistake to try to beat other countries' industries by unfairly subsidising one's own". This was reiterated by the Secretary of State for Exiting the EU in Vienna on 20 February, when he said that "the UK has long been a vocal proponent of restricting unfair subsidies to ensure competitive markets".

Recommendation 16) *If no agreement is reached with the EU—or in the unlikely event that the agreement does not contain State aid provisions—the UK will still be bound by its obligations under the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (ASCM). This would be a less intrusive*

system of subsidy control than the EU regime, but the extent to which it would change levels of state support in the UK is questionable. (Paragraph 216)

As explained earlier, the Government is working on plans to transpose the EU State aid rules for day one of exit by using the powers in the EU (Withdrawal) Bill. However, the Government recognises that the WTO Agreement on Subsidies Countervailing Measures (ASCM), which applies currently to the UK, would always act as the backstop for subsidy control after EU exit.

While it is theoretically possible to give more State aid for different purposes under the ASCM, WTO members are able to challenge any aid where they believe there has been harm. In particular, it is likely that aid to industries (such as steel) where there are world surpluses, as well as aid to any highly competitive sector, would be challenged. WTO members would be particularly sensitive in relation to mobile investment or to any subsidy that was obviously selective (such as that aimed at building a national champion).

Recommendation 17) *We recognise that after the UK leaves the EU there may be domestic pressures for a more interventionist industrial strategy with greater use of State aid measures at national, devolved, and local levels. On the other hand, should the Government significantly increase State aid to UK businesses, this could undermine the UK's ambition to become an open, global trading nation after Brexit. We therefore welcome the Prime Minister's assurance that the Government will not attempt to "beat" other countries' industries by unfairly subsidising our own.*

A functioning regulatory regime governing the provision of State aid is part of ensuring fair competition both internationally and within the UK's internal market. Subsidy controls also ensure government interventions are smart and targeted and have incentive effects.

As part of the Industrial Strategy, the Government is identifying the UK's competitive strengths and exploring with industry the ways in which Government can help build on these. We will seek to put in place institutions and relationships to sustain higher levels of productivity over the long term. This is about creating an economy that is resilient to change and fit for the future. Rather than propping up failing industries or picking winners, the Government is keen to create the conditions where successful businesses can emerge and grow in all industries and sectors.

While the Government will need to be mindful of the needs of the Industrial Strategy in considering its longer-term approach to State aid after exit, we note that in practice the existing EU rules have always been sufficiently flexible to allow the UK to make innovative aid interventions where necessary.

Recommendation 18) *The ASCM has no domestic application and therefore would not regulate State aid within the UK. Outside the EU, a UK-wide State aid framework will be necessary to avoid the risk of domestic subsidy races and distortions of competition between various parts of the UK. A UK State aid authority may also be required in some form, whether by extending the remit of an existing authority or creating an entirely new entity. We note the possibility that the CMA could take on this role but also that it has no experience in this activity. It would also be important to ensure that such an extension of the CMA's remit did not detract from its existing responsibilities. (Paragraph 218)*

The Government recognises that failing to implement a UK-wide regime of State aid control when the UK leaves the EU would mean there would be no legal framework to prevent subsidies that distort trade within the UK. Planning to implement a domestic State aid regime for day one of exit will address this issue, maintain the openness and competitiveness of UK markets, and provide businesses with certainty.

The independent enforcement of the State aid rules is essential for the regime to operate effectively in a domestic context. This function would be inappropriate for the courts, as it involves making complex technical determinations relating to economic policy. The Government considers that the CMA is the most appropriate body to carry out a State aid regulatory function. There is a broad consensus across a range of experts that gave evidence to the Committee's inquiry that State aid would fit well with the CMA's remit to promote competition and preserve well-functioning markets. Enabling the CMA to take on a State aid function will also minimise delivery risks and ensure preparedness for EU exit, compared with establishing a new body.

The Government recognises the impact of this additional function on the CMA's financial, human and IT resources, and is committed to make sure this is addressed.

Recommendation 19) *In developing this framework, the Government should take into account calls from local authorities for a less complex and burdensome approval process than under the current EU regime. The Government should also involve and secure the support of the devolved administrations in this process, including in agreeing the terms of reference, remit and priorities of any new UK State aid authority. It was made clear to us that any approach where the UK Government was perceived to be both 'rule maker' and 'rule taker' would probably be unacceptable to local and devolved governments.*

The Government notes the concerns expressed by local authorities to the Committee and shares the ambition to see a UK State aid regime operate as effectively as possible. Under the EU (Withdrawal Bill), the Government intends to transpose the General Block Exemption Regulation into UK law, which would mean aid givers can continue to grant the majority of new aid measures quickly without prior approval.

All actors in the UK internal market have an interest in the preservation of the level playing field in terms of competition. The Government believes the CMA is the right choice as the UK's State aid regulator in part for its independence from Government and its UK-wide remit.

The Government has been engaging with the Devolved Administrations on the future of State aid after EU exit and recognises that the regulation of State aid is a UK-wide issue.

The CMA is independent from Ministers. This independence, which is considered to be best practice for competition authorities internationally, ensures that CMA decisions are made objectively and solely on the basis of the best available evidence, and that they are seen to be so. This gives confidence to markets that CMA decisions will be based on an objective assessment of consumer interests. The Government remains committed to the CMA's independence and objective decision making, including in the context of the CMA's new State aid role.

Recommendation 20) *The EU (Withdrawal) Bill, as introduced, seeks to preserve the general prohibition on unapproved State aid, but does not specify what approval mechanism State aid would be subject to after Brexit. We urge the Government to clarify this omission, and its position on the shape of the future UK State aid regime, as soon as possible, to provide certainty to local authorities and businesses.*

It is right that a responsible Government plans for all scenarios. This is without prejudice to future negotiations. The Government's view therefore is that the UK should be prepared to establish a full, UK-wide subsidy control framework, with a single UK body for enforcement and supervision, at the point this is required.

In line with this objective, the Government can confirm it is planning to transpose the EU State aid rules under the EU (Withdrawal) Bill, as is the case for EU rules more broadly under this Bill. The transposition of the existing rules will apply to all sectors, including agriculture, fisheries and transport and will replicate any existing exemptions from State aid rules.

To ensure the regime is operable, the Government has concluded that at the point when an independent UK state aid authority is required, the CMA would be best placed to take on the role of State aid regulator. This reflects its experience and understanding of markets as the UK's competition regulator and its independence from Government.

DETERMINING THE UK'S FUTURE INSTITUTIONAL FRAMEWORK

Recommendation 21) *As a direct consequence of Brexit, the CMA will assume responsibility for a greater number of large and complex cases, and is likely to require more funding and more staff to meet this additional demand. It will be imperative to ensure that the CMA is appropriately resourced—and has staff with the right skills and experience in place—in good time to prepare to take on its post-Brexit caseload. We welcome the Government's current high levels of engagement with the CMA on this issue, and call on the Government to confirm its resourcing plans for the CMA and other affected institutions, like the CAT, as soon as possible.*

The Government is confident in the CMA's readiness for EU exit both in managing the expected case load increase and taking on its new role as regulator of State aid. HM Treasury, BEIS, and the Department for Exiting the European Union are working closely with the CMA and the Competition Appeal Tribunal on EU exit planning.

The Chancellor of the Exchequer has already committed over £250m of additional spending in 2017-2018 to allow all departments and partner bodies, including the CMA, to prepare for our exit from the EU. As part of the recent Spring Statement, the Chief Secretary to the Treasury announced that the CMA has been allocated with an additional £23.6m in 2018-2019 to prepare for EU exit.

Recommendation 22) *As well as existing bodies, the UK's future institutional framework for competition matters will involve a number of other organisations, including the proposed Trade Remedies Authority (TRA), and possibly a new State aid authority. It will be important to ensure that all these organisations are sufficiently resourced, have clearly defined remits, and that they work together to deliver a cohesive and effective competition regime. The Government should also bear in mind the need to avoid duplication and ensure that public resources are used cost-effectively.*

Value for money considerations were a factor in determining that the CMA was the most appropriate body to take on the role of State aid regulation, rather than setting up a new body. However, the Government is clear that the role of State aid regulator in monitoring public spending to ensure it is in compliance with the rules is distinct from that of the Trade Remedies Authority. The Trade Remedies Authority (TRA) will be responsible for providing a safety net to protect domestic industries against injury caused by unfair trading practices – such as dumping and subsidies, and unforeseen surges in imports. It will do so by conducting trade remedies investigations and making impartial recommendations to Ministers.

The TRA will have the ability to work with other bodies, departments and organisations in the exercise of its core functions. There may be situations where the TRA and the CMA, given its competition expertise, will need to work together as

appropriate. The Government will ensure mechanisms are in place to allow them to do so.

Recommendation 23) *In developing this regime, the UK will have the opportunity to design a system that more closely reflects domestic needs and priorities, and is more inclusive of the devolved administrations and local authorities, as well as other stakeholders such as businesses and consumer groups. We urge the Government to make full use of this opportunity and launch a consultative process, involving all relevant stakeholders, to inform its decisions and any related legislation. We hope this report will be a useful contribution to that endeavour.*

The Government is mindful of the importance of engaging relevant stakeholders – including Devolved Administrations, local authorities, regulators, businesses and consumers – as part of our EU exit negotiations and thereafter.

Discussions with the Devolved Administrations on a number of issues were opened last year by the former First Secretary of State. Business advisory groups have already been set up by the Prime Minister and the Secretary of State for Business, Energy and Industrial Strategy to discuss concerns and priorities for the economy and strategically important sectors. BEIS officials have also held informal discussions with representatives of business groups – such as the Confederation of British Industry – about the impact of EU exit on our competition regime.

Further consultation will take place as part of the review of the UK's competition regime and the forthcoming Consumer Green Paper.

On international trade, the Government has made clear that our approach to future UK trade policy must be transparent and inclusive.² We look forward to working with a wide range of stakeholders on the establishment of the TRA, to ensure that their views and interests are taken into account where appropriate.

Recommendation 24) *Finally, we were encouraged by witnesses' confidence that Brexit should not affect the UK's influence in international networks such as the International Competition Network (ICN), OECD, and United Nations Conference on Trade and Development (UNCTAD). We urge the CMA to maintain, and increase, its engagement in these fora to help enhance its influence in the global competition community post-Brexit. It will also be important for the TRA, once established, to build relationships with international networks and other trade authorities.*

² <https://www.gov.uk/government/publications/preparing-for-our-future-uk-trade-policy/preparing-for-our-future-uk-trade-policy>

The Government is keen to maintain the UK's leading role in the development of effective competition laws and enforcement around the world. The CMA will continue to be an active member of relevant international networks. The Government believes that the UK's strong adherence to State aid rules and the CMA's independence and expertise in matters relating to competition will underpin the credibility of the domestic regime on the international stage.

The Government recognises the importance for the TRA to build and maintain relationships with relevant international networks – including counterpart trade remedies functions in other countries. This will ensure the UK's trade remedies function learns from international best practice. The Government is already building these relationships through the World Trade Organisation.