

Brexit: competition

The House of Lords EU Internal Market Sub-Committee, chaired by Lord Whitty, has decided to launch an inquiry into the impact of Brexit on UK competition policy. The inquiry will explore the opportunities and challenges of leaving the EU for antitrust rules, merger control and state aid, as well as considering the potential future relationship between UK and EU competition authorities.

Background

Through its enforcement of competition rules, the European Commission aims to ensure consumers are provided with more choice, better quality and lower prices. The EU has exclusive competence over establishing the competition rules necessary for the functioning of the internal market and these rules apply directly to Member States. The Commission enforces EU competition rules together with the national competition authorities of the EU countries, with cooperation facilitated by the European Competition Network.

The UK's competition regime is underpinned by domestic statutes modelled on EU law, and includes provisions to ensure consistent interpretation with European legislation. This close interconnection between EU and domestic competition policy presents a number of opportunities and challenges for re-shaping the UK regime post-Brexit.

With regard to antitrust and mergers, existing domestic legislation will remain in force but UK competition authorities will need to assume aspects of enforcement previously undertaken by the European Commission. The UK will also need to consider whether it wishes to establish cooperation arrangements with the EU to facilitate future mutual assistance and information sharing with European competition authorities.

State aid, an exclusive area of EU law controlled solely by the European Commission, presents a different challenge. In this case, absent membership of the European Economic Area, the UK will need to establish an entirely new domestic framework.

The inquiry

The Internal Market Sub-Committee intends to contribute to public debate on the opportunities and challenges of leaving the EU for UK competition policy, and to inform and influence the UK Government's consideration of these issues.

Public hearings will be held from September 2017 until November 2017. The Sub-Committee aims to publish its report, with recommendations, early in 2018. The report will receive a response from the Government and will be debated in the House.

The Committee seeks written evidence on the following questions from anyone with a relevant interest. You need not address all questions in your response, and respondents from a particular area or sector are invited to focus on the questions most pertinent to them. Submissions are sought by Friday 15 September 2017.



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General

- What should competition policy in the UK set out to achieve? What guiding principles should shape the UK's approach to competition policy after Brexit?

Antitrust

- Post-Brexit, to what extent should the UK seek to maintain consistency with the EU on the interpretation of antitrust law? What opportunities might greater freedom in antitrust enforcement afford the UK?
- Will Brexit impact the UK's status as a jurisdiction of choice for antitrust private damages actions?
- Post-Brexit, what is the likelihood of UK authorities conducting parallel investigations with the European Commission or national competition authorities of EU Member States? What would the implications of this be?
- Is a post-Brexit competition cooperation agreement in the mutual interest of the EU and the UK? What provisions would be necessary for such an arrangement to be effective?
- How will Brexit affect the CMA's ability to cooperate with non-EU competition authorities? What impact might there be, if any, on the UK's influence in developing global competition policy?
- Will it be necessary for the UK and EU to agree a transitional arrangement for antitrust enforcement after the UK's withdrawal from the EU? If so, what transitional issues would such arrangements need to address?

Mergers

- What opportunities does Brexit present for the UK to review national interest criteria for mergers and acquisitions? What might the advantages and disadvantages of this be?
- Does the Competition & Markets Authority (CMA) have the capacity to manage an anticipated increase in UK merger notifications post-Brexit? Could regulators with concurrent competition powers, e.g. Ofgem and Ofcom, play a greater role?
- How burdensome would dual CMA/European Commission merger notifications be for companies?
- How likely is it that parallel merger reviews by the European Commission and CMA would lead to divergent outcomes? What would be the likely implications of such a scenario?
- Do either the CMA or the European Commission currently cooperate with other non-EU national competition authorities on concurrent merger reviews?



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- Will it be necessary for the UK and EU to agree a transitional arrangement for merger control after the UK's departure from the EU? If so, what transitional issues would such an arrangement need to address?

State Aid

- Are state aid provisions likely to form an essential component of any future trade agreement between the UK and EU? Do any existing trade agreements between the EU and third countries provide a useful precedent for future UK-EU state aid arrangements?
- Will the UK require a domestic state aid authority after Brexit?
- What would be the opportunities and challenges for state aid or subsidy controls in the UK if no trade agreement were to be reached with the EU? Would WTO anti-subsidy rules restrict the UK's ability to support industries, or individual companies, through favourable tax arrangements?
- How will the Government's industrial strategy shape its approach to state aid after Brexit? To what extent has the European Commission's state aid policy limited interventions that the UK Government may have otherwise pursued?
- What, if any role, might the devolved institutions play in UK state aid control post-Brexit? Are there any potential implications for the UK internal market?
- Will it be necessary for the UK and EU to agree a transitional arrangement for state aid matters after the UK's withdrawal from the EU? If so, what transitional issues would such an arrangement need to address?

ANNEX I: Guidance for Submissions

Written evidence should be submitted online using the written submission form available at www.parliament.uk/brexit-competition-lords-inquiry-submission-form. This page also provides guidance on submitting evidence.

If you have difficulty submitting evidence online, please contact the Committee staff by email at westwoodp@parliament.uk or by telephoning 020 7219 4840. The deadline for written evidence is Friday 15 September 2017.

Short submissions are preferred. A submission longer than six pages should include a one-page summary. Paragraphs should be numbered. All submissions made through the written submission form will be acknowledged automatically by email.

Evidence which is accepted by the Committee may be published online at any stage; when it is so published it becomes subject to parliamentary copyright and is protected by parliamentary privilege. Submissions which have been previously published will not be accepted as evidence. Once you have received acknowledgement that the evidence has been accepted you will receive a further email, and at this point you may publicise or publish your evidence yourself. In doing so you must indicate that it was prepared for the Committee, and you should be aware that your publication or re-publication of your evidence may not be protected by parliamentary privilege.

Personal contact details will be removed from evidence before publication, but will be retained by the Committee Office and used for specific purposes relating to the Committee's work, for instance to seek additional information.

Persons who submit written evidence, and others, may be invited to give oral evidence. Oral evidence is usually given in public at Westminster and broadcast online; transcripts are also taken and published online. Persons invited to give oral evidence will be notified separately of the procedure to be followed and the topics likely to be discussed.

Substantive communications to the Committee about the inquiry should be addressed through the clerk of the Committee, whether or not they are intended to constitute formal evidence to the Committee.

This is a public call for evidence. Please bring it to the attention of other groups and individuals who may not have received a copy directly.

You may follow the progress of the inquiry at www.parliament.uk/brexit-competition-lords-inquiry.

Follow the inquiry on Twitter: [@LordsEUCom](https://twitter.com/LordsEUCom)