



Select Committee Evidence

EU Internal Market Sub-Committee Brexit: Competition Inquiry

Which? is the largest consumer organisation in the UK with more than 1.5 million members and supporters. We operate as an independent, apolitical, social enterprise working for all consumers and funded solely by our commercial ventures. We receive no government money, public donations, or other fundraising income. Which?'s mission is to make individuals as powerful as the organisations they have to deal with in their daily lives, by empowering them to make informed decisions and by campaigning to make people's lives fairer, simpler and safer.

Summary

1. Which? welcomes this opportunity to submit evidence to the EU Internal Market Sub-Committee's inquiry on Brexit and competition policy. We have an opportunity through the Brexit process to create a new economy, where essential markets that are currently failing consumers are reformed, and where consumers have the confidence to spend and propel growth. The UK's approach to competition policy going forward will be a crucial element of this.
2. It is essential that the UK has a strong, world-leading competition authority and a robust competition regime. The current approach to competition policy in the UK broadly serves consumers well. While we do not think that any radical change of approach is needed following Brexit, the opportunity should be taken to review the current approach, particularly in light of recent inquiries into the energy and retail banking markets.
3. The return of competition policy to national competence will dramatically increase the workload of the Competition and Markets Authority (CMA). It is important that it has the necessary resources and expertise to ensure that important decisions, that could have wide-ranging implications for consumers, are determined as efficiently and effectively as possible. The principles that underpinned the establishment of the CMA, with its dual responsibilities for competition and consumer enforcement must also be maintained. We have concerns that its consumer enforcement role, relative to its competition one, is already weak and it has not made effective use of these dual powers. The CMA must have the expertise and resources to be able to pro-actively fulfil both responsibilities at a time



when the wider consumer landscape, including Trading Standards Services, are under strain and in need of more fundamental reform.

4. Given the cross-border nature of trade and of businesses, close co-operation between the CMA, European Commission DG COMP and competition authorities within other member states will continue to be important. Our proximity to the EU means that many international companies will continue to operate across Europe and the UK with similar business practices. It is therefore likely that mergers or anti-competitive behaviour that affect more than one future EU jurisdiction will also affect the UK.
5. A post-Brexit competition co-operation agreement would be in the mutual interest of the EU and UK in order to ensure continued access to intelligence and data. Co-operation with other non-EU countries will also need to be enhanced beyond current arrangements as issues are likely to affect several markets. It is therefore critical that the CMA has strong relationships with authorities in third countries. The UK Government should also put in place the necessary transitional arrangements in relation to antitrust rules and merger control after the UK's withdrawal.
6. More generally, the Government needs to pay greater attention to consumer interests as part of its negotiating position for Brexit and in considering the implications of the UK's exit. This includes its approach to competition policy. An important signal that the Government is willing to listen to consumer views, would be to appoint a consumer body, such as Which?, to the Business Forum that is now advising Ministers on policy.

Introduction

7. Which? welcomes this opportunity to submit evidence to the EU Internal Sub-Committee's Inquiry into the implications of Brexit for competition policy. It is essential that consumer interests, rights and protections are prioritised in the negotiations for our future relationship with the European Union (EU) and wider world, as well as the subsequent regulatory and policy framework beyond the EU's exit.
8. We have an opportunity through the Brexit process to create a new economy, where essential markets that are currently failing consumers are reformed, and where consumers have the confidence to spend and propel growth. The UK's approach to competition policy going forward will be a crucial element of this. In particular, in encouraging efficiency and enterprise in the economy delivering lower prices, greater choice and better quality for consumers.
9. Which? is concerned that the Government has so far failed to give enough attention to consumer impacts. We have asked for consumer interests to be prioritised and a consumer organisation, such as Which?, to be represented on the high level Business Forum created to advise Ministers. A recent survey by Which? also found that 80% of businesses said that consumers' interests were either very or fairly important to them, in relation to Brexit meetings or negotiations¹.

¹ Research was carried out between 26th April and 4th May by Populus on behalf of Which?, who conducted online interviews with 511 business owners and directors within SMEs in various sectors across UK.

10. Our evidence focuses on the Committee's questions that are of most relevance for Which?.

Resource implications

11. There will be major resource implications for the CMA in taking on competition inquiries and merger cases currently dealt with at EU level. The CMA came into effect in 2014, taking on previous functions of the Competition Commission and the Office of Fair Trading. The intention was that by combining competition and consumer powers within one regulator, it could be much more than the sum of its parts. We have, however, concerns that it has not been as pro-active on some consumer enforcement issues as it should be. Which?, for example, had to submit a super-complaint to the CMA in order to ensure it addressed issues around confusing supermarket pricing and misleading special offers.
12. It is therefore crucial that as well as ensuring that the CMA has the necessary expertise and resources for its significantly enhanced competition policy role that it will also have sufficient resources to pro-actively fulfil its consumer enforcement role and make more effective use of the combined powers that this gives the Authority.
13. The EU's exit from the EU will raise a broad range of issues for consumer enforcement. The extent of this will depend on the nature of Brexit and the extent to which we are still linked into co-ordination mechanisms such as the Consumer Protection Co-operation (CPC) network, or need to replace them with new means of co-operation. At the moment the system is heavily reliant on Trading Standards Services within local authorities, but these Services have been subject to large cuts around the country which, as the National Audit Office² has highlighted, means that much of their work is reactive and that there are significant gaps in consumer protection. The CMA has an important role within this landscape and so the consumer enforcement challenges need to be understood and addressed, alongside its competition role.

Guiding principles

14. It is essential that the future competition regime works in consumers' interests. Consumer benefits and efficiency should be the guiding principles of UK Competition Policy after Brexit.

Consistency and continued co-operation

15. Continued co-operation with the European Commission, and wider EU authorities, will be vital after the UK's exit. Many businesses operate globally, across markets. Our proximity to the EU means that many international companies will continue to operate across Europe and the UK with similar business practices. It is therefore likely that mergers or anti-competitive behaviour that affect more than one future EU jurisdiction will also affect the UK, as was seen for example in the Google case, where the UK was one of the main affected markets. Investigations undertaken by the EU will therefore continue to have

² Protecting Consumers from Scams, Unfair Trading and Unsafe Goods, National Audit Office, December 2016.

implications for the UK and mechanisms need to be put in place to facilitate this. There are likely to be a significant number of parallel competition investigations. Consistency may be desirable, but the overriding objective should be the robustness of the approach and ensuring that the CMA reaches the most appropriate conclusions for the UK market and UK consumers. The UK has played an influential role in shaping the European Commission's approach to competition policy and therefore over time, it may be possible that there is some divergence, dependent on the nature of the relationship going forward.

16. A post-Brexit competition co-operation agreement would be in the mutual interest of the EU and UK in order to ensure continued access to intelligence and data. Co-operation agreements should also be sought with wider non-EU international partners, given the global nature of the economy and future trading relationships.
17. The UK Government should put in place the necessary transitional arrangements in relation to antitrust rules and merger control after the UK's withdrawal. Those arrangements need to ensure a smooth transition for UK competition policy and the continuity of UK Competition Law after Brexit so consumers are protected against anticompetitive practices.
18. As well as the EU, it is also essential that the CMA ensures that the UK has stronger relationships with wider competition authorities in third countries and that they are able to co-operate and share intelligence.

Consumer engagement

19. Effective consumer engagement will be essential in shaping policy going forwards and it is essential that this, along with open and transparent processes, are central to the future UK approach. A range of mechanisms are now available to enable the CMA to do this, but consumer engagement also needs to be embedded within the policy making and governance processes of the CMA.
20. In addition to this, the EU Withdrawal Bill proposes to make allowances for Ministers to have the power for two years to "correct problems arising from the withdrawal" including "transferring the functions of EU authorities to UK public authorities" and "creating new public authorities to take on those functions"³. In both the competition regime, and indeed across the regulatory landscape, Which? would want to see proposals for the altering of existing powers and expansion of the scope of regulators undergoing a full and thorough consultation process. This is vital to ensure the regulatory powers are assigned properly and can function efficiently for consumers and other interest groups following the UK's departure from the European Union.

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³ European Union (Withdrawal) Bill – Explanatory Notes, House of Commons p10