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Business, Energy and Industrial
Strategy Committee

State aid and post-Brexit competition policy: Office for the Internal Market response to the Committee's Fourth Report

Fifth Special Report of Session
2022–23

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Business, Energy and Industrial Strategy Committee

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Contacts

All correspondence should be addressed to the Clerk of the Business, Energy and Industrial Strategy Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 8586; the Committee's email address is beiscom@parliament.uk.

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Fifth Special Report

The Business, Energy and Industrial Strategy Committee published its Fourth Report of Session 2022–23, [*Post pandemic economic growth: State aid and post-Brexit competition policy*](#) (HC 759) on 25 October 2022. The Office for the Internal Market (OIM) in the Competition and Markets Authority (CMA) sent a response on 18 April 2023: that response is published as an Appendix to this Report.

Appendix: The Office for the Internal Market (OIM) in the Competition and Markets Authority (CMA) response

Note on findings relevant to the Committee's interest in intra-UK trade and its impact on competition

Background

1. On 25 October 2022, the BEIS Committee published a report on 'Post-pandemic economic growth: state aid and post-Brexit competition policy' (HC 759). The Report made several recommendations to the CMA including (at paragraph 73) that the CMA conduct a short economic analysis, to be sent to the Committee no later than September 2024, assessing the cost to business of trading in both the EU and the UK and its impact on competition.
2. On 10 February 2023, the CMA's response to the Committee's recommendations was published (HC 1078). The CMA's response on the intra-UK trade element of the Committee's recommendation at paragraph 73 committed to provide a note to the Committee after the Office for the Internal Market's 2023 annual report was laid, setting out information or findings relevant to the Committee's interest in intra-UK trade and its impact on competition. This note reflects that commitment. On the UK-EU trade element of this recommendation, the CMA committed to update its analysis of the effect of international trade on concentration in its next State of Competition report, which is currently planned to be published before September 2024.

Legislative context

3. The Office for the Internal Market (OIM) is required by the UK Internal Market Act 2020 (the Act) to produce two regular monitoring reports:
 - Report on the operation of the internal market (to be prepared at least once in every relevant twelve month period). We refer to this as 'the annual report'.
 - Report on the effectiveness of the provisions of Parts 1 to 3 (UK Market Access for goods, services and professional qualifications and regulation) of the Act (to be prepared at least once in every relevant five year period). We refer to this as 'the periodic report'.

4. The Act requires that these two reports are laid before each House of Parliament, the Scottish Parliament, Senedd Cymru, and the Northern Ireland Assembly. The reports were laid in the legislatures on 21 March 2023 and published on GOV.UK the following day.¹

5. This note focuses on the annual report, as our findings on the operation of the UK internal market are most relevant to the Committee's recommendation. The focus of the periodic report is on the effectiveness of the internal market arrangements established in the Act.

6. These reports were prepared shortly before the Windsor Framework was announced. We will work with the governments to understand any implications of the Windsor Framework for our reporting.

Summary of findings of the annual report

7. Trading between the UK nations is a crucial part of our economy. The most recent estimate of intra-UK trade that includes figures for England was published by the Economic Statistics Centre of Excellence (ESCoE) in 2021, based on trade in 2015. ESCoE estimates that intra-UK sales (exports) in 2015 amounted to around £190bn. For context, this would represent over one-quarter of all UK exports (both intra-UK and extra-UK) and around 10% of total GDP.²

8. We found that, overall, the majority of businesses that trade within the UK do not face challenges when selling to other UK nations.³ In practice, there has been little regulatory difference arising between the nations since the Act came into force. Most businesses do not have experience of regulatory difference and have not encountered challenges relating to regulatory difference, when trading across UK nations. The reports identify a number of regulatory developments which may lead to differences in the future.

Effective operation of the internal market

9. Our annual report focuses on the effective operation of the UK internal market. Our role does not extend to considering other differences which may arise between the UK nations (for example, in relation to matters of public policy), nor to matters of broader economic policy. We recognise the policy context in which governments act. Governments may make policy interventions for a number of reasons which may, in turn, lead to differences in regulation emerging between the UK nations. Our focus on economic factors needs to be considered within the wider context of the public policy decisions of governments, including the manner in which governments consider the (often unquantifiable) costs and benefits of policy choices. These considerations are discussed in more detail in the report.⁴

1 [OIM Annual Report - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/115441/OIM_Annual_Report_2022.pdf) [OIM Periodic Report - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/115441/OIM_Periodic_Report_2022.pdf)

2 Annual Report. Paragraph 2.5.

3 Under the Act, our remit does not extend to the Northern Ireland Protocol. We are unable to undertake a review of the Protocol or of legislation implementing it. For the purposes of our reporting functions, Northern Ireland is part of the UK internal market. In our research, some stakeholders raised issues related to the Protocol and these are referenced where appropriate in the annual report and in the periodic report.

4 Ibid. Paragraphs 1.21–1.24.

10. In our annual report we set out our approach to assessing the effective operation of the internal market. This builds on the factors highlighted in our previously published guidance on the operation of CMA's UK internal market functions.⁵ The Act provides a non-exhaustive list of factors which may be considered by us when monitoring and reporting on the effective operation of the internal market. The potential relevance of these factors can be summarised as follows:

- **Competition:** Where businesses in the UK are able to trade across UK nations, this is likely to lead to some businesses in each nation competing with those from other nations. This will increase competition which is likely to lead to improved outcomes, such as lower prices or better products and services, for consumers.
- **Access to goods or services:** Similarly, trade across UK nations can result in consumers having a greater choice of goods and services by making available products or brands which are not produced within their 'home' nation.
- **Volumes of trade:** Evidence of high volumes of trade across the UK nations may suggest that barriers to trade are surmountable; and increases in trade may indicate that consumers could be benefiting from increased competition and improved access to goods and services.
- **Differences of approach:** The practical implications of differences of approach embodied in regulatory provisions are important as the details of how regulations work can have a significant impact on firms and individual markets.⁶

Evidence base

11. In preparing the annual report, we gathered evidence from a range of sources, including statistics from the Devolved Governments, from ESCoE and from the Business Insights and Conditions Survey (BICS), a fortnightly business survey conducted by the Office for National Statistics (ONS).⁷ We held roundtable discussions with businesses and trade associations, academics, members of the policy community, and legal professionals. We commissioned qualitative research which obtained views of businesses based in all UK nations and who trade across the UK.⁸ We also monitored UK regulatory developments and reviewed publicly available information relevant to the operation of the UK internal market, and used information provided by businesses and other stakeholders through the OIM's webform [Report an issue with the UK's Internal Market - GOV.UK \(www.gov.uk\)](https://www.gov.uk/report-an-issue-with-the-uk-internal-market).

Our findings from the annual report

12. We found that the available data on intra-UK trade was limited, with long lags before figures were available for Scotland, Wales and Northern Ireland and no data at all for England. There are inconsistencies in the way data is collected and produced which hampered comparability. However, some clear indications emerged. We found that intra-

5 [Guidance on the operation of the CMA's UK Internal Market functions - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/guidance-on-the-operation-of-the-cma-uk-internal-market-functions) paragraph 3.2.

6 Ibid. Paragraphs 1.28–1.29.

7 [Business Insights and Conditions Survey - Office for National Statistics](https://www.ons.gov.uk/businessandindustry/surveys/businessinsightsandconditions)

8 [OIM: Qualitative research with businesses on intra-UK trade - GOV.UK \(www.gov.uk\)](https://www.gov.uk/report-an-issue-with-the-uk-internal-market)

UK trade was very important to the UK nations, representing around 45% to 65% of the external sales and purchases of Scotland, Wales and Northern Ireland, although less so for England as a result of the relative size of its economy.⁹

13. Given the limitations in the data currently available, we have published a Data Strategy Roadmap¹⁰ which sets out initiatives to improve intra-UK trade data being undertaken by the ONS, the Devolved Governments and others. These projects aim to improve significantly what can be known and monitored of how the UK's internal market is working, by improving the available data.¹¹

14. Evidence on who trades within the UK is available from the BICS. Results suggest that around 15% of businesses trade with customers in other UK nations.¹² Evidence from the BICS suggests that larger businesses are more likely to trade across the UK than smaller ones. We found from the BICS that the majority of businesses that trade within the UK do not experience challenges when selling to other UK nations, with less than one in ten firms citing challenges due to differences in rules and regulations. Our qualitative research also found that few businesses had encountered challenges in trading with other UK nations.¹³ (Some businesses highlighted other challenges outside our remit, such as supply chain impacts from external events.)¹⁴

15. We found that businesses were also largely unaware of the potential for regulatory differences between UK nations to arise. When the potential for such changes was raised with the participants in our qualitative research and at our roundtables, they considered that it could raise challenges and that consistency was preferable. Businesses were concerned that regulatory developments could entail additional costs or place some businesses at a relative disadvantage.¹⁵ Despite this, the businesses we heard from mostly said they would be able to adapt to regulatory difference, although our evidence suggests that some smaller firms may find adaptation more challenging due to more limited resources and a lack of experience in adapting to regulations.¹⁶

16. Chapter 3 of the annual report discusses current and upcoming regulatory developments that are affecting, or have the potential to affect, the UK internal market. We identified these developments through monitoring government consultations and the activity of the four legislatures, and through our stakeholder engagement.¹⁷ The key areas identified were agriculture, the environment and food and drink. This is consistent with the policy areas identified in our overview report (March 2022) as having potential to impact on the internal market.¹⁸

9 Ibid. Executive Summary, paragraph 8. Paragraph 2.27.

10 [OIM Data Strategy Roadmap - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/101441/OIM_Data_Strategy_Roadmap.pdf)

11 Ibid. Executive Summary, paragraph 9. Paragraph 1.34.

12 Ibid. Paragraphs 2.10–2.13.

13 Ibid. Executive Summary, paragraph 10. Paragraphs 2.15–2.16.

14 Qualitative research findings document, section 2.3.

15 Ibid. Paragraph 3.66.

16 Ibid. Paragraph 2.29.

17 Ibid. Paragraphs 3.1–3.7.

18 [Overview of the UK Internal Market Report – GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/101441/OIM_Data_Strategy_Roadmap.pdf)

17. Governments have policy reasons for wanting to introduce a regulation at a particular time. This can lead to each of the four governments pursuing their objectives on different timelines. An example of this is action by the governments in respect of peat in horticulture, which is explored further in our report on the proposed ban of the sale of horticultural peat in England.¹⁹

18. We have heard from businesses that they perceive introducing separate regulations to address broadly similar policy objectives over differing timelines to be a factor that could exacerbate perceived negative effects of regulatory difference between UK nations.²⁰ This may link with the point businesses made about relative disadvantage and impacts on competition.

19. We will report on the impact of regulatory developments on the effective operation of the UK internal market in subsequent annual reports.

19 [Report: Impact of a proposed ban of the sale of horticultural peat in England on the effective operation of the UK Internal Market – GOV.UK \(www.gov.uk\)](#)

20 Ibid. Paragraph 3.67.