



National Audit Office

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## **Report**

by the Comptroller  
and Auditor General

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**Department for Business, Energy & Industrial Strategy**  
**Competition and Markets Authority**

# Exiting the EU: Consumer protection, competition and state aid

## Key facts

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**3**

number of legal and regulatory frameworks examined in this report, all of which are the policy responsibility of the Department for Business, Energy & Industrial Strategy

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**240**

estimated number of additional staff the Competition and Markets Authority needs to recruit to upscale its existing competition and consumer protection responsibilities, a 39% increase

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**46**

estimated number of additional staff the Competition and Markets Authority needs to recruit to set up an entirely new state aid function

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**£23.6 million** total additional funding in 2018-19 for the Competition and Markets Authority's new and expanded responsibilities, including £3.3 million for state aid

**£2.4 million** amount the Department for Business, Energy & Industrial Strategy (BEIS) is spending on a new IT system to replace the European Union (EU)'s product safety rapid alert system that United Kingdom (UK) authorities currently use

**3,888** number of complaints by UK consumers against traders in the rest of the EU supported by the BEIS/EU-funded UK European Consumer Centre in 2016

# Summary

**1** The legal and regulatory frameworks covering consumer protection, competition and state aid are intended to create fair and effective markets that support consumer confidence and economic growth, and ensure that competition and markets work well for consumers. Consumer protection law helps protect consumers from unfair trading practices, competition law aims to promote competition between firms to the benefit of consumers and businesses, and state aid regulations are intended to prevent distortions of trade and competition.

**2** To varying degrees, these three frameworks are linked with European Union (EU) law and sit within the competency of the European Commission (EC). The EC and national competition authorities together have responsibility for enforcing competition law. The EC typically brings cases that cover the markets in a number of member states, while national authorities are more typically focused on their domestic market. The EC is solely responsible for enforcing state aid rules. There is significant cross-border cooperation on consumer protection across the EU single market, but enforcement is principally done at national and local levels. The regulatory areas also have an international dimension with, for example, World Trade Organisation rules on state aid and international networks on consumer protection and competition.

**3** In the UK, the Department for Business, Energy & Industrial Strategy (BEIS) is responsible for the general framework of consumer protection, and has overall policy responsibility for competition and state aid. However, a number of other bodies are responsible for enforcing all three areas. The majority of consumer law enforcement is carried out by local authority Trading Standards services, with support at the national level from the BEIS-funded National Trading Standards. The Competition and Markets Authority (CMA) applies competition law and merger review, and also uses its consumer powers to tackle market-wide issues, unfair contract terms and international consumer issues. A number of other national regulators and standards bodies also contribute to meeting consumer and competition policy objectives, for example by setting product standards or regulating specific sectors, and some have concurrent powers with the CMA to enforce competition rules in those sectors.

4 The UK government has indicated that the UK will leave the EU single market when it ceases to be a member of the EU. Following EU Exit, the competencies in all three regulatory areas will fall exclusively to the UK, which will have implications for the UK government and regulators:

- BEIS will need to ensure that the UK's legal and regulatory frameworks are operable from March 2019 in the event of no deal, or at the end of a transition period if this is agreed.
- UK authorities will need to develop increased capacity, particularly for competition enforcement and merger review (largely the competence of the CMA) where the scale and complexity of cases are likely to increase significantly, and new skills and capabilities, especially for state aid.
- The CMA and UK regulators will need to prepare for the relationship with European regulators and other agencies to change, particularly if the UK no longer has access to enforcement cooperation and cross-border data systems. Such arrangements are often enshrined in trade agreements or international treaties, meaning that future relationships are dependent on the form of any such agreement between the UK and the EU.

### **Scope of this report**

5 In the three areas that are the subject of this report (consumer protection, competition and state aid), the report examines:

- BEIS's progress in ensuring a functioning statute book for 30 March 2019; and
- the progress made by BEIS, the CMA and National Trading Standards in building regulatory capacity and capability for the UK in response to the potential repatriation of functions from the EU. This includes preparing for two alternative scenarios: one with an implementation period until 31 December 2020 and another for 30 March 2019 in a no-deal scenario.

6 There is a significant degree of uncertainty in all three areas stemming from negotiations on the future relationship between the UK and the EU as well as ongoing policy development. This report therefore also provides a commentary on contingency plans for areas that are subject to negotiations between the EU and UK on future cross-border cooperation, and the nature of any residual risks. Principally, these risks relate to:

- cross-border market surveillance and data sharing;
- cross-border enforcement and investigative cooperation; and
- consumer redress for cross-border transactions.

**7** This report covers eight of BEIS's EU Exit work-streams. It does not examine other areas of BEIS's progress in implementing EU Exit and it is not an assessment of BEIS's overall preparations, on which we have reported previously.

## **Key findings**

### Consumer protection

#### **Ensuring a functioning statute book**

**8 BEIS is currently reliant on cross-government prioritisation to get a large body of legislation laid in Parliament in the case of a no-deal scenario.** A significant proportion of BEIS's secondary legislation for EU Exit covers product safety in particular. It has prioritised its secondary legislation according to its significance for having an operable legal framework on 30 March 2019 and the potential impact on consumers. BEIS has established clear milestones for its legislative programme. Some of these have been put back by between 2 and 4 months, because of internal rescheduling or at the request of the Department for Exiting the European Union (DExEU) when prioritising different parts of the overall programme. This has not affected the proposed legislative timelines. BEIS has risk rated its deliverability as 'amber' (meaning that BEIS considers delays to milestones are recoverable and its consumer protection legislative programme remains on track for 30 March 2019). However, there is pressure on parliamentary time, and there have been delays to the passage of the European Union (Withdrawal) Bill (the Withdrawal Bill). BEIS is exploring ways to streamline its programme: for example, options to pass some pieces of legislation earlier than currently scheduled to ease pressure on parliamentary time (paragraphs 2.8 to 2.11).

#### **Capacity and capability**

**9 The impact of EU Exit on Trading Standards services is highly uncertain, and government is keeping it under review.** Local authority Trading Standards services carry out the majority of consumer protection enforcement, while National Trading Standards (funded by BEIS) carries out a range of national consumer protection enforcement. National Trading Standards has assessed at a high level the potential impacts of EU Exit, but considers the uncertainties too high to provide a specific overall cost for future scenarios. It has not to date requested any additional funding, although it is undertaking further analysis of demand at ports. BEIS is discussing the impact on local Trading Standards services with several other parts of government, because they provide services for a number of different government departments. We reported in 2016 that local Trading Standards services have limited capacity to enforce the existing consumer protection regime, and that they prioritise local issues despite trading becoming more national and international. BEIS is also currently consulting on whether to strengthen the consumer protection regime (paragraphs 2.13 to 2.16).

### **Contingency plans for cross-border cooperation**

#### **10 BEIS has contingency plans if the UK loses access to EU-wide market surveillance and enforcement systems, but it will have a considerable task to implement them in the event of a no-deal scenario.**

- To support its market surveillance capability, the UK currently relies on an EU-wide rapid alert system to identify unsafe products. BEIS sought a ministerial direction in March 2018 to spend £2.4 million on a replacement system. This was behind schedule but, following the direction, BEIS reports being on track to deliver a minimum capability by March 2019 in a no-deal scenario (paragraphs 2.19 to 2.21).
- National Trading Standards has identified product safety checks on imported goods as an issue that may be affected by EU Exit if provision is not made for the free movement of goods in a future UK–EU economic relationship. The borders in Kent are potentially some of the most affected by EU Exit because the vast majority of goods imported through there are from the EU and not currently subject to product safety checks. Kent Trading Standards has estimated the impact on its workforce of different scenarios, including no deal, and has escalated this to their funding providers. There is no requirement in law that product safety checks must be carried out at the border and, to date, no changes have been made to the infrastructure at Dover to expand capacity for product safety checks (paragraph 2.24).
- Trading Standards services and the CMA are planning to work bilaterally with EU member states on enforcement, as they currently do with non-EU countries, in the absence of an overall agreement with the EU. Appropriate protocols already exist, but outside EU structures the authorities expect cross-border enforcement to take longer and be more expensive, and the UK authorities cannot mandate another country to cooperate (paragraphs 2.22 to 2.23).

**11 BEIS has contingencies to maintain UK consumers' ability to seek redress from EU firms and to communicate any changes to consumers' rights.** The UK European Consumer Centre supports UK consumers to seek redress in cross-border disputes with EU firms, and it is currently funded equally by BEIS and the EC. In 2016, the Centre supported 3,888 consumer complaints lodged against traders in the rest of the EU. In the absence of continued membership of the European Consumer Centre Network, BEIS is exploring contingency options, although networking and cooperation with EU partners may be reduced. Consumers also need to understand their rights, should these change as a result of EU Exit. BEIS has overall policy responsibility in Whitehall for consumer advice and advocacy and is considering how and when it may be appropriate to inform consumers of any changes to their rights (paragraphs 2.25 to 2.26).

## Competition

### **Ensuring a functioning statute book**

#### **12 BEIS has drafted and consulted on secondary legislation but pressures in the legislative timetable could have an impact on readiness for 30 March 2019.**

The main statutes covering competition in the UK are already modelled on EU law but BEIS has identified a number of areas that are essential to the functioning of the UK regime, and which will require amendment in all scenarios. BEIS has a governance arrangement with the CMA to review the legislation. The CMA reviewed the legislation in detail in February 2018 and the secondary legislation is ready to go to the Parliamentary Business and Legislation Committee of Cabinet. BEIS's original delivery plans for the legislative framework were based on the cross-government assumption that the Withdrawal Bill would receive royal assent in May 2018 (paragraphs 3.10 to 3.13).

### **Capacity and capability**

#### **13 The CMA has additional budget that it considers sufficient to meet its estimated increase in competition caseload, and has taken steps to strengthen project management of its preparation for EU Exit.**

Larger competition cases involving markets in a number of member states, such as the recent case of Google's alleged abuse of its dominant position, are currently enforced by the EC. Outside the EU single market, the CMA will be responsible for enforcing cases with an impact on the UK market that previously would have been part of an EU-wide investigation. The CMA was allocated an additional £20.3 million total budget in 2018-19, a 29% increase, which it considers sufficient for this year. With the additional funding, it is planning to increase its staffing by 240 people, a 39% increase. The Infrastructure and Projects Authority reviewed the CMA's operational readiness in April 2018, and concluded that successful delivery appeared feasible if a number of issues were addressed promptly. It recommended that the CMA should strengthen project management and create an integrated delivery plan, both of which the CMA is implementing (paragraphs 3.14 to 3.16 and 3.18).

#### **14 The CMA is in a competitive environment for staff, and may need to re-prioritise certain aspects of its work if it cannot recruit the numbers or skills and expertise it needs in time for the increase in caseload.**

The CMA competes for specialist staff with other regulators and the private sector, where the CMA's benchmarking shows that salaries are often higher. The CMA is at an early stage in its recruitment but has a planned programme of campaigns during 2018. In the event that there is no implementation period for competition matters, the CMA has contingencies to deal with the likely increased caseload including the use of temporary staff and secondments, and through re-prioritisation of work. The Infrastructure and Projects Authority's review found that the CMA had coherent plans to build growth in staff complement and develop skills requirements (paragraphs 3.17 to 3.18).

### **Contingency plans for cross-border cooperation**

**15 The CMA has plans to mitigate the potential loss of access to cross-European enforcement and intelligence-sharing arrangements.** The UK is currently part of an EU-wide network with legal provisions for exchanging intelligence and confidential data that facilitate enforcement. Existing EU law provides for sharing confidential information between member states and the EC, subject to appropriate safeguards. Outside this EU-wide network, some member states do not have separate legal gateways in existence to share such information with the UK. In the absence of a substantive UK–EU agreement on data sharing, the CMA would seek to set up bilateral arrangements with agencies in member states, and under UK law provisions already exist to share confidential information with overseas authorities. However, the CMA cannot unilaterally secure reciprocal information sharing with other countries, and there is no mechanism to oblige overseas competition authorities to share information with the CMA, nor any existing legal gateway to allow this (paragraphs 3.20 to 3.22).

State aid

### **Ensuring a functioning statute book**

**16 BEIS has prioritised the essential legal provisions for a workable state aid regime for 30 March 2019 but implementation remains challenging because of pressures on the legislative timetable.** Following the vote to leave the EU in June 2016, the government considered different policy options on state aid, and decided in January 2018 that the UK needed an independent domestic state aid regime. It announced in March 2018 its proposal to use the Withdrawal Bill to establish a state aid regime, with the CMA as the independent state aid regulator. BEIS and the CMA have been working to develop the detail of the regime. BEIS considers it has a very tight timescale to incorporate EU state aid rules into UK law under the Withdrawal Bill for 30 March 2019 in the event of no deal, and it has therefore prioritised the critical legal provisions. The CMA considers that any further compression of the legislative timetable will place pressure on their plans (paragraphs 4.7 to 4.9).



## **Capacity and capability**

**17 BEIS and the CMA have been working in a constrained environment and are in the early stages of setting up a new state aid function.** The CMA is setting up a state aid function and is now expanding its delivery following the government's announcement in March 2018. The CMA has been allocated £3.3 million of additional budget for state aid (including £0.9 million for IT) for 2018-19. The CMA considers this sufficient for this year, both for its initial estimate of 46 additional staff required to set up the function and for the development of an IT system. Its staffing and costing estimates were based on those from UK officials with prior experience of state aid. The business case states that funding may need to be adjusted once the regime goes live and there is more certainty on how the regime is operating. There was no clear vires for the CMA to spend on IT and staff specifically for state aid until the Withdrawal Bill received royal assent. BEIS and the CMA have started developing the IT system. Only a minimum level of functionality will be required immediately following EU Exit, because of the initial low volumes of state aid notifications expected. (paragraphs 4.10 to 4.13).

## **Conclusion**

**18** The UK authorities responsible for consumer protection, competition and state aid expect that EU Exit will place much greater demands on aspects of these areas, for example in preparing new legislation, setting up a new state aid body, or taking on more complex competition enforcement cases. While the precise requirements remain uncertain and depend on the form of the future UK–EU relationship, BEIS, the CMA and National Trading Standards have identified and prioritised aspects that are critical to the functioning of these areas for 30 March 2019 or following an implementation period.

**19** However, the scale of the implementation challenge is significant and timescales are tight in all three areas examined. In particular, the time available for ensuring that legal frameworks are ready has already been eroded by slippages in the passage of the Withdrawal Bill, and the recentness of policy decisions on state aid. Furthermore, there are challenges to build capacity and capability in the event of a no-deal scenario. Government must therefore prioritise those actions and resources that are most critical to ensuring that UK businesses and consumers can continue to trade confidently and smoothly following EU Exit. We will therefore continue to monitor the management of delivery risks, and the progress that BEIS and its delivery partners are making overall.